

# **The Land and Its People:**

**Civil Society Voices Address the Crisis over Natural Resources in the Middle East/North Africa**

Housing and Land Rights Network



Habitat International Coalition



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## Welcome

The Housing and Land Rights Network of Habitat International Coalition (HIC-HLRN) warmly welcomes you to the Middle East/North Africa Land Forum. As a reader of this volume, you are joining a process that HIC-HLRN initiated in 2009 with the objective of developing further the knowledge and capacities of the region's civil society actors as needed to advance both the research and advocacy agendas on human rights dimensions of land and natural resources. The volume under your eyes represents much of the cumulative output of the first four annual Land Forums since 2009.

This volume also represents the completion of a critical diagnostic stage in the MENA region's civil society's expression of priorities, challenges, dilemmas and solutions in facing the ongoing—and growing—crisis of natural resource administration in the modern state system. As the various crises have evolved, so too has the critical voice of citizens in the governance of their own public assets. The present compilation at this phase of the Land Forum reflects both the rich diversity and remarkable similarities of the issues across the region.

The MENA region is perhaps best known in the world over time as a veritable crossroads, where traders, political powers, resource extractors and external agents have vied for strategic advantage. However, the following chapters tell of the very local struggles over land and natural resources that abide within this more-familiar geostrategic context. Thus, *The Land and Its People* trains our focus on the local peoples and domestic dynamics that often are obscured from the sweeping global perspective. Like the Land Forum itself, this volume takes a view from the ground and explains those dynamics and ongoing struggles within states, as both also seek to identify common cause among them.

The unfolding story of *The Land and Its People* reveals that common cause and its powerful potential embodied in the region's civil society. The civil perspectives contained here divulge a citizen-based analysis of the issues whose time has come. The Land Forum also has sought to create the space and opportunity for the diffuse citizen voices and efforts to find common expression through exchange of knowledge and experience. As daunting as that task may be, the Land Forum has succeeded largely to establish the necessary common ground, as it were, and to converge urban and rural, development and environment, legal and popular approaches within a common normative frame of human rights and corresponding obligations as developed in the interstate system.

Drawing on the normative framework of international human rights law, the diagnostic phase of the Land Forum represented here also reveals serious gaps in capacities and information. This assessment is also useful. In the region, the comparative analysis of analogous contests over land and natural resources such as Aḥwaz, Palestine and Western Sahara often are overlooked by case-specific observers within the region and the wider world. Women's rights on the land and related gender issues remain understudied and under-reported, especially in contrast to their centrality. Certain emerging issues are known, if at all, by their political or rhetorical character, but the factual details remain elusive, partly because of scant data. Official discourse in and about the region also has obfuscated arguments arising from vital struggles and horrendous abuses. In the crucible of this region, however, the critical focus on land and natural resources brings into high relief the inextricable relationships between seemingly diverse “natural” and human-made factors, physical planning and food security, urban and rural, geography and economy, extraterritorial forces and local human rights conditions, the haunting past and the ongoing present and future. Seeing the Middle East/North Africa from the perspective of the people's land and natural resources also enables us to perceive the perfect storm on the climate change

horizon, with the MENA region's uniquely predicted combination of water stress and drought risks, coinciding with reduced crop yields.

For whatever reasons of double standards, professional specialization, bias and/or factual deficits have caused these issues to escape our gaze, the so-called "Arab Spring," which took place in the course of the Land Forum's serial rounds, has reawakened us to the complexity of issues that beg urgent attention and policy correction. It is no mere coincidence that the infamous "Spring of Nations" uprisings in another place and time (1948 Europe) embodied comparable factors and features: social upheaval following a food crisis and revolutionary hopes dashed for lack of sustainable solidarity. The Land Forum and, especially, this record go a long way to capture the lessons that remain, despite the derailment, disappointment and shortcomings of reform and transitional-justice processes to date.

As this coherent perspective has crystallized for the participants of the Land Forum, the diagnostic stage now gives way to more-practical approaches. Future Land Forums will be dedicated to developing and applying strategies and tools to advance the research and advocacy agenda toward operationalizing the human rights approach to the administration and management of land and natural resources. Foremost among the tools commonly available to all concerned is the normative framework deliberated and developed at the regional and international levels. To date, the setting of those standards and the development of those tools far exceed their application and use. The efforts of future Land Forum participants will seek to make systematic use of those tools, norms, international mechanisms and global concepts.

Within the region, civil society actors and activists have taken up many of the global concepts, as they are reflected in these pages. Writers have incorporated and localized the "social function of land and property," "social production of habitat," "right to the city," "transitional justice," "local government," "right to land," and "city-regions" as planning and policy concepts, adding specificity to the "human right to adequate housing" in discourse and in practice.

As the Land Forum is a process, so too is this volume a living document, to which participants will contribute as the field evolves. Especially in its forthcoming electronic form—at [www.hic-mena.org](http://www.hic-mena.org) and <http://landtimes.landpedia.org/>—HIC-HLRN will maintain an updated on-line resource of civil society contributions to the Land Forum.

This English-language edition of *Land and Its People* takes the local production to a wider, external audience, as it presents, in translation, many of the lessons of the Land Forum. The specifics of each round are found in other references. However, this compilation represents the first time that HIC-HLRN is able to share this learning with a wider public. It is with equal appreciation for all of the contributors to this volume, the dedicated HLRN team in Cairo and, you, the reader, who now coincide on the juncture of the terrestrial and human dimensions of our region.

Welcome to the MENA Land Forum and to *The Land and Its People*.

Joseph Schechla  
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# **1. Land in the Middle East/ North Africa**





## A Regional Perspective of the Land

*Joseph Schechla and Rabie Wahba*

"Blessed are the gentle, for they shall inherit the earth.  
Blessed are those who hunger and thirst for righteousness,  
for they shall be sated."  
*Matthew 5:5<sup>1</sup>*

"Surely, We inherit the earth, and to Us they are returned."  
*Sūrat Mariam: 40/19<sup>2</sup>*

The land continues to represent a pivotal and formative element in the continuum of the peoples of Middle East and North Africa. Land is the locus of life for the existence and significance of the human presence, the first source and reference of identity, even and especially as people began to move upon it.

The land has witnessed the passing of ages, hosting its itinerant weavers of cultures, ideologies, religions, myths and systems. Waves of settlement, invasion, transfer and colonization have created the sedimentary layers of the ages under our feet. The land also has been the subject of great contention at all stages of history, culminating in the current millennium. Conflicts between neighbors and world wars have engulfed the homeland, forcing displacement and relocation to unfamiliar parts. Colonial and alien powers have long wrestled for control of fertile grounds, geostrategic positions, social thought and coveted resources, binding and bonding the peoples of the southern Mediterranean and Western Asia in particular ways, both common and diverse, but intricately interwoven.

### **Common Historical Ground**

The region occupies, at once, a center point, a cradle and a crossroads of civilizations. The human practice of agriculture began in ancient Mesopotamia, and soon spread to the fertile Nile Valley. The lands on which civilization was born have long been the grounds of great ambitions and rivalries. The first mention of Babylon was in the context of conquest of surrounding lands by the city's apparent builder.<sup>3</sup> Its eventual ruler Hammurabi produced the world's first known law. These foundations may have seemed indelible. However, the serial collapse of Babylonian empires testifies to the temporal nature of power over the land.

With every major political shift, the rules of the game give way to new norms affecting use of the land, its resources and the mitigation of human interests and rivalries. Throughout, a people's relationship to its land remains consistent.

In the 6<sup>th</sup> Century B.C.E., Cyrus the Great broke from the former Neo-Assyrian practice of social control by population transfer and demographic manipulation that separated many peoples of the region from their lands. It was Cyrus who is attributed with establishing the first charter of human rights. With the "Cylinder of Cyrus," the emperor declared the displaced peoples' right to return and to restore their residence in their ancestral lands. This ancient writ also recognized the right to freedom of belief, conscience and religion, in its contemporary forms, and the restoration of the displaced peoples' residences (lands) and places of worship. This stroke of justice earned the Persians the distinction of instituting human rights as statecraft, and some even described Cyrus the Great in messianic terms.<sup>4</sup>



The Cyrus Cylinder (R) and its cuneiform text (L). British Museum, London, England.

This legacy of statecraft gave way, nonetheless, to successive forms of conquest and deprivation generations later. As subsequent civilizations and empires rose and fell, the foundations of monotheistic (Zoroastrian and Judaic) belief gave way to waves of Christian and Islamic ethics that have prevailed in the modern era. That tradition gave rise to another giant of social thought who has guided a generational movement toward knowledge and against tyranny. When Ibn Khaldūn confronted Tamerlane at Damascus in 1401 A.D. (803 A.H.), he spoke truth to power (*jihād*), and delivered a powerful message that still rings true today: "Justice is the foundation of urbanity" ["العدل أساس العمران"].<sup>5</sup>

After laying waste to the cities of Aleppo and Hama, Tamerlane's invaders then ravaged and burned Damascus. In the aftermath, an obscure resident named 'Abd Allah al-Bahā'ī al-Ghuzūlī composed a 65-verse poem<sup>6</sup> mourning the capital's destruction. His work stands among a time-honored genre of Arabic elegies to cities and the longing for homelands [الحنين إلى الأوطان]. This long-standing lament is more than a romantic longing, but also translates as an inherently human call for protection and the realization of human rights to the land and to the city wherever people live.

Ibn Khaldun's notion of *al-`asabiyya*, the connection and sense of belonging to each other, resonates also in the contemporary expression of civil society that works in the public interest, and of modern citizenship through participation in local self-determination. This is the civic sense of the "deep state" that has been lost in the language of security-obsessed statecraft. It is that civil solidarity that endures, even when the state fails.

The land and the majority upon it, especially in our region, still suffer various forms of colonization. From under that scourge spring eloquent voices to remind both the colonizer and the colonized of the inextricable bond among the indigenous people, their land and their resistance on it. The national poet of Palestine, a country continuing under colonization into the new millennium, eloquently asserts personal integrity with the land:

I name the soil "an extension of my soul"  
 I call my hands "the pavement of wounds"  
 I name the pebbles "wings"  
 And the birds "almonds" and "figs"  
 My ribs are "trees"  
 Gently, I pull a branch from the fig tree of my breast  
 I toss it like a stone  
 To blow up the conqueror's tank.  
 —Mahmoud Darwish (Palestine)

أسمي التراب امتداداً لروحي  
 أسمي يدي رصيف الجروح  
 أسمي الحصى أجنحة  
 أسمي العصافير لوزاً وتين  
 أسمي ضلوعي شجر  
 وأستل من تينة الصدر غصناً  
 وأقذفه كالحجر  
 وأنسف دبابه الفاتحين .  
 —محمود درويش (فلسطين)

Amid images emanating from the region of tourist get-a-ways, desert nomads and other stereotypes, outside observers often lose sight of the fact that most of the Middle East/North African societies are fundamentally agricultural. The people who live from, and work on the land form a frontline in its defense. Just as often, they struggle for subsistence without rights to organize, benefit from social protection or tenure security.

Emblematic are the Egyptian small-holding peasants who have remained a cultural and economic backbone of the country across the incrementally shifting ground of official ideologies. Former President Gamāl `Abd ul-Nāsr's 1952 tenancy law protected the land tenure of small farmers. Previously, individual landowners could own more than 500 feddans (210 hectares), an amount subsequently reduced to 50 feddans (21 hectares).<sup>7</sup> In the late 1970s, President Anwār el-Sadāt opened the door to foreign companies that produce and market agricultural goods, which came at the expense of their locally produced counterparts. The Egyptian President Husni Mubarak-era's notorious Owners and Tenants Law 96 (1992) reversed `Abd ul-Nāsr's social legacy, the enforcement of which, with its neoliberal policy assumptions, has left untold millions of rural Egyptians without a source of livelihood amid skyrocketing land prices and crushing farmer debt.<sup>8</sup>

This process coincided with executive-driven reform that stripped 34 social provisions from the Egyptian Constitution and subordinated the public sector role in development.<sup>9</sup> The underused and likely misunderstood provision guaranteeing the "social function" of land and property remained a part of the Constitution,<sup>10</sup> however, until excised from its latest iteration of January 2014.

### **Between Global Integration and Self-determination**

Such measures to diminish the protective and service roles of the state and to defer development instead to private interests reflect the region's integration into the processes of economic globalization. The so-called Washington Consensus promoted the assumption that the economic challenges facing developing countries almost invariably traced back to their governments' profligate spending and meddling in the economy. A set of structural-adjustment and macroeconomic stabilization policies, consisting of short- to medium-term austerity measures, became the prescription, leading to longer-term policies of trade liberalization, privatization and deregulation. The periodic balance-of-payment crisis was generally taken as evidence of the fact that the country was not producing enough (externally) tradable goods and services, exacerbated by excessive government expenditure that distorted markets and artificially enabled high social spending and the production of non-tradable goods and services.

The subsequent adjustments have imposed increasingly deep government spending cuts on subsidies and tightened lenient tax regimes. Especially from the perspective of economically vulnerable people and communities in the globalized MENA countries, the solutions appeared rather like sinking the ship (of state) in order to get rid of a few rats. However, the adjustments were intended to unshackle markets from excessive government interference so that they could be more resilient in the face of changing economic conditions and outside shocks. Privatization and market deregulation were among the means of eliminating strictures and inefficiencies of state institutions that inhibited market adjustment, competition and inflation control. However, in the Middle East/North Africa region, as in much of the developing world, the result has been increased market volatility and a deflationary bias.<sup>11</sup>

However, where the state continues to play a greater role in guiding the national economy, the need for greater social protection for the economically vulnerable has remained high. Algeria also has found it

necessary to rescue its farmers from crushing indebtedness in recent years, promising a debt relief scheme for the most affected.<sup>12</sup>

Mismanagement and corruption in the land sector in all cases have favored political, military and tribal elites, sometimes in various forms of collusion. The lack of transparency and the prevalence of illicit acquisitions in the land sector have become notorious in Morocco, Jordan, Libya, Egypt, Bahrain, Sudan, Turkey and Yemen. Some of these cases follow the contours of historic social or ethnic discrimination, while others coincide with political favoritism new-fashioned privatization schemes.

In Tunisia, political figures of the previous regime appropriated vast farm lands by arbitrarily annulling standing contracts between the state and local farmers who had cultivated the land for many years. The political instability and lack of reform over the transition have impeded restitution of those landholdings.<sup>13</sup>

A mounting civic reaction to globalized policies and their local agents appears to have gained traction in the events and developments of the millennium's first decade. The social movements in the littoral states of the region have reflected both a cerebral and visceral reaction of society to the disruptive effects upon the community of standing economic development models and their enabling political superstructures.

Following the uprisings of 2011, numerous changes have taken place, others are promised, while many corrective opportunities—both remedial and preventive—have been squandered under counter-revolutionary forces, polarization, political compromise and/or sheer ambiguity of the situation. The constitutional reform processes underway engage a strident call for wider consultation and participation of citizens, in general, and marginalized communities, in particular. For those relying on the land and natural resources for their sustenance, alternative visions are taking shape, although relief is not yet palpable or assured.

In Egypt, the draft constitution included transitional Articles 243 and 244, which oblige the state to ensure that youth, Christians, the disabled, Egyptian expatriates, farmers and laborers are represented “adequately” in the new parliament; that is, in a manner yet to be organized by the law. The Constituent Assembly, which drafted the constitution, nevertheless cancelled the 50% parliamentary quota allocated to farmers and laborers since the era of late President Gamāl `Abd ul-Nāsr in the 1960s.<sup>14</sup>

A new constitution is in the making in Yemen, following a National Dialogue that aired a range of historic grievances and gave way to an experiment in transitional justice. There, land dispossession has particularly affected small-holding farmers in al-Hudaida, certain tribal groups elsewhere and youth across the country promised land for housing since 2007. Prospects for constitutional reform in Algeria also have elicited calls for special protections for farmers from persistent violations of their rights.<sup>15</sup>

These responses reflect, among other things, the fact that human beings understand themselves and attribute meaning to their lives in a social and economic context. That process involves solidarity that is anchored in personal and productive relationships in specific locales, far from the bureaus of national capitals and international financial institutions (IFIs). The constant redeployment of labor and land in a divisive market, with its corresponding economic disparities, had disrupted these relationships and, thus, undermined the stability that is required for people to realize their rights, dignity and aspirations as productive and remunerated human beings.

The land-based dimension of development in the region is characterized by a large proportion of national populations living outside of cities, while these populations remain the least likely beneficiaries of formal employment and social development. Some 50% of Egyptians live in rural areas, and 80% of people in Sudan rely on access to natural resources for their livelihoods. Central to the demands of the Tunisian uprising in 2010–11 has been the relative neglect of development and investment in the country's interior, where the uprising began.

The recent political turns in the Middle East and North Africa suggest that, if the authoritative economic agencies truly have mediated the competitive forces unleashed in the process of global integration, they certainly have not done so sufficiently to stave off the reaction of the Arab Spring, nor the disruptions and failed governance that left no option but for newly autonomous regions and independent states—such as Iraqi Kurdistan and South Sudan—to emerge from their dysfunctional hosts. These developments have increased the pressures not only for the local, regional and global social agencies to act as moderators, but also for the donor community to respond to the lessons that emerge from the many cracks in the current economic world order that the current social uprisings and political contentions have exposed.

While Keynesian economics has appeared to provide a framework for reconciling the competing forces and underlying contradictions, each economic ideology since remains contested. While development takes place without a consensus today, it becomes more difficult to create a coherent alternative. However, at the same time, the broader questioning compels development actors to experiment with new approaches to practice and to seek fresh perspectives on social policy as integrated with economic progress and the “forward development” promised in the UN Charter (along with peace and security, and human rights). However, the emerging concept of a “human right to land”; that is, the human rights dimensions of the land, remains an evolving operational tool to meet this challenge across seasons of change in the dynamic MENA region.

In the midst of dramatic change, a group of Housing and Land Rights Network members asserted that, in its essence, the dynamic unleashed in 2011 “aims at restoring and implementing human rights, particularly economic, social and cultural rights, including the right to adequate housing, which preserve the dignity and ensure the future of citizens in their home and land.”<sup>16</sup> As parts of a long continuum, every organ of society sharing this vision is freshly determined to bring those civil objectives into reality.

## Endnotes:

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<sup>1</sup> *The Beatitudes*, Matthew 5:5–6, *World English Bible*, at:

[http://en.wikisource.org/wiki/Bible\\_\(World\\_English\)/Matthew#Chapter\\_5](http://en.wikisource.org/wiki/Bible_(World_English)/Matthew#Chapter_5).

<sup>2</sup> *The Holy Qur'ān*, Sūrat Mariam: 40/19, transl. Maulana Muhammad Ali (Lahore: The Ahmadiyyah Anjuman Isha'at Islam, 5<sup>th</sup> ed., 1963), p. 601.

<sup>3</sup> Sargon of Akkad. “Chronicle of Early Kings,” adapted from A.K. Grayson, *Assyrian and Babylonian Chronicles* (Locust Valley NY: J. J. Augustin, 1975) and Jean-Jacques Glassner, *Mesopotamian Chronicles* (Leiden: Brill, 2004), at: <http://www.livius.org/cg-cm/chronicles/abc20/kings.html#1>.

<sup>4</sup> Kādhim Jabr Sulaimān al-Kar`āwī, *Suqūt Bābil fī 539 q.m. wa Dawr al-Yuhūd fī Dhalik* [The Fall of Babylon in 539 BC and the Role of Jews in It], Open University Library of Babylon, Repository of Open Access Papers, At: <http://repository.uobabylon.edu.iq/papers/publication.aspx?pubid=1722>.

<sup>5</sup> Ibn Khaldun, “Introduction,” *The Book of lessons* (Tunis, 1377).

<sup>6</sup> `Alā' al-Dīn `Ali bin `Abdullah Bahā'i al-Ghazūli, *Matāli' al-Badūr fī Buyūt al-Surūr* [Gazing at Moons in the Houses of Pleasure] (Cairo: Religious Culture Library, 2006) pp. 619–21.

<sup>7</sup> 1 feddan = 1.038 acres, or .42 hectares.

<sup>8</sup> By 2006, Egypt's Ministry of Agriculture counted the number of tenants dispossessed under Law 96 at approximately 904,000 (30% of farmers in Egypt). Those tenants and their families totalled approximately 5.3 million people who had lost their sole

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source of income. Karam Saber, "Agrarian policy, legislation and violations of Human Rights in Egypt: Land privatization and farmers evictions in Egyptian countryside," dialogues, proposals, stories for global citizenship (2006), at: <http://base.d-ph.info/en/fiches/dph/fiche-dph-6922.html>. That number is estimated to be much higher, although no census of dispossessed farmers has followed the 2006 count.

<sup>9</sup> In the amendment to Article 30 of the Egyptian Constitution.

<sup>10</sup> Article 32, of 1971 Constitution and after amendments ratified in 22 May 1980 referendum; Article 32, after amendments ratified in 22 May 1980 referendum; Article 24, after amendments ratified in the 15 and 22 December 2012 referendum.

<sup>11</sup> See Eswar S. Prasad, Kenneth Rogoff, Shang-Jin Wei and M. Ayhan Kose, "Effects of financial globalization on developing countries: Some empirical evidence," Occasional Paper (Washington: IMF, 2003), at: <http://www.imf.org/external/pubs/nft/op/220/index.htm>.

<sup>12</sup> *Algeria: the announcement of the final list of beneficiaries of debt peasants survey within 15 days* [Arabic], , in HIC-MENA News (3 January 2010), at: <http://www.hlrn.org/news.php?id=pGlpA==>; *Algeria: debt forgiveness maximum peasants who do not meet the conditions* [Arabic], *el Ayem*, in HIC-MENA News (25 February 2010), at: <http://www.hlrn.org/news.php?id=pGlpZw==>.

<sup>13</sup> « Tunisie. Restitution des fermes accaparées par l'ex-clan au pouvoir, » *Kapitalis* (7 January 2012), at:

<http://www.kapitalis.com/economie/7723-tunisie-restitution-des-fermes-accaparees-par-lex-clan-au-pouvoir.html>; Nader Ghazouani, « Comment un assureur devient agriculteur grâce à la troïka ? » *Business News* (22 January 2014), at: <http://www.businessnews.com.tn/Nader-Ghazouani,-comment-un-assureur-devient-agriculteur-gr%C3%A2ce-%C3%A0-la-tro%C3%AFka.520,43721,3>.

<sup>14</sup> "New Egyptian constitution scraps parliamentary quota for workers and farmers," *ahram online* (18 November 2013), at: <http://english.ahram.org.eg/NewsContent/1/64/86851/Egypt/Politics-/New-Egyptian-constitution-scraps-parliamentary-quo.aspx>.

<sup>15</sup> "Algeria: Call for Criminalizing the Attacks on the Agricultural Land in the Constitution" [Arabic], *PFLN*, in *HIC-MENA News* (18 July 2014), at: <http://www.hlrn.org/news.php?id=pmPszw==>.

<sup>16</sup> "A New Dawn in Our Region: Revolution against Tyranny and Corruption, and for Restoring Rights and Liberties," statement of HLRN members in Egypt, 22 March 2011, at: <http://www.hlrn.org/img/documents/HIC-MENA%20Stmt%20Egyptian%20revolution%202011%20Eng.pdf>.

## **In the Long Shadow of Ottoman Land Administration**

*Jamal Talab al-Amlah and Joseph Schechla*

Despite its latter reputation in the West as the “sick man of Europe,” the Ottoman Empire made great strides in the administration of land across its vast reach. The Sublime Porte had managed to consolidate land administration criteria into a unified legal order that, in today’s vernacular, could be considered a historic good practice in administering diverse tenure forms.

This challenge still faces many governments in the new millennium, when the issue of land and natural resources becomes all the more contentious. States and their institutions are assumed to mitigate the divergent interests and struggles for local survival amid increase global demands on limited resources. However, few succeed.

In any context, the claims of tenure are diverse, often involving multiple systems within the administrative unit that is the modern state. Historically, the concept of legitimate tenure rights extends beyond mainstream notions of private ownership and includes multiple tenure forms deriving from a variety of tenure systems.<sup>1</sup> The tenure system of the Ottoman Administration reflects the region’s historic experience at consolidating diverse tenure arrangements into a single system, while leaving an enduring legacy of assumptions that affect local communities’ ongoing struggles for secure tenure within contemporary authoritarian successor states. This chapters explores that legacy with a view to its divergent purposes, ranging from the pursuit of social justice to the extension of acquisitive authoritarianism.

### **Land and It People in Ottoman Administration**

The Near East of the Ottoman Empire (Western Asia, east and central North Africa, including Sudan) covers a vast and diverse area. The predominance of Islam, with its various jurisprudential schools and local applications, is one of the unifying—if not also sometimes divisive—factors characterizing the region.

Just preceding and simultaneous with the Age of Discovery for Europe, the Ottoman Empire was consolidating its hold on land and subject peoples through a process of "gradual assimilation."<sup>2</sup> The Ottomans carried out the turkification of western Anatolia not by a mass conversion to Islam, but by an aggressive Turkish migration and settlement movement that sought new areas beyond the overpopulated lands to the east. The subsequent expansion of the Ottoman Empire was assured largely by the related *ghazi* military organizations that functioned as warriors of the Islamic faith in the borderlands.

Although the core of the Empire was dominated by ethnic Turks, it may be an exaggeration to characterize the Ottoman Empire as a Turkish ethnocracy. The guiding ideology rather was Pan-Islam until the Empire's decline in late 19<sup>th</sup> Century when Pan-Turkism arose to take its place independently of Sultan `Abd ul-Hamīd II and later consolidated in the Kemalist Movement. Nonetheless, the Ottoman state actively had encouraged the settlement of Turkish people, or other Muslims, in conquered lands. In earlier centuries, this developed into an elaborate system of colonization and mass deportation (*sügün*) to secure conquests. The Ottomans also transferred non-Turks to Anatolia, the Ottoman



heartland, as in the transfer of rebellious Albanians to Trabzon (Anatolia) in the 15<sup>th</sup> Century, and of Christian militiamen from their fortresses in Europe to Karası (Anatolia), in order to thwart insurgency.

However, other cases of population transfer appear to have been motivated less by counterinsurgency strategies than for purposes of territorial control through demographic manipulation. By the 16<sup>th</sup> Century, the Ottoman Administration settled Turks along the two great strategic routes of the Balkan Peninsula: through Thrace and Macedonia to the Adriatic Sea, and through the Maritza and Tundja Valleys to the Danube, where village names today bear witness to their inhabitants' Anatolian origins. According to a 16<sup>th</sup> Century imperial population-transfer decree,<sup>3</sup> one of every ten families in Anatolia, Rum (Sivas), Karaman and Zülkadriye provinces were to be sent to newly conquered Cyprus.<sup>4</sup> Also, 1,025 Muslim families from Anatolia were transferred to the Pravadi district of Bulgaria.<sup>5</sup>

As the Ottoman Empire lost its ascendancy in the Middle East, the various nationalities asserted their will to achieve self-determination. The non-Muslim national groups largely succeeded with the assistance of European powers, which sought, in return, economic and geopolitical advantages in the new world order. The looming exception was the Armenian nation, which was frustrated by the lack of tangible European assistance and, thus, suffered the full brunt of ethnocentric population transfer policies throughout the transition from Ottoman Empire to Turkish Republic.<sup>6</sup>

### **Managing the Land**

Throughout the Ottoman period and until the present, property rights in official law in the region have coupled Islamic principles and custom with the demands of the state or ruler to secure rights and extract surpluses as tribute and tax. However, state power has tended to dissipate beyond the seat of governments. Thus, the formal legal system of the state, the *qanūn* (written and legislated), has co-existed with customary law, *urf* (largely unwritten and practiced by local consensus). To some degree the *qanūn* often confirmed existing local custom, while it also has been recognized that custom is one of the sources of Islamic law (*sharī`a*), itself a pillar of the *qanūn*.

With the pan-Islamic ideology of the Ottoman Administration, Islam's egalitarian principles informed the early systems of land tenure in pursuit of social justice, equity and equality. In the 19<sup>th</sup> Century, the Ottoman Administration codified the prevailing land tenure systems into a set of regulations that still carry great influence in much of the region, particularly as continuous practice also forms an important part of the law.

The Ottomans attempted to codify Islamic land rights in 1858, as well as initiate the first cadastral system for the mapping and registration of all settled areas of the empire, which prevailed in the region till 1918. Given its development in the settled areas of the Islamic world, the Islamic Ottoman property rights law assumes the perspective from the village outward, but imposes less regulation of pastureland, steppe and desert areas.

During the era of the Ottoman Caliphate, the Land Law was issued in 1858, as was the Law of the Land Registry in 1861, and two systems of registration of private land in its user and its owner's name. The Land Law classified tenure into five types:

- **Owned land** (Ottoman Turkish [OT]: *mülk*; Arabic [A]: *mulk*): Private land, right of full (freehold) ownership and usufruct of the land, as well as right to bequeath and dispose of bequeath the property. This category was reserved for permanently irrigated areas, orchards, and housing-plots, generally held privately. *Mulk* is comprised of several facets: (1) resource ownership or "neck"

(*raqaba*) and (2) usufruct rights (*tasarruf*). This privately owned land could be sold by the owner or encumberer, and bequeathed to rightful heirs. It does not return to the state treasury, unless there is no heir.

- **Princely land** (OT: *miri*; A: *mīrī*, or *amīrī*): These lands, “belonging to the Amir,” essentially were state land suitable for agricultural use where the ultimate owner is the ruler, but the usufruct usually belonged to individuals. *Mīrī* land may include agricultural land, pastures and *maḥātab* (forests). Most agricultural land belonged to the category *mīrī*. Here the *raqaba* land belonged to the state or ruler, while the farmer enjoyed *tasarruf*. The farmer's situation was complicated by the exploitation of these lands more often than not on a communal basis (*mushā`*, see below) and by the practice of fallow that involved grazing rights.
- **Abandoned land** (OT: *metruka*; A: *matrūka*): Land “left” of “given over.” *Matrūka* lands were of two types: (1) land left for general use of the public (i.e., highways, public works, public markets, etc.) and (2) land for the inhabitants of particular settlement, village or town. Examples of the latter were communal forests, water bodies, valleys, herding stations and threshing floors. These lands were left to benefit the general public, or left to the people of nearby villages, and no person had the right to build or plant trees in such public places.
- **Disused land** (OT: *mevat*; A: *mawāt*): So-called “dead,” unclaimed or disused land, mainly for grazing under common property regimes. These are remote areas that are not allocated for public benefit, not claimed by anyone and at least a mile (or half mile) away from the built-up areas. Often, this category remains a grey area with political undertones. Ottoman laws allowed tenure claims to *mawāt* land for those who “revived” those lands within a period not exceeding three years. Both the 1858 Ottoman Land Code and *sharī'a* maintained that *mawāt* is “open access” land, where “no taxes were claimed” and all persons could “cut for fuel and for building...or collect herbage...without anyone being able to prevent him.”<sup>7</sup> The Land Code designated customary summer pastures near settled areas and markets as *mīrī*, but few authorities actually registered and formalized them as such.
- **Endowment** (OT: *vakıf*; A: *waqf*): Unalienable lands bequeathed or otherwise dedicated in perpetuity to religious or benevolent foundations for the usufruct of the faithful, especially the neediest members of the community of a particular faith. This benevolent function of property is generally attributed to Muslims, but also *waqf* classification could apply to societies ministering to communities of other faiths as well. This *waqf*, or endowment, category of land ensured rights of access to, and use of land for agriculture and/or housing. The *waqf* system involved other forms of property or services for the public.

Endowment land often included public lands identified by the Sultan of Sultans. The Ottoman Administration raised the legal status of this form of tenure in practice, exempting *waqf* lands and properties from tax. It followed that some wealthy persons or farmers contributed land and other real properties to the *waqf* system in order to avoid paying taxes and fees. Thus, *mawqūfa* lands and other properties are those possessed in mortmain or endowment (*mawqūfa*: past participle of *waqf*.)

The *waqf* system operates at the intersection of civil society and state in at least two important ways:

- (1) it is a set of benevolent institutions to redistribute property on a charity basis (while the state bears the obligation to do the same, but on behalf of rights holders without regard to religious affiliation);
- (2) the *waqf* system coincided with many public works that are within the remit of the state, but devolved to the initiative of nongovernmental benefactors.

**Other Criteria:**

***Iqtā'***: This concept devolves to the ruler the authority to allocate lands, analogous to contemporary authoritarian systems that empower the head of state and/or ministers the authority to grant or dispose of lands. However, when the governing institutions of state allot land to another party, the state bears the burden to utilize the property for its intended purpose. Otherwise the previous holder regains her/his property. In the case of *iqta'*, an *imam* may “bestow” *mawāt* land. If, after three years, that land is still not utilized for the purpose of its acquisition, it reverts to the *imam*. Arab monarchs maintain, to this day, the right to bestow, or otherwise transact in public land.<sup>8</sup>

***'ihya al-mawāt*** [reviving/rehabilitating dead land]: In the event that legal or natural person rehabilitated *mawāt* land and made it productive, that tenure claimant would be eligible to convert the tenure into *mulk*. If, however, the tenure claimant did not rehabilitate the land as *'ihya al-mawāt* within a certain grace period, the state would reclaim it and offer it to someone else to revive.<sup>9</sup> Occasionally, individuals or tribal groups have tried and succeeded to obtain title to otherwise *mawāt* lands. Such has been the case in al-Naqab, southern Palestine. (See “Land and Lawfare against the Naqab Palestinians” in this volume.)

The investment and development of land bestows freehold ownership rights (*mulk*), and is thought to reflect custom in the region prior to Islam. However, jurists of the Hanafi school of Islamic jurisprudence—the dominant method in the Ottoman Empire since Suleiman the Magnificent/Lawgiver (1520–66)—insist that a state authority approve the investment *a priori*. Islamic governments throughout history have favored the Hanafi School of Islam in land administration.<sup>10</sup> Either way, a three-year limit for the development generally applies, after which the tenant's rights to *mīrī* were forfeited in the case of failure to cultivate the land, and such forfeited land was termed *maḥlūl*.<sup>11</sup> In that case, the land reverts to *mawāt* and/or allotment to a further *'ihya al-mawāt*—and potential *mulk*—claimant.

***Mushā`***: Communal land and its management were a peculiarity of many parts of the region, where erratic climatic conditions made production risky and therefore the community was used as security. Jointly owned villages practicing crop farming were known as *mushā`* when the whole territory was undivided. When individual holdings were defined, they were known as *mafrūz*. In general, the cadasters for *mushā`* villages followed a system of registering each villager's share of the land as a fraction of the total, while those who occupied land sometimes continued to exchange their shares. As a consequence, although the system is rapidly disappearing in most countries, there is considerable confusion regarding actual ownership rights.

In greater Syria and, notably, Palestine before its partition and colonization, maintained a tradition of *mushā`* land holdings, whereby arable land in a village was allotted equally to each inhabitant. Each household operated land in different parts of the village, with periodic reallocations of scattered strips and a high level of fragmentation of holdings.<sup>12</sup>

*Mushā`* land was not formally recognized under the Ottoman land laws, or in the subsequent legal systems. However, it continues to exist today in much of the West Bank of Palestine. Fully private land (*mulk*) is said to be a rarity, and is present mainly in or around urban areas. On the other hand, *waqfs* (*awqāf*) are common and continue to exist more or less in their traditional form. Despite its widespread demise through serial land reforms since the turn of the 20<sup>th</sup> Century, *mushā`* practices are still familiar to some of the more-remote parts of the region, including rural Jordan.<sup>13</sup>

## A Double-edged Sword

As mentioned, the pan-Islamic ideology of the Ottoman Administration sought, on the one hand, to consolidate the empire, while, on the other, operationalize Islam's egalitarian principles of social justice, equity and equality through the land-tenure administration. In the 19<sup>th</sup> Century, the Ottoman Administration codified the norms necessary to establish a uniform reference for land management across its jurisdiction, while also making allowances for local traditions and customary practice to prevail. As noted also, continuous practice formed one of the pillars of Islamic Shari'a in both theory and jurisprudential fact. Both of these formal and customary institutions carry significant weight in much of the region, while succeeding colonial and postcolonial regimes often have sought to bend the rules to the rulers' advantage.

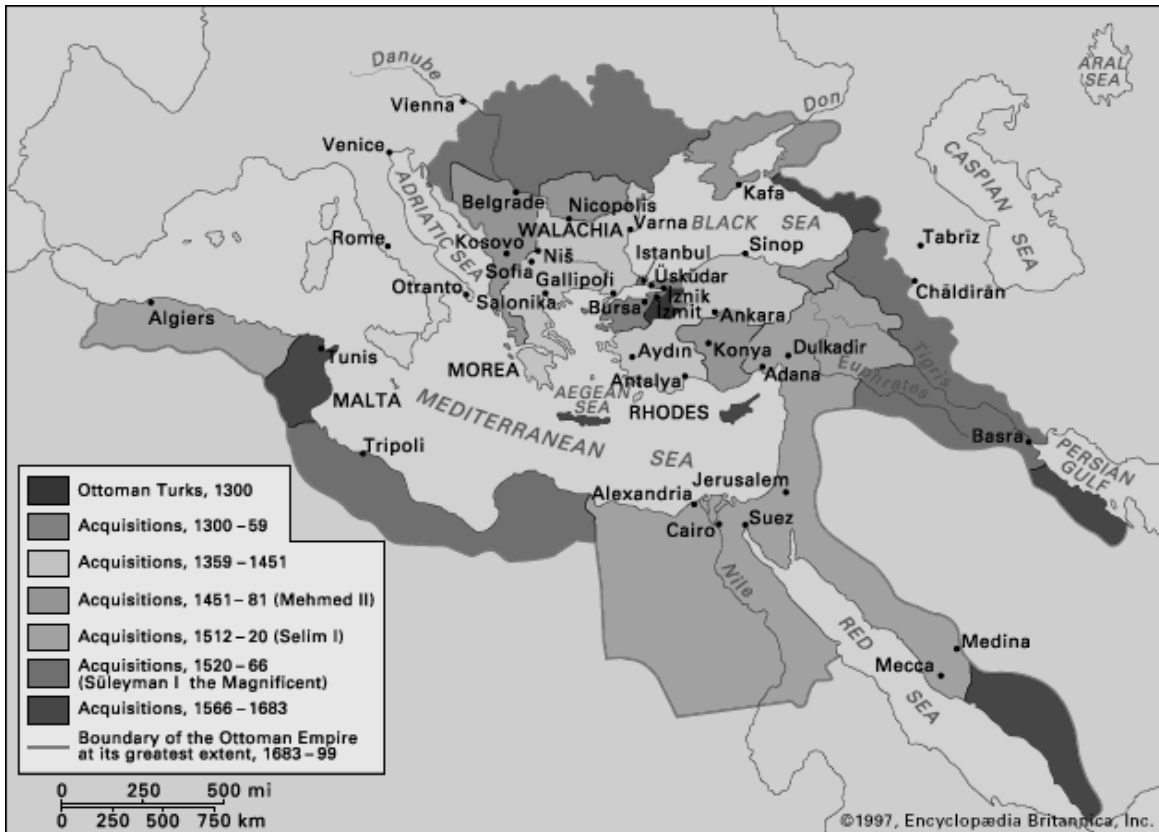
Much of the literature on the Ottoman period perceives the codification of land categories, in particular *mīrī* and *mawāt* land, primarily as an attempt to consolidate wealth and power. This the Ottomans did in an effort to neutralize large landlords and tribal groups by establishing individual land "rights" for many small, individual cultivators paying tribute directly to the ruler (*amīr*; i.e., "commander," or "prince").<sup>14</sup> While this necessarily accompanied the erection of grand institutions to register, value, adjudicate and extract surplus from those many smaller landholdings, it also accompanied a military conscription regime. Those who could, evaded both forms of extraction of capital (human and economic) through escape and emigration, in the case of the former, and evading formal registration of land holdings, in the case of the latter form. The fragmentation of *mulk* and *mīrī* landholdings through inheritance through succeeding generations also contributed to migration and emigration, especially by the turn of the 20<sup>th</sup> Century.

The concept of state ownership of land was, in fact, an idea in Islamic law that, however central to Ottoman and previous regimes, nonetheless, often was left "ambiguous and unclear."<sup>15</sup> Most of the land that forms the territory of modern states in the region of the former Ottoman Empire was traditionally classified as *mawāt* under the Ottomans. Such land is not "state land" in the Western sense of juridical "ownership," however. The Islamic law concept differs in that the state claims ownership of all land, except that assigned in private ownership (*mulk*), or as a religious endowment (*waqf*), etc. However, in eventual practice tenure security in those cases also became subject to authoritarian intervention.

In practice, the Ottomans' concentric decline in effective regulation beyond the agricultural village may be the result of a combination of factors, including (1) administrative default, with the increasing cost and difficulty of enforcement in increasingly remote areas; (2) fewer opportunities for extracting surplus in the form of taxation from the more-arid zones; and (3) the Islamic injunction against privatizing scarce and common resources, operationalizing the custom that: "Humanity holds three things in common, water, vegetation and fire."<sup>16</sup> The ultimate ownership of these resources remains with God, but their use is common to all. According to prophetic tradition, "The people [Muslims] share in three things: water and pasture and fire" derives from witnesses of the word and deed of the Prophet Muhammad (pbuh),<sup>17</sup> but also originates from other, older Arab and pastoral ethics. Through the continuum over time and space in the Islamic world, it is generally perceived that the use of pastureland is free for all.<sup>18</sup>

The Ottoman Empire's successor states also took great interest in *waqf* land, in large part appropriating, or otherwise abolishing the practice. The only exceptions to this treatment of *waqf* can be found in the Persian Gulf states, Iran and Afghanistan. For example, where the European colonial governments did not appropriate or otherwise dispose of *waqf* properties, some post-colonial independent authorities later did. Under neoliberal state policies, the (otherwise mortmain prohibition of) "selling" *waqf* lands and housing has been a contemporary function of the privatization of public assets in several countries of the former Ottoman Empire and elsewhere in the Islamic world.<sup>19</sup>

States in the MENA region only adopted the role as a juridical person in relationship to land ownership following the Treaty of Lausanne,<sup>20</sup> and the transfer and registration of the Ottoman sovereign lands (private holdings of the sultan) to the new states.<sup>21</sup> In Yemen, for example, the land first to constitute "state" land was that appropriated from the Imam in 1962. Since then, all but Yemen have transferred *mawāt* and forestry land into this "state land" category, assigning juridical ownership to the state—or monarch—for the good of the people.<sup>22</sup>



### A Military Function of Land Tenure

The nexus of military expansion, settlement and land-tenure administration manifested in the 14<sup>th</sup>–16<sup>th</sup> Century Ottoman land-allocation system that well preceded the 1858 Land Code. Historically, revenues for the state were generated exclusively from *mirī* land, which was organized through the *dirlik* or *timar* system. These land grants were organized in three types of administrative unit: *timar* (farm plot), *zeamet* (larger allotment to a "leader") and *has* (A: *khās*; i.e., private tenure). A *timar* was the smallest unit of land granted with a tax revenue annual value of less than 20,000 *akçes*. The Ottoman sultans referred to the *timar* holder as a *timariot*, whose revenues from the *timar* served as a kind of

compensation for military service. If the revenues produced from the *timar* were between 20,000 and 100,000 *akçes*, the *timar* was categorized as *zeamet*. If the revenues exceeded 100,000 *akçes*, the land would be considered *has*.<sup>23</sup>

Most *dirlik* holders, therefore, were military men. The *timar*, village-level revenue, went to the lowest-ranking military men (*sipahis*) for their service to the empire. A holder of a *zeamet* (*subaşı*) was usually a higher-ranking officer. The *sancakbeyi* and *beylerbeyi* was granted the *has*, the largest *dirlik*. The *reaya*, or peasants, would be assigned to a *timar*, *zeamet*, or *has*. If a peasant cultivated the land in a *timar*, he paid his taxes directly to his *timar* holder. If the peasant worked on land that was part of a *zeamet*, he was responsible to his *subaşı*. Only the *cizye* (A: *jizya*), or poll tax paid by the non-Muslims, went directly to the central treasury. In return, the *timariot* and *zeamet* holder was required to maintain a certain number of cavalymen or *cebelis*, based on their incomes (specified also by legal regulation in the *kanunname*). Upon request, they had to come under the command of the *sancakbeyi* for military expeditions. In turn, all military personnel from the entire province gathered under the *beylerbeyi*.<sup>24</sup>

This system was applied especially to the central and most European lands of the empire. However, its roots extend to the common social practice of the preceding Byzantine period (ca. 330–1453 C.E.).<sup>25</sup>

### **A Social Function of Land Tenure**

The Ottoman land-tenure system also supported the social function of land through two important institutions and practices: the *waqf* system and its coexistence with custom (*`urf*), particularly in the tolerance of *musha`* (see *musha`* above) and primordial practices enabling pastoral communities to maintain their access to natural resources needed for their livelihood.

*Waqf* properties donated to the faith-based community served a public and, therefore, social function, even though also parochial in the sense that it benefitted only adherents to a particular faith group. Whether given out of charity, development or tax-evasion motives,<sup>26</sup> the *waqf* assets general served their social function by favoring the most needy and vulnerable faithful with land and housing as an accessory toward realizing a bundle of human rights.

The Ottoman period developed this pan-Islamic practice into law and official institutions. Today, the *waqf* and the state are often conflated, however, with *waqf* “ministries” operating in most Ottoman Empire successor states. The social function of *waqf* properties becomes questionable in cases of the sale or other transfer of those properties to the benefit of private interests.

The social function of land has not remained a consistent priority of successor and post-colonial state. When Egypt’s 1992 amendment to the rural tenancy law rescinded the core of Gamal `Abd ul-Nasser’s land-reform legislation, discussions ensued between the al-Azhar Sheikh and other government decision makers on the conformity of the proposed land-dispossession and privatization law (Law No. 96 of 1992) to Islamic Shari’a.

Al-Azhar’s *Fatwa* High Committee adopted the Husni Mubarak’s government position in favor of dispossessing formerly tenure-protected small-scale farmers. However, the supposedly radical group *al-Gāma`a al-Islāmiya* opposed, asserting that any legislation that further impoverished poor farmers must be rejected as un-Islamic. The government and its supporters have stigmatized the predictable unrest resulting from the implementation of this law as “Islamist.”<sup>27</sup>

This controversy—and the deprivation resulting from the law—underline that ethical and legal debate over any tenure regulation in conformity with Islamic rules. Private interests and other politics aside, Islamic norms represent a higher “social sanction” that is a prerequisite for enforcement of the property and tenure regimes.

Current state legislation on land tenure in the region often is derived mainly from the Ottoman code, with changes drawn from western European civil codes. In most post-Ottoman countries today, land tenure can be classified as either state/crown land, private land or communal land. Communal lands are generally rural, where *‘urf* (custom) prevails. Private *mulk* and public *mīrī* land are often very similar in function. People using *mīrī* land by concession eventually can subdivide it among their heirs and have tenants, ultimately privatizing the land. However, *waqf* residents and leasehold tenure holders may not.

According to *‘urf* law, tenants also may transfer occupancy by sale and/or inheritance. However, historically, allotted land theoretically could be confiscated and returned to the ruler (crown or state), ensuring a measure of tenure insecurity.

The Ottoman code may encumber *mushā`* tenure also, as it makes no provision to guarantee the tenure security of the share tenant. The deficiency in protecting this social-function institution and any other undocumented tenure arrangement continues to afflict entire traditional and indigenous communities with tenure insecurity throughout the MENA region.

In the socio-economic sphere, rules and regulations concerning access to land, crop sharing and tenancies are vital to limit poverty among small farmers. Such regulations may help slow the perceptible slide of so many rural households from the status of land worker, however insecure, to landless laborer, unequipped to transition into nonagricultural labor. The policy dilemma between social equity and efficiency of land use remain ethical question for any land-management or development regime.

Linked to this dilemma is the concept and disposition of common property. Whether deliberately or not, sometimes authorities confuse state land or other public asset as the property of a temporal government or head of state. This distortion and its dire consequences are most pronounced in the process of colonization.

### **Land, Colonization and Conquest**

With mounting state debt, and under European pressure, the Ottoman Administration approved a series of laws (1868, 1873) allowing foreign land ownership, whether they are individuals or companies in the territory of the state. This law opening the floodgate of the Zionist movement’s land-purchase strategy, among other nonconsensual means, to acquire large tracts of land in Palestine under different European nationalities. A subsequent Ottoman law sought to limit the entry of colonizing Jews into Palestine (1882). However, the sultan lifted those restrictions, contributing to the foreign Jewish control of 418,000 acres (169,158ha) of Palestinian land from 1882 to 1914 (58% from non-Palestinian Arab owners, and 36% from absentee Palestinian Arab landlord).<sup>28</sup>

Throughout their colonial period, the French permitted—and encouraged—the sale of extensive *waqf* properties to business enterprises, irrigation concessions and large landowners. In Syria, family *waqf* was abolished in 1949, three years after independence. Syria firmly kept religious *awqāf* under state control. In Algeria, the colonial administration put *waqf* (*habūs*) land at the disposal of French settlers as early as the 1840s.

In Tunisia, Algeria and Morocco, the French used the registration system, to gain control of the more-fertile lands, either for their own use (in the coastal plain of “*le Maroc util*”), or in order to allot land grants to local allies. By the end of their term in Algeria, the French colonists owned over 2.6m ha of agricultural land, approximately one-third of the country’s total agricultural endowment. In Morocco the figure was 1m ha, including half of the perennially irrigated lands. Meanwhile, in Tunisia, Europeans “owners” accounted for some 800,000ha, or one-fifth of the agricultural land. Egypt underwent a similar experience under the British occupation, whereby 11.5% of agricultural land came under the control of European land corporations. In Egypt, the monarchy “nationalized” such lands—to the permanent dispossession their rightful owners—with the departure of the British occupation in the 1820s.<sup>29</sup>

### **British Mandate and Colonization of Palestine**

With the beginning of the British Mandate after the collapse of the Ottoman Empire, the British military administration in Palestine closed all Land Registry departments and offices until it instituted legal and procedural adjustments on land ownership and registration. In 1920, the British Mandate Administration issued the Transfer of Land Ordinance, requiring the consent of the Director of Land Registries or by the District Registrar to all dispositions of immovable property.<sup>30</sup>

The British Agricultural Department was constituted as an administrative unit in April 1920, the Ottoman provincial service having disappeared completely during the war years, leaving neither concrete nor documentary evidence of its official activities. The new Department assumed responsible for the agricultural, veterinary, forestry, soil-survey and fisheries services. In addition to its normal duties, the agricultural field staff assisted in demarcation commissions, tithe assessments, and inspections of government loans, while forest rangers acted as tax collectors for several classes of revenue.<sup>31</sup>

Although Ottoman legislation eased the theoretical requirements of ‘*ihya’ mawāt*’ tenure claims,<sup>32</sup> the British strictly interpreted the law as requiring three years’ continuous cultivation and applied this condition retroactively, depriving many Palestinian farmers from their lands. By asserting that lands were reclaimed land or planted without the consent of the Directorate, the British Administration denied farmers title to this land, exposing them to trial and the imposition of taxes and fines. These measures left much of Mandate Palestine population indebted, forcing him to sell parts of its territory to meet its arrears.<sup>33</sup>

In 1926, the Mandate issued the Land Expropriation Act, granting the British High Commissioner the power to expropriate land from the owner for the benefit of economic projects of the state. Enabling the Zionist movement to grab large tracts of Palestinian land and the expulsion of its inhabitants

Through the adoption of the Land Settlement Law in 1928, the Mandate exploited the status of *mīrī* lands to introduce some 12 million acres (4,856,227ha) of communal land territory for sale, facilitating the Zionist movement to acquire and develop Palestinian territory through its parastatal institutions. By 1947, the colonists were able to acquire 1,734,000 acres (701,724ha) in this way, of which 933,000 acres (377,571ha) were “owned” by the Jewish National Fund.<sup>34</sup>

The British High Commissioner assumed the authority to appoint commissioners to settle land disputes in their respective areas. Their function also contributed to forcing Palestinians to sell private land and otherwise alter real estate records with judicial effect that may not be challenged.



The greatest historic loss of tenure for Palestinians in their own land occurred through the process known today as “ethnic cleansing,”<sup>35</sup> whereby Zionist forces carried out a series of 33 strategically located village massacres in advance of a military onslaught, against insufficient local and Neighboring Arab state resistance, that depopulated over 351 villages and 11 urban centers in the first round of ethnic cleansing in 1948.<sup>36</sup> (See discussion of further waves of village/habitation razing in “Land and Lawfare against the Naqab Palestinians” in this volume.)

The Zionist forces implemented “Plan Dalet,” which the political and institutional leadership adopted on 10 March 1948 with a focus on conquest of all Arab urban centers within the area proposed as the “Jewish state in Palestine” recommended under GA resolution 181. By April, and before the Arab League’s forces deployed after the British Mandate formally ended, that phase of depopulation displaced another 250,000 Palestinian civilians.

This series of events, known in the Palestinian calendar as *al-Nakba* (the catastrophe) culminated in the newly proclaimed State of Israel capturing massive land holding and real property, as well as the contents of homes and institutions belonging to the indigenous Palestinian people. Already in January 1949, the self-proclaimed government of Israel signed over one million dunams of land seized from refugees and “absentees” during the 1948 war to the parastatal Jewish National Fund (JNF) to be held in perpetuity for people of Jewish faith, which it refers to as “the Jewish people/nation” [*Je’om yahudi*]. The Israeli colonization authorities applied the Ottoman category of *mīrī* lands to extend a claim over these lands as belonging to the state. In October 1950, the new government similarly transferred another 1.2 million dunams of captured Palestinian land to the JNF.<sup>37</sup> In 1951, a JNF spokesman revealed the tactical reason for the “state” of Israel transferring ownership of Palestinian properties to its parastatal counterpart. Since the JNF was established to serve only people of Jewish faith, or as interpreted in its charter as people of “Jewish race or descendancy,” JNF’s tenure “will redeem the lands and will turn them over to the Jewish people—to the *people* and not the *state*, which in the current composition of population cannot be an adequate guarantor of Jewish ownership.”<sup>38</sup>

## Conclusion

The Ottoman land regime has spelt diverse and inconsistent consequences for those tenure holders living in its long shadow. While its incorporation of Islamic social-justice principles evolved into a system of land “rights,” the enduring ambiguity of *mīrī*, *mawāt* and *mushā’* status lands has provided loopholes for predators to interpret tenure in their own self-interest. This legacy is most notorious in the case of Palestine, where the exploitation of the Ottoman land laws codified in 1858, especially the Land Registry Act, enabled the “legal” transfer of sovereignty over Palestinian territories against the interests of the indigenous communities living on these lands. Palestinian farmers and Bedouins have been the most directly and continuously affected segment of the indigenous people by their dispossession. The case of Palestine also provides an example of how the distortion of land rights—and particularly the entitlement to security of tenure—can amount to the denial of self-determination of an entire people, the gross violation of a peremptory norm of international law.

“These operations [“against enemy population centers”] can be divided into the following categories:

Destroying villages (by setting fire to them, by blowing them up, and by planting mines in their debris), especially those populations centers that are difficult to control continuously;

Mounting search and control operations according to the following guidelines:

- Encirclement of the villages, conducting a search inside them;
- In case of resistance, the armed forces must be wiped out and the population expelled outside the borders of the state.”

*Plan Dalet*, 10 March 1948

In contemporary international law, security of tenure is currently understood as:

A set of relationships with respect to housing and land, established through statutory or customary law, or informal or hybrid arrangements, that enables one to live in one's home in security, peace and dignity. It is an integral part of the right to adequate housing and a necessary ingredient for the enjoyment of many other civil, cultural, economic, political and social rights.<sup>39</sup>

Different types of customary or legally sanctioned land tenure can be found in the systems derived from the Ottoman Code, ranging from community tenure to fully private, freehold ownership. Until well into the 20<sup>th</sup> Century, group or clan organization prevailed over individual ownership in much of the region. Although application of the Ottoman Land Code of 1858 never succeeded in the universal registration of titles to land, largely because such practice was not compatible with indigenous communal village organization and because of the nature and extent of marginal cultivation.

The definition of cultivated land in marginal areas of the region remains a "grey area" in which individuals and self-interested groups try to obtain title to land through occasional, often ecologically harmful cultivation and/or urbanization of previous grazing land.<sup>40</sup> The definition of the "commons," "communal property," "state lands" and "people's lands" still needs precision, as authorities continue to acquire and dispose of such assets without compunction guided by the above definition of secure tenure.

Most of the independent states that emerged in the 20<sup>th</sup> Century have embarked upon redistributive land reforms, either building on or selectively replacing Ottoman laws. Despite the land-privatization trends prevailing elsewhere,<sup>41</sup> historically developed customary tenure continues to determine access to, and use of the land and its natural resources. Today, some 50% of Egyptians and 80% of Sudanese depend on environmental resources for their livelihoods.<sup>42</sup>

The recognition and clarification of pastoral tenure in the MENA region is made urgent and important not so much by the number of people involved, which is usually imperfectly known and often statistically underestimated for political reasons. Rather, its significance derives more from the vast territories, cultural significance, political issues and ecological values at stake. The land tenure of pastoralists and small-holder farmers presents a special case in which governments and urban elites often perceive these producers on, and guardians of rural lands as a political threat, rather than as assets. Hence the rules and regulations proposed by governments are often intended to control rather than to support these producers. The suspicion of hidden "urban agendas" partly explains the reluctance of many pastoralists and rural communities in the region to participate in public programs, dating back to Ottoman times.

Current land tenure systems are failing to address age-old problems: landless households and small farmers continue to compete for limited and fragmented cropland, and pastoralists are losing control of their traditional grazing areas. Access to water is becoming an increasingly vital issue link to land tenure as the number and nature of users grow, while supplies decline. Governments, on the one hand, and citizens, on the other, tend to perceive these major issues in divergent ways. It is essential, therefore, that public efforts pursue a participatory approach to resource management and decision making that involves the rural populations concerned.

With the ascendancy of the modern post-Ottoman state, official legal systems generally have sought to entrench sovereignty over land through the abolition of customary law and the evolution of *shari'a* to deal with modern concepts of limitless economic development. Often this has accompanied a measure

of secularization in property rights law, mixed with Western legal concepts of—and preferences for—private, individual and freehold tenure models. The definition of secure tenure (above) seeks to incorporate the universal human rights criteria and corresponding obligations of all states in the international system and *reorient* toward equity and social justice as the policy standard.

## Endnotes:

- <sup>1</sup> “Guiding principles on security of tenure for the urban poor,” in Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, A/HRC/25/54, 30 December 2013, p. 4, at: [http://www.hlmn.org/img/documents/A\\_HRC\\_25\\_54\\_EN.pdf](http://www.hlmn.org/img/documents/A_HRC_25_54_EN.pdf).
- <sup>2</sup> As characterized by Halil İnalçık, “Ottoman Methods of Conquest,” *Studia Islamica*, No. 2 (1954), pp. 103–29.
- <sup>3</sup> Decree of 13 Djumādā I 980 (24 September 1572).
- <sup>4</sup> İnalçık, op. cit., p. 123.
- <sup>5</sup> See İnalçık, op. cit., p. 124; also Joseph Schechla, “Ideological Roots of Population Transfer,” *Third World Quarterly*, Vol. 14, No. 2 (1993), at: <http://www.tandfonline.com/doi/abs/10.1080/01436599308420324?journalCode=ctwg20#.VLpmC2fwjtjo>.
- <sup>6</sup> See Vahakn N. Dadrian, “Genocide as a Problem of National and International Law: The World War I Armenian Case and Its Contemporary Legal Ramifications,” *Yale Journal of International Law* Vol. 14, No. 2 (1989), especially ‘The Armenians’ lack of a tie to any European power,’ at 249–51.
- <sup>7</sup> *Land Code*: Art. 104.
- <sup>8</sup> *Jordan Land Ownership and Agricultural Laws Handbook*, Volume 1: “Strategic Information and Basic Laws” (Washington: Int’l. Business Publications, 2013), p. 40.
- <sup>9</sup> For further details of the Ottoman land law division, see: Rasim Khamaisi, “هكذا سرّبت ونزعت الأرض في فلسطين,” [*Hakidha Suribat wa Naza’at al-Ardh fī Filastīn*] / “Thus, the Land in Palestine Was Depleted and Dispossessed,” *Haq al-`Awdha/Right of Return* [Arabic], Vol. 4, No. 16 (March 2006), at: <http://www.badil.org/fr/haq-alawda/item/361-article13>.
- <sup>10</sup> Abdullah M. A. Maktari, *Water Rights and Irrigation Practices in Lahj* (Cambridge and London: Cambridge University Press, 1971).
- <sup>11</sup> In practice, however, the Ottomans and their successors in the British Mandate rarely, if ever, retrieved lands in such cases. Abraham Granott, transl. M. Simon, *The Land System in Palestine—History and Structure*, (London: Eyre & Spottiswoode, 1952), p. 90.
- <sup>12</sup> Doreen Warriner, *Land and Poverty in the Middle East* (London: Royal Institute of International Affairs, 1948).
- <sup>13</sup> Eric Patrick, “Jordan,” in Rae, op. cit., pp. 105–19.
- <sup>14</sup> According to Abraham Granott, “The object of the law of 1858, which dealt primarily with these three classes of property [viz., *mīrī*, *matrūk* and *mawāt*], was to maintain the rights of the State over them.” Abraham Granott, *The Land System in Palestine — History and Structure*, translated by M. Simon, (London: 1952), p. 87. Robert H. Eisenman asserts that the “principle aim” of the Land Code of 1858 “was the reassertion of Government control over State Domain....” Robert H. Eisenman, *Islamic Law in Palestine and Israel: A History of the Survival of Tanzimat and Sharī’a in the British Mandate and the Jewish State* (Leiden: E.J. Brill, 1978), pp. 56–57.
- <sup>15</sup> Ali Abd Al-Kader, “Land Property and Land Tenure in Islam,” *Islamic Quarterly*, 5 (1959), pp. 4–11, p. 8; Eisenman, op. cit., p. 54; Granott, op. cit., p. 80.
- <sup>16</sup> As translated in John C. Wilkinson, “Islamic water law with special reference to oasis settlement,” *Journal of Arid Environment* 1: (1978), pp. 87–96.
- <sup>17</sup> سنن ابن ماجه، الأحكام، 73–247؛ وأحاديث من رواه أحمد وأبو داود وصححه الألباني، وسلمان الفارسي.
- <sup>18</sup> Muḥammad Ḥusayn Pāpulī Yazdī, *Le Nomadisme Dans le Nord du Khorassan* (Paris and Tehran: Institute Français de recherche en Iran, 1991).
- <sup>19</sup> See cases of *waqf* property sales in India, at: <http://indiankanoon.org/search/?formInput=sale%20of%20wakf%20property>; Saleem Siddiqui, “Sale of and illegal construction on Waqf Land in Delhi’s Kaka Nagar,” *Urdu Media Monitor* (29 December 2013), at: <http://www.urdumediamonitor.com/2013/12/29/sale-illegal-construction-waqf-land-delhis-kaka-nagar/>; Aziz A. Mubarakī, “The loot of waqf properties in India,” *TwoCircles.net* (26 April 2012), at: [http://twocircles.net/2012apr26/loot\\_waqf\\_properties\\_india.html#.VN3djmfwtjo](http://twocircles.net/2012apr26/loot_waqf_properties_india.html#.VN3djmfwtjo); Zulkifli Hasan and Muhammad Najib Abdullah, “The Investment of Waqf Land as an Instrument of Muslims’ Economic Development in Malaysia,” Dubai International Conference on Endowments’ Investment, 4–6th February 2008, at: <http://kantakji.com/media/5162/z140.pdf>.
- <sup>20</sup> Except, as noted above, where French colonizers expropriated the land as early as 1840.
- <sup>21</sup> However, the French nationalized all land as early as the 1840s in Algeria. Jon Rae, “An Overview of Land Tenure in the Near East Region,” Part 1, note 8, at: <http://www.fao.org/wairdocs/aq202e/aq202e.pdf>.

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- <sup>22</sup> Rae, op. cit., note 9.
- <sup>23</sup> Hakan Özoğlu, *Kurdish notables and the Ottoman state: evolving identities, competing loyalties, and shifting boundaries* (Albany NY: SUNY Press, (2004), p. 52, at: <http://m.friendfeed-media.com/30bf85501d361f9ab0ce07a80d1ef94eb1384538>.
- <sup>24</sup> Halil İnalcik, *The Ottoman Empire: The Classical Age, 1300–1600*, trans. N. Itzkowitz and C. Imber (London: Trinity Press, 1973), pp. 104–5.
- <sup>25</sup> Ernst Hartwig Kantorowicz, “Feudalism in the Byzantine Empire” in Rushton Coulborn, ed., *Feudalism in History* (Hamden CT: Archon Books, 1965); Mehmed Fuad Koprulu, *Some Observations on the Influence of Byzantine Institutions on Ottoman Institutions* (Ankara: Türk Tarih Kurumu Basimevi, 1999).
- <sup>26</sup> Hon. Mr Justice Tute, “The Registration of Land in Palestine,” *Journal of Comparative Legislation and International Law*, II (1929) p. 46; Eisenman, op. cit., p. 137; Granott (1952), op. cit., p. 76.
- <sup>27</sup> Reem Saad, “Egyptian Politics and the Tenancy Law,” in Ray Bush, ed. *Counter-revolution in Egypt's countryside: land and farmers in the era of economic reform* (London: Zed Books, 2002), pp. 103–25.
- <sup>28</sup> Abraham Granovsky (Avraham Granott), *Land Policy in Palestine* (New York, 1940); Rashid Khalidi, “Palestinian Peasant Resistance to Zionism before World War I,” in Edward W. Said and Christopher Hitchens, eds., *Blaming the Victims: Spurious Scholarship and the Palestinian Question* (London and New York: Verso, 1988), 207–34.
- <sup>29</sup> Rae, op. cit., p. 14.
- <sup>30</sup> For more details about the land laws in the British Mandate period, see Ahmad Sulaimān `Ajwa, “*Aliya Intiqāl al-Milkiya Ghayr Musajalla fī Falastīn: Dirāsa Muqārīna*” [“Mechanism for Transfer of Ownership in the Unregistered Land is in Palestine: A Comparative Study”] [Arabic], Master’s thesis, Graduate School, An-Najah National University, Nablus, Palestine, 2011, at: [http://scholar.najah.edu/sites/default/files/all-thesis/the\\_means\\_of\\_ownership\\_transfer\\_of\\_the\\_unregistered.pdf](http://scholar.najah.edu/sites/default/files/all-thesis/the_means_of_ownership_transfer_of_the_unregistered.pdf).
- <sup>31</sup> Harry Charles Luke and Edward Keith-Roach, eds., *The Handbook of Palestine* (London: MacMillan, 1922), pp. 186–87.
- <sup>32</sup> *Provisional Law on Disposal of Immovable Property* (5 Jumādā’l-ūlā 1331/12 April 1913).
- <sup>33</sup> Nabih Bashir, “Arab towns and local authorities in Israel, a comprehensive survey in 2006,” (Shifa’ `Amr, Israel: Rikaz Information Bank on the Palestinian Minority in Israel and the Galilee Society, 2006), at: [http://www.rikaz.org/ar/index.php?s=publications\\_ls](http://www.rikaz.org/ar/index.php?s=publications_ls).
- <sup>34</sup> Ibrahim `Ali, “*al-Irhāb al-Sahyūni tijāh al-Ardh al-Falastīniya: Qānūn Amlāk al-Ghayyibīn Namūdhajan*” [“Zionist Terrorism against the Palestinian Land: Absentee Property Law Model”] [Arabic], Palestinian Return Community, Research and Studies Section, pp. 7–9, at: <http://www.google.com/eg/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCQQFiAB&url=http%3A%2F%2Fwww.wajeb.org%2Fmedia%2Ferhab.doc&ei=C8OrVJ-tCoW4oQTF4YKYCw&usg=AFQjCNG4QCaK1W9iF3JjwVcYIFxaqVqi7g&bvm=bv.83134100,d.cGU>.
- <sup>35</sup> Ilan Papé, *The Ethnic Cleansing of Palestine* (Oxford: One World, 2006).
- <sup>36</sup> Walid Khalidi, ed., *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Washington: Institute for Palestine Studies 1992).
- <sup>37</sup> The first JNF acquisition totaled 1,101,942 dunams: 1,085,607 rural and 16,335 urban; the second amounted to 1,271,734 dunams: 1,269,480 rural and 2,254 urban. Abraham Granott, *Agrarian Reform and the Record of Israel* (London: Eyre & Spottiswoode, 1956), pp. 107–110.
- <sup>38</sup> Jewish National Fund, *Report to the 23rd Congress*, 32–33, emphasis in original, cited in Lehn and Davis, op. cit., 108.
- <sup>39</sup> Raquel Rolnik, “Guiding principles on security of tenure for the urban poor,” in Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/25/54, 30 December 2013, pp. 3–4, at: [http://www.hlrn.org/img/documents/A\\_HRC\\_25\\_54\\_EN.pdf](http://www.hlrn.org/img/documents/A_HRC_25_54_EN.pdf).
- <sup>40</sup> Nadia Forni, “Land tenure policies in the Near East,” FAO website (undated), at: <http://www.fao.org/docrep/005/y8999t/y8999t0f.htm>.
- <sup>41</sup> Ibid.
- <sup>42</sup> According to figures of the International Labour Organisation.



# Toward Land Governance in the Middle East/North Africa Region<sup>1</sup>

*Willi Zimmerman*

The Middle East and North Africa region (MENA) covers a vast geographical area and diverse political and socio-economic systems. Land rights in the MENA region are affected by violent conflicts, the impact of climate change and desertification, migration, population growth and urbanization. Rule by force, inefficient state institutions and services, a widening gap between rich and poor, and increasing landlessness are symptoms of the governance gap in many of the countries in the MENA region.

Significant progress in modernizing land administration systems has taken place in most countries of the region. However, such progress is mainly technology driven (e.g., the geo-industry) and too often not accompanied by progress in reforming land policies, improving the normative framework, involving civil society, and reengineering institutional processes. A more-balanced and integrated approach would facilitate reforms in the land sector, build professional capacities and generate an enabling environment toward improved land governance.

The article identifies major land-related problems and also highlights best practices and work in progress. Lessons learned are identified and recommendations for continued reform processes are summarized.

## **Introduction**

“Land is a source of life.” With this statement, the FAO launched the Middle East and North Africa regional consultation<sup>2</sup> to discuss the importance of governance affecting land and other natural resources in securing livelihoods and ensuring social, economic and cultural development.

Certain conditions are specific to the MENA region. Occupation, wars, land expropriation and eviction, as well as centralized power, increasingly impede rights of access to land and related natural resources and the associated security of tenure. These factors override local land-use norms and claims, and prevent individuals from enjoying their legal rights to full sovereignty over their land, to control its natural resources and develop sustainable livelihoods.

The MENA-region-specific land issues related to natural resource management and involve management of public land and land management in drylands, governance issues in land administration such as transparency, accountability, and efficiency. Additional factors distinguish the MENA region from other parts of the world, such as the impact of climate change, rapid urbanization, the prevalence of the state as the ultimate owner of the land, laws related to natural resources, and growing demands for land for food production.

Other major challenges include:

- Long-term impact of conflicts in the MENA region, ranging from displacement to residual land mines
- Lack of political will for reforming the land sector
- Absence of land policy orientation
- Weak capacity and lack of service orientation of public administrations

- Lack of trust between government and civil society, often due to corruption and denial of information, and
- Paucity of accessible empirical land data.

Globally, land governance can help to reduce poverty, support social and economic development, reform public administration, and contribute to conflict avoidance and peace making. This article reviews progress made in reforming land-tenure aspects of land governance in the MENA region, especially:

- Progress made in land registration
- Land and gender
- Common property rights and pastoralism
- Consequences of violent conflict
- Human rights aspects related to land tenure
- Land tenure and water rights interdependencies
- Land in border disputes.

## **Good Governance and Land Tenure**

### *Gender-responsive Land Tenure*

In most societies, women play an important role in agriculture, despite the variations in division of labor from one cultural setting to another. Hence, land is an essential source of livelihood for rural women. Experiences from countries across the MENA region indicate that women’s access to land (and water, which cannot be separated from land issues) is more problematic than it is for their male counterparts. In fact, the question of access is becoming increasingly complex: certain groups in society seem more privileged than others, because of coexisting systems—customary or formal—that seem to favor those groups over others, because these systems enable them to negotiate rights and entitlements.

Disparity of land access is one of the major causes of social and gender inequalities in rural areas, and as a consequence jeopardizes rural food security as well as the well-being of individuals and families. Research has shown that, although land is considered an important issue in the MENA region, “gender-responsive land tenure” interventions and corresponding literature are scant for the following major reasons:

- Its link to rigid belief systems (e.g., Islamic law, customary practices)
- Socio-cultural assumptions that land is not necessarily an issue for women and that land is axiomatically owned by men as a matter of custom
- A corresponding lack of gender-disaggregated data and documentation, not only of women’s property and access to resources, but also the need for change in their status
- Lack of institutional support for gender/land research and policy analysis.<sup>3</sup>

Research needs to address institutional barriers at different levels, from the state and its practices all the way down to local and community based organizations. Why do government organizations in the countries studies endorse a “gender approach” to agriculture, but fail to address the land question as a problem in its own right?

Islamic law provides women with substantial rights to acquire, manage and dispose of property. However, under classical Islamic law (diversely expressed in the *sharīʿa*), governing the devolution of

land in full ownership (*mulk*), women were accorded smaller inheritance shares. Therefore, it remains a knowledge gap and, therefore, research need to monitor gender-responsive land-tenure reforms and draw conclusions for adequate action.<sup>4</sup>

### **Box 1: Best Practices for Islamic Tenure Reform and Capacity Building**

In December 2009, the International Islamic University of Malaysia (IIUM), in cooperation with the Global Land Tool Network (GLTN), Training and Capacity Building Branch (TCBB) of UN-HABITAT and the University of East London (UEL) successfully hosted an international pilot training on land and property rights issues in Islamic contexts.

The training attracted participants from 10 countries, including the MENA region. The objectives of the training were to: test the pilot training package for wider dissemination and use; communicate founding principles of Islamic law and how they relate to land and property rights; develop knowledge, networks and capacity on Islamic approaches to land and property rights; generate possible action plans and strategies for use in training and workplace settings. The training was a success in realizing its objectives and building networks.

### **Islamic Land Tenure Reform**

Land tenure concepts, categorizations and arrangements within the Islamic world are multifaceted, generally distinctive and certainly varied. This “web” of tenure regimes is often dismissed as intractable, inscrutable, or outdated. However, the lack of adequate systematic research hampers our understanding of how Islamic land concepts manifest on the ground. The evolution of Islamic land-tenure regimes from the classical and Ottoman periods to colonial and contemporary times should provide vital insights into the dynamics of Islamic land administration.

Without understanding or differentiating between what is Islamic (norm) based and what is local tradition or practice, clouds our understanding of what is religiously ordained, as it relates to traditional practice. What emerges from the known pattern is an interplay of a range of Islamic land approaches, authoritarian state interventions, military action, customary practices and external influences. Too often, global reviews of land tenure in the region without taking Islamic laws relating to land sufficiently into account. Therefore, the Land and Tenure Section of UN-HABITAT has carried out in-depth studies of the Islamic land and property rights<sup>5</sup> and organized a first training program in 2009. The UN-HABITAT-hosted Global Land Tools Network continues to cull specialized information and methods for sharing lessons through the community of practice, applying and innovating Islamic land-administration tools and methods. These inform gender approaches, tenure rights of indigenous peoples, asylum cases related to land use, etc. The normative ocean on the subject is vast.

### **Common Property Rights and Pastoralism**

Pastoralists are those communities who rely on mobile rearing of livestock as a livelihood strategy for human survival and socio-economic development on marginal arid and semi-arid lands. Due to low-average productivity and great variance in the productivity of this type of land, animal mobility enables risk to be spread reliably. That optimizes productivity by exploiting seasonal resources (pastures and water). Pastoral resource management applies a complex set of temporary or semipermanent claims to pasture, water and other resources, as well as on the underlying principles of flexibility and reciprocity. These lessons inform the development of global norms, so as not to decimate indigenous communities, including those elsewhere affected.



In the MENA region, the relationship between pastoralists and the state holds many unresolved governance issues. The nationalization of pastoral resources and the state-led organization of herders in collective/associative groupings have accompanied the nationalization of natural resource, organizing pastoral groups into associations, and providing them with services and/or facilities. The herders' access to resources should be improved and their identification with state institutions facilitated, resulting in less conflict with the state. Governments either tried to superimpose new institutions on existing ones, or to co-opt traditional ones into state structures. In practice, that strategy has resulted in the dispossession of pastoralists from their most-valuable means of subsistence through their incorporation into state and market mechanisms.

Two factors especially contribute to reshaping pastoral livelihoods in the MENA region: (1) pastoral livelihood never has been the focus of mass international development assistance and (2) the weaker capacities of local civil society. These factors likely are correlated.

In most MENA countries today, most pastoral communities are organized into “producer associations.” About half of pastoral livestock feed requirements come from grazing on range, stubble and crop residues. The other half is provided through purchased feed, often subsidized by the government.

By acknowledging herd mobility as a critical factor for sustainable pastoral livelihoods (and as also defined in the UN Convention to Combat Desertification (UNCCD) operational framework),<sup>6</sup> governance and policy imply that:

- Pastoralists' rights to land must be secured (see Box 2)
- Authority to administer natural resources must be decentralized; power and responsibility must devolve to, or shared with local institutional levels
- Within these policies—which are appropriate to the mobility paradigm—legal mechanisms and support systems must be built, in order to move away from central and remote control of rangelands, and to make pastoral communities responsible for their own evolution toward economically, socially and environmentally sustainable livelihood systems.<sup>7</sup>

#### **Box 2: Good Legal Practice from Mauritania**

The [Mauritanian Code Pastoral](#) may be considered an example of “legal best practice,” as it is consistent with the local as well as the global environments. It is a well-written, short and clear piece of legislation, formalizing/codifying local traditions and outlining the role of different stakeholders. Its content and its application are culturally embedded in the society's tradition. At the same time, it is consistent with three UN Conventions: on Biological Diversity, on Climate Change and on Combatting Desertification. The Code incorporates the conventions' objectives by establishing a framework for exploitation of natural resources consistent with the preservation of local ecology, in order to preserve and foster human survival within the environment.

This enabling environment should define the operational framework in which resource access, resource use and resource management takes place. This will comprehensively address diverse claims and enable different local institutions to work toward fair negotiation and brokerage of different interests, to avoid

conflict and resource degradation.<sup>8</sup> Further developments along these lines evolved into so-called co-management systems,<sup>9</sup> which suggest that, where resources are scarce and variable and income streams uncertain, communal property systems are the most efficient, because the relatively low returns from the arid resource do not warrant the cost of organizing and enforcing more exclusive forms of tenure. Management of livestock mobility involves continuously contested claims and rights, and requires multiple institutions working at multiple levels of authority, function, and spatial scales. Rather than framing these dynamics simply as aggregate population pressure on a limited natural resource base, a more disaggregated “entitlements approach” considers the role of diverse institutions in mediating the relationships among various social actors, and various components of local ecologies.

### **The Water Rights and Land Tenure Interface**

Land and water rights are instrumental to the realization of fundamental human rights such as the right to food and the right to water. Addressing the problematic areas of the land/water rights interface contributes to the progressive realization of those human rights, which is required by international human rights treaties.

Water is not an issue that can be treated separately from land—for the world’s poor the linkage between the two is self-evident on a daily basis—land without water is of little use in an arid climate as is access to water without land. Securing access to land can secure access to water too; this enables farmers as well as urban dwellers to invest with confidence in management practices and technologies that enable them to improve their livelihoods and to use limited water resources wisely.<sup>10</sup>

For the MENA region, four broad areas still need effort to regulate the interface between water rights and land tenure:

1. **Clarify the relationship between statutory and customary rights:** Where customary law has prevailed, clarifying the status of existing arrangements and guaranteeing their stability and transparency to ensure that specific users and user groups are not marginalized and/or exploited.
2. **Restore the Natural Link between Land and Water Rights:** When we move beyond the generally low-intensity customary use of water in rural settings, and then scale-up to land tenure and water rights policies within formal irrigation schemes, official parties impulsively de-link land tenure and water rights, particularly with the demise of central planning and command-and-control-style water administrations. Land and water will continue to be ever more-tightly bound, and the distinction of land tenure and water rights is critical. The economies of the MENA region that are dependent on groundwater are a case in point.
3. **Reform Resource-management Systems:** Assuming that systems become more decentralization, the development of local democracy would require re-regulation of water-use rights in support of decentralized land management, which in turn creates a need for successful, local land- and water-management structures. In reality, clarification of Nos. 1 and 2 above require appropriate institutions in place to regulate water rights, land tenure and, above all, the interface between the two.

In countries where irrigation systems are being improved or new irrigation systems established, the design and functioning of these systems will be greatly enhanced if pre-existing patterns of land and water rights and established procedures for system operation are taken into account. For example, through land consolidation procedures. An appreciation of these rights and procedures can greatly influence the layout of the water distribution network, water and land management practices, anticipated cropping patterns, and the related incidence of project benefits. Failure to do so would

almost certainly have an adverse effect on the functioning of the irrigation system, and can often result in serious conflicts.<sup>11</sup>

### **Box 3: Statement of the Proposed Policies and Measures for the Arab Region on Land**

Agricultural production and rural farming are not possible without land; therefore, the implementation of a socially just land policy, land-use plans and sustainable land management practices, continue to represent enormous challenges in sustaining livelihoods. Therefore, this will require implementing the following policies:

#### *Policies*

Countries of the Arab region are heading toward establishing and implementing national policies toward:

- Ensuring socially just land-tenure systems and designing realistic enforcement
- Land-use plans
- Enhancing sustainable land management practices and protecting land from degradation
- Promoting scientific research in natural resources protection in order to achieve Sustainable development
- Enhancing the role of the private sector and civil societies in implementing sustainable development programs and applying integrated policies to eradicate poverty.

Source: UN Commission on Sustainable Development CSD 17, 2009, at:  
[www.escwa.un.org/information/meetingdetails.asp?referenceNum=0833E](http://www.escwa.un.org/information/meetingdetails.asp?referenceNum=0833E).

## **Good Governance in Land and Natural Resource Management**

### *Sustainable Land Management in Dryland*

Land is an essential productive asset on which many livelihoods depend, particularly in the drylands of the MENA region (Box 3). For the poorest populations, land degradation has enormous consequences for productivity, food security and sustainable livelihoods. Lack of access to natural capital not only constrains development opportunities at the level of the individual, but also has macro-economic effects at the national scale. There is a strong positive correlation between equity of land ownership and subsequent national economic growth rates. Good governance of land-based resources means positive equity, efficiency and environmental sustainability outcomes of land and related policy.

The ways in which natural capital is managed, including the rules that govern who may use which land resources under what conditions, is central to development outcomes in many societies. This is particularly true where financial capital is scarce, meaning that peoples' welfare is more directly reliant on the management of natural capital.<sup>12</sup>

Food insecurity is still largely a rural problem in most Arab countries. Currently, about 44% of the population of Arab countries live and work in rural areas and depend on agriculture for their livelihoods. In addition, the development potential of those rural areas is compromised by low education attainment levels, inadequate basic infrastructure, and poor access to health and education facilities. Desertification and land degradation are constraining agricultural productivity in the Arab region. Concerted efforts are needed, therefore, to combat desertification and reverse land degradation trends through sustainable land management practices, including improved tenure security.

## *Management of Public Land*

The management of public land across the world is often badly handled and is certainly a major governance issue in which misuse of power and vested interests are constantly involved. The vesting of the ownership or administration of substantial portions of a nation's land in the hands of the public sector is a widespread feature of many land tenure structures in the MENA region, where probably more than 80% of all land can be considered as public land (Box 4).

### **Box 4: Governance Problems in Managing Public Land in Egypt**

Decades of reliance on the sectoral development model have resulted in a complex and fragmented institutional landscape for public land management, characterized by an unusual split between multiple central government authorities controlling public land and local governments controlling public land, divided along geographic lines. This unusual situation is the result of the accumulation of layers of legislation over the past four decades, with as many as 45 directly and indirectly related laws and decrees that are not harmonized and are often conflicting. The problem is compounded further by a multitude of differentiated, non-transparent, complex and arbitrary procedures related to public land allocation, pricing and development controls. Egypt also lacks a coherent public land information system; investors and noninvestors alike often are unable to figure out which authorities control public land and where public land is available. In addition, there is ineffective land-use planning, with little gauge of demand and without consideration of the opportunity cost of land development.

In some countries, the new interest in improved and more-effective management of public land is driven mainly by public-sector and fiscal reform. In other countries, the devolution of state assets from central to local government, or the challenge of governance and accountability motivate public land-management reform.<sup>13</sup> The many good practices in the MENA region are scattered, not systematically analyzed, and not easily accessible or documented. Not only does the region have an enormous need and interest for sharing experiences about work in progress in all countries, but also for tailoring capacity-building opportunities in effective management of public land.<sup>14</sup>

Public land will continue to have increasing social and economic significance. Consequently, the related institutional, legal and operational arrangements that should secure multiple rights and interests in specific locations take on additional political importance. Reforming the management of public land in the MENA region must contribute to a basic set of development principles, namely reduction of severe poverty, sustainable management of natural resources, progress in good governance<sup>15</sup> and transparent fiscal management of the public sector. We have only scratched the surface in crafting new institutional arrangements pertinent to public land.

### **Sustainable Urban Land Management**

The forces generating urbanization and urban growth are irreversible, at least in the short and medium terms. In many respects, they are beneficial both to the increased urban populations and national economic development. However, climate change, violent conflicts and a tendency for globalization to concentrate capital and landholdings in fewer hands all reinforce rural–urban migration and urban growth. In the MENA region, 66% of the population is already living in urban space. Although urban areas make a significant contribution to economic growth, many of their existing and projected inhabitants are poor, which is resulting in a growing urbanization of poverty. Around half of the people living in cities in the MENA region live in slums.<sup>16</sup>

New policies are required to guide and manage the process of urban growth through effective land management, planning and tenure systems, within a governance framework that advances, or at least protects, the needs of the urban poor.

Urban space provides people with places to build houses, factories, shops and social and service facilities (such as schools, hospitals and movie houses). This space needs to be organized efficiently. However, city authorities tend to view most people living in slums as illegal residents. Because of this premise, city authorities do not plan for, or manage slums, overlooking and excluding inhabitants from services and participatory structures. They receive none of the benefits of more-affluent citizens, such as access to municipal water, roads, sanitation and sewage. This attitude toward slum dwellers and specific policies that disregard them perpetuate the levels and scale of poverty, which impacts on cities as a whole.

Urban human settlements require a more-inclusive approach to planning and land management if they are to sustain all the people who live in them. All people living in cities have a basic need for—and human right<sup>17</sup> to—shelter. Cities that meet this need and, hence, uphold that human right will have to integrate all people and recognize all city dwellers as citizens of the city. The first step in creating sustainable urban settlements is for cities to recognize that people living in slums also have a right to be in the city. This recognition will begin to make slum dwellers legitimate citizens, which, in turn, will start to legalize their tenure.

Forced evictions in urban and periurban locations, although unequivocally prohibited under international law,<sup>18</sup> are carried out in both developed and developing countries, in all regions of the world. They are usually directed at the poor, living in informal settlements or in slums. The effect on the lives of those evicted is catastrophic, leaving them homeless and subject to deeper poverty, discrimination and social exclusion. Such communities in MENA invariably are evicted against their will, in most cases without proper compensation or alternative housing.

Changing official and social attitudes and mindsets about informal settlement, with residents having a “right to the city,” would be a major step toward giving the urban poor some form of tenure security. Their security would be greatly strengthened if the policies and laws were made congruent with such a change of attitude.<sup>19</sup> In some countries this could be more easily achieved than in others. Altering urban law, policy, instruments, procedures, education and training curricula would take a long time to take effect. Housing rights culture requires a deep cultural reform in MENA.

Meanwhile, climate change poses many challenges to the region’s cities, especially as hubs for economic, social, cultural and political activities. Rising sea levels could affect 43 port cities—24 in the Middle East and 19 in North Africa. In the case of Alexandria, Egypt, a 0.5 meter rise would leave more than 2 million people displaced, with \$35 billion in losses of land, property, and infrastructure, as well as incalculable losses of historic and cultural assets. Development options for urban planning and financing need to tread a fine line, balancing innovative solutions (such as *Masdar*, Abu Dhabi<sup>20</sup>) with rehabilitation/regularization of the numerous informal settlements. This remains a pressing need in the MENA region.

### **Good Governance in Land Administration**

Reforming the organizations and practices responsible for land administration is one of the most difficult governance challenges in the land sector. Efforts to improve land governance and land policies would

target the land-administration system directly. In either case, reform may require the transformation of land-administration systems that have been operational in their current form for a long time, and changes to an organizational culture that has developed around existing rules and procedures.

#### **Box 5: Tehran Declaration 2009**

Both the Land Market Seminar and Land Administration Forum (Tehran, 2009) identified the following needed actions (among others) toward improvement and management of land-administration systems:

- Developing a National Land Policy that addresses land-related issues in a holistic way and provides a foundation for economic development, ensures all have access to land, and protects women and vulnerable groups
- Taking action to improve the legal and institutional framework for land-related activities
- Making land-related information more open, transparent and accessible for the public
- Speeding up the processes of core land activities (registrations, plans, valuations, etc.) Through process re-engineering, computerization and closer cooperation between all land-related agencies
- Developing an information policy to provide a framework for the sharing of data between agencies as part of an e-government strategy and, as appropriate, with the public
- Ensuring appropriate institutional and technical arrangements are in place to facilitate the integration of cadastral and topographic data within Spatial Data Infrastructures (SDI) to support sustainable development
- Strengthening the relationship and understanding between the land administration and financial sectors.

Source: Proceedings of the 3rd UN-sponsored Land Administration Forum for the Asia and Pacific Region, Tehran, Iran, 23–26 May 2009, at: <http://www.csdila.unimelb.edu.au/projects/tehran/pre-seminar.html>; Tehran Declaration on Land Administration to Support Sustainable Land Markets and e-Government, at: <http://www.hlrn.org/img/documents/Tehran%20Declaration-24-26%20May%202009.pdf> and <http://www.csdila.unimelb.edu.au/projects/tehran/Tehran%20Declaration-24-26%20May%202009.pdf>.

### **Progress in Land Registration**

Jordan, UAE and Lebanon, for example, have effectively modernized the land-administration system and implemented a modern title registration system. In Jordan almost all land is registered and covered by cadastral maps in digital format. A comprehensive land valuation system is operational, registers and cadastral maps are updated and harmonized, services and professional capacities are strengthened and the private sector is playing an increasing role. However, state land is badly defined and a wide gap persists between *de jure* and *de facto* land rights on public land.

In summary, the driving force for the modernization of land-registration systems in the MENA region is technology (geo-industry) and not the badly needed reforms in land tenure and land policy orientation.

Across the region, the number of procedures legally required to register property ranges from 1 to 11, the time spent in completing the procedures ranges from 2 to 72 days, and the cost (expressed as a percentage of the property value) such as fees, transfer taxes, stamp duties, and any other payment to the property registry, notaries, public agencies or lawyers, range from 0 to 28%.<sup>21</sup>

### **Transparency and Accountability in Land Administration**

The absence of corruption is one obvious prerequisite to good governance in land administration. However, features of good land governance also include accountability, political stability, government effectiveness, regulatory quality and rule of law, as well as control of corruption. The principles of land

governance can be made operational through equity, efficiency, transparency and accountability, sustainability, subsidiarity, civic engagement and tenure security.

**Table 1: Registering Property in the MENA Countries**

<i>Region or country</i>	<i>Procedures (number)</i>	<i>Time (days)</i>	<i>Cost (% of property value)</i>
<b>Middle East &amp; North Africa</b>	6.1	36,1	5,7
<b>Algeria</b>	11	47,0	7,1
<b>Bahrain</b>	2	31	0,9
<b>Egypt, Arab Rep.</b>	7	72	0,9
<b>Iran, Islamic Rep.</b>	9	36	10,5
<b>Iraq</b>	5	8	7,7
<b>Jordan</b>	7	21	7,5
<b>Kuwait</b>	8	55	0,5
<b>Lebanon</b>	8	25	5,8
<b>Mauritania</b>	4	49	5,2
<b>Morocco</b>	8	47	4,9
<b>Oman</b>	2	16	3,0
<b>Palestine (West Bank &amp; Gaza)</b>	7	47	0,7
<b>Qatar</b>	10	16	0,3
<b>Saudi Arabia</b>	2	2	0,0
<b>Syrian Arab Republic</b>	4	19	28,0
<b>Tunisia</b>	4	39	6,1
<b>United Arab Emirates</b>	1	2	2,0
<b>Yemen</b>	6	19	3,8

*Source: "Registering Property," Doing Business in the Arab World (Washington: World Bank and IFC, 2009).*

Transparency International's Global Corruption Barometer (GCB) 2009 presents the main findings of a global public-opinion survey of the general public's perceptions of corruption in key institutions and public services, as well as experiences of bribery. For the first time, in the 2009 survey (in cooperation with FAO), included questions about the level of bribery and political corruption in the land sector. The 2009 barometer interviewed 73,132 people in 69 countries. The results for the MENA region revealed high perceptions of corruption in land administration (Box 6).

## **Land Governance and Post-conflict Situations**

### *Land Tenure in Conflict*

Land tenure issues in conflict situations are human rights and humanitarian law concerns, as well as a governance issue. Conflict over land is a major cause of poverty, marginalization and debasement of whole societies and economies, and land disputes are particularly problematic in cases of violent conflict.

The causes of violent conflicts are typically complex. Some violent conflicts are linked directly to competition for land and other natural resources. Growth in population without increases in productivity or new opportunities to acquire off-farm income tends to place increased pressure on natural resources, and the resulting environmental degradation may cause still greater competition for the remaining natural resources. As access to land often is related to social identity, the rights of people to land may be used in the political exploitation of tenure. Other violent conflicts arise without scarcity of land and other natural resources being a fundamental cause, although land disputes may merge with other issues, and different sides in the conflict may attempt to gain control over natural resources.<sup>22</sup>

Land tenure issues can be a source of tension (in the case of competition over essential natural resources, for instance), and can equally fuel violence once it has erupted (e.g. dominance of valuable resources such as water and oil). Land and its resources often are used to fund conflict. Land and natural resources can be implicated in all phases of the conflict cycle, from contributing to the outbreak and perpetuation of violence to undermining prospects for peace. In addition, land resources and the environment itself can fall victim to conflict, because direct and indirect environmental damage, coupled with the collapse of institutions, can lead to environmental risks that threaten people’s health, livelihoods and tenure security. Land tenure is also often a critical element when designing and implementing humanitarian responses to the consequences of armed conflict and other situations of violence.<sup>23</sup>

**Box 6: Transparency International’s Global Corruption Barometer (GCB) 2009**

Land question (10 B) in selected countries of the MENA region: *How serious do you think the problem of grand or political corruption is in land matters?*

(Grand or political corruption refers to corruption in the privatization of state-owned land, zoning or construction plans assigned without technical support, and/or land being expropriated (compulsory purchase) without appropriate, or even any compensation for actual land value.)

Level of perceived corruption	Total Sample 69 countries	MENA			
		Iraq	Kuwait	Lebanon	Morocco
1 Not a problem at all	2%	3%	1%	1%	0%
2	6%	11%	7%	1%	0%
3	18%	17%	10%	4%	2%
4	23%	22%	18%	14%	17%
5 Very serious problem	36%	21%	56%	79%	77%

*Quote GCB 2009:* In the Middle East and North Africa, the most bribe-prone institutions are reported to be those handling procedures related to buying, selling, inheriting or renting land.

*Quote GCB 2010:* The regional differences are significant. It is notable that in MENA and Newly Independent States (NIS), the reported bribery in land services is very high.

The Rio Declaration (1992) states, in Principle 24, that “Warfare is inherently destructive of sustainable development.”<sup>24</sup> This is nowhere more apparent than in the MENA region, where wars and conflicts have set back sustainable development gains, with significant repercussions for the region as a whole. While developments since the 1992 Earth Summit have brought calm to parts of MENA, the lack of equitable peace and security has been a major constraint to achieving sustainable development.

The specific plight of Internally Displaced Persons (IDPs) as regards land access requires particular analysis. Land tenure is a critical element throughout all phases of displacement, but is particularly challenging in relation to the return, reintegration, and sustainable resettlement, including the resolution of tension of displaced persons. From another perspective, it is arguable that land tenure is also a socially contested issue, and, thus, largely a human rights concern. Nonetheless, there is wide agreement that unresolved land tenure issues can result in resumed violence.<sup>25</sup>

After years of discussion and input from experts involved in property restitution programs in such areas as the Former Yugoslavia and Middle East, in 2005, the UN Sub-Commission on the Promotion and Protection of Human Rights formally endorsed the “Pinheiro Principles” for restoring housing, land and



property-restitution rights in the context of the return of refugees and internally displaced persons.<sup>26</sup> The legally grounded principles provide practical guidance to governments, UN agencies and the broader international community on how to address the complex legal and technical issues surrounding housing, land and property restitution in post-conflict situations. The Pinheiro Principles currently are applied in the MENA region in Iraq, Palestine, Sudan, Syria and Western Sahara.<sup>27</sup> These ongoing cases illustrate how extensive the problem of unresolved restitution claims is.<sup>28</sup>

#### *Border Issues Are Land-governance Issues*<sup>29</sup>

Since their independence, borders have been a recurrent source of conflicts and disputes between countries in the MENA region. Most of the borders are poorly defined.

The location of strategic natural resources in cross-border areas poses additional challenges (Box 7). Large tracts of land cannot be registered in a systematic manner, and are not accessible for the local population to the benefit of their livelihoods, because of security restrictions. People are forcibly evicted from critical border areas and are losing their traditional land rights without being compensated. On the other hand, secure and demarcated borders can be an enabling infrastructure for sustainable development, new access to land and tenure security.

Borders are often perceived by borderland populations as imposed barriers that rarely reflect local realities. Governments need to develop strategies to involve borderland populations in delimitation and demarcation exercises, in order to ensure that clearly delimited and appropriately demarcated boundaries are regarded as a valuable foundation for borderland development, rather than a threat to local communities. Borderland populations also have much to contribute to the development and implementation of effective border management strategies.

## **Conclusion**

### *Governance, Human Rights and Sustainable Development*

In addressing land-administration issues in the MENA region, it is crucial to understand the nature of the relationship between socio-economic development, respect for human rights, good governance and conflict. The new paradigms for looking at governance, in general, and land governance, specifically, may hold promise for creating enabling environments and enabling infrastructure for reform processes and generating an atmosphere of change in the land sector. It calls for greater and nondiscriminatory inclusion of the full range of social actors in the land sector, the increased recognition or re-establishment of the rule of law, strengthening of service-oriented institutions, building professional capacities, and civilian oversight of development processes.

### *The Ways Forward*

Many promising but diffuse land-governance practices can be found in the MENA region, such as the development of Mauritania's "Code Pastoral" for recognizing pastoral land rights and strengthening local-level participation in managing land and natural resources. The transparent and modern land administration systems in Jordan and the UAE municipalities. However, pressing needs for reform in the land sector are clear and obvious in the following fields:

- Developing frameworks for land policy, including public consultation
- Reforming the normative framework (human rights/gender issues, law enforcement, access to justice, Islamic tenure reform, gender, recognition of customary land rights)

- Reforming the institutional infrastructure for land administration (transparency, accountability, service-orientation, effective public land management, access to land information, the role of the private sector)
- Linking land issues more systematically with water resource management, with UNCCD and climate-change actions, with food security, with peace-building and transitional-justice processes, with urban development/rehabilitation and with the finance sector
- Supporting the reparation of war and political conflicts in the MENA region through international partnership in the land sector<sup>30</sup>
- Documenting and disseminating best land-governance practices and lessons learned in MENA
- Fostering public awareness regarding land governance and land rights in appropriate language and media to reach all relevant groups
- Facilitating civil society engagement and strengthening professional associations in the MENA region
- Modernizing professional education and training programs in the land sector and strengthening institutions for applied research
- Eventually marketing the idea of establishing an Arab Land Tenure Centre for post-graduate studies and research in the land sector
- Establishing mechanisms in the Arab region and beyond for exchange of experiences, action-oriented research and enhanced cooperation.

Compared to other regions in the world, MENA lacks international partnership and international engagement in the land sector involving local and regional partners. MENA should develop greater cross-country regional cooperation.

The international community (multilateral and bilateral development institutions, research associations, education associations, professional associations, private sector, NGOs) should play a pro-active and facilitating role in engaging with new regional MENA partners (such as the League of Arab States, UN-ESCWA and the Islamic Development Bank) in land matters, streamlining the often scattered efforts of the international community, supporting systematic capacity building programs, co-organizing regional and national land governance/policy conferences and offering support to reform processes in the land sector, as well as filling the obvious research gaps.

The FAO and the Committee on Global Food Security (CFS)-developed [Tenure Guidelines](#) should be considered in MENA policies.<sup>31</sup> While Arab state delegations have been active in the forums developing the norms, further effort is needed to operationalize the standards on the ground. This further step can be achieved through the use of current and upcoming e-learning tools and modules being developed for the purpose of implementing these global good-practice Tenure Guidelines.<sup>32</sup>

That would help codify norms where laws and development strategies remain silent, as well as promote the new era of international partnerships, including partnering more with the MENA region. The democratic governance movements and initiatives currently underway in several Arab countries are calling for a new commitment, culture and partnerships with the international community to enable land-governance reforms across the region.

#### Endnotes:

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<sup>1</sup> A previous version of this article appeared in *Land Tenure Journal*, No. 1 (2011), at: <http://www.fao.org/nr/tenure/land-tenure-journal/index.php/LTJ/article/viewArticle/20>.

- <sup>2</sup> “Near East and North Africa Regional Assessment for the FAO Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources,” Amman, Jordan, 2–4 May, 2010, at: <http://www.fao.org/docrep/012/al304e/al304e00.pdf>.
- <sup>3</sup> Michelle Obeid, *Women’s access and rights to land: Gender relations in tenure – Jordan, Yemen and Morocco* (Ottawa: IDRC, 2006), at: <http://www.landcoalition.org/en/global-initiatives/womens-land-rights/obeid-women-and-land-jordan-yemen-and-morocco>.
- <sup>4</sup> UN-Habitat. *Islam rights and property research series* (Nairobi: UN-HABITAT, 2005); Siraj Sait and Hilary Lim, *Land, Law and Islam: Property and human rights in the Muslim world* (London: Zed Books, 2006), at: [http://www.hlrn.org/img/documents/Sait\\_Lim\\_Land\\_Law&Islam.pdf](http://www.hlrn.org/img/documents/Sait_Lim_Land_Law&Islam.pdf).
- <sup>5</sup> Sait and Lim, op. cit.
- <sup>6</sup> For a summary of the UNCCD operational framework, see the introductory strategy leaflet, at: <http://www.unccd.int/Lists/SiteDocumentLibrary/10YearStrategy/Strategy-leaflet-eng.pdf>.
- <sup>7</sup> International Center for Agricultural Research in the Dry Area (ICARDA), *A field manual for the preparation of a participatory community development plan* (Aleppo: ICARDA, 2007), p. 125, at: [http://www.cop-ppld.net/fileadmin/user\\_upload/cop-ppld/items/Field%20manual%20PA%20%20CDPs%20final%20version.pdf](http://www.cop-ppld.net/fileadmin/user_upload/cop-ppld/items/Field%20manual%20PA%20%20CDPs%20final%20version.pdf). For more information on ICARDA local government programs on agricultural research and development in Cyprus, Iraq, Jordan, Lebanon, Palestine, Syria and lowland Turkey, see ICARDA at: <http://www.icarda.org/west-asia-regional-program#sthash.KyvolooO.dpuf>.
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- <sup>9</sup> Karl P. Kirsch-Jung and Lars T. Soeftestad, “Regulating the commons in Mauritania: Local agreements as a tool for sustainable natural resource management,” paper at 10th biannual conference of the International Association for the Study of Common Property (IASCP), Bali, Indonesia, 19–23 June 2006, at: [http://www.supras.biz/pdf/supras\\_088\\_mr\\_iasc\\_paper.pdf](http://www.supras.biz/pdf/supras_088_mr_iasc_paper.pdf).
- <sup>10</sup> United Nations Development Programme (UNDP), Dryland Development Center (DDC), “Equitable access to land and water resources – Promoting sustainable livelihoods in the Arab States region” regional workshop, Beirut, 28–30 November 2005, at: <http://agripollute.nstl.gov.cn/MirrorResources/10526/index.html>.
- <sup>11</sup> Mohammed Essadiki, “Land consolidation in Morocco: Situation and perspective” International Federation of Surveyors (FIG) working week 2005, Egypt, at: [https://www.fig.net/pub/cairo/papers/ts\\_29/ts29\\_03\\_essadiki.pdf](https://www.fig.net/pub/cairo/papers/ts_29/ts29_03_essadiki.pdf).
- <sup>12</sup> UNDP DDC, op. cit.
- <sup>13</sup> Food and Agriculture Organisation (FAO), FIG and Consiglio Nazionale Geometri (CNG), “International Seminar on State and Public Sector Land Management,” Verona, Italy, 9–10 September 2008, proceedings at: [www.fig.net/commission7/verona\\_fao\\_2008/proceedings.htm](http://www.fig.net/commission7/verona_fao_2008/proceedings.htm).
- <sup>14</sup> Willi Zimmermann, “Effective and transparent management of public land” FIG article of the month. (Frederiksberg DK: International Federation of Surveyors (FIG), 2009).
- <sup>15</sup> Jennifer Franco, “Pro-poor policy reforms and governance in state/public lands: a critical civil society perspective,” *Land Reform: Land Settlement and Cooperatives, land reform / réforme agraire / reforma agraria* 2009/1 (Rome: FAO, 2009), at: <http://www.fao.org/3/a-i0899t/>.
- <sup>16</sup> Slum is referred to here as a contiguous human settlement where the inhabitants are characterized as having inadequate housing and basic services. A slum is often not recognized and addressed by the public authorities as an integral or equal part of the city and includes any combination of the following elements: Insecure residential status; Inadequate access to safe water; Inadequate access to sanitation and other infrastructure; Poor structural quality of housing; Overcrowding. “Defining Slums and Secure Tenure,” Expert Group Meeting, Nairobi, November 2002.
- <sup>17</sup> Article 25 of the Universal Declaration of Human Rights (1948); and Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966), which 18 states in the MENA region have ratified. See Annex to Joseph Schechla, “Land and Natural Resource Rights in the Constitutions of Transitional Countries: Examples for Arab Reformers,” in this volume.
- <sup>18</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7 “forced eviction”* (1997), at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en).
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- <sup>20</sup> Masdar corporation, at: <http://www.masdar.ae/>; and on *Wikipedia*, at: [http://en.wikipedia.org/wiki/Masdar\\_City](http://en.wikipedia.org/wiki/Masdar_City).
- <sup>21</sup> “Registering Property,” in *Doing Business in the Arab World* (Washington: World Bank and IFC, 2009), pp. 20–22, at: [http://www.doingbusiness.org/reports/~/\\_media/GIAWB/Doing%20Business/Documents/Special-Reports/DB09-ArabWorld.pdf](http://www.doingbusiness.org/reports/~/_media/GIAWB/Doing%20Business/Documents/Special-Reports/DB09-ArabWorld.pdf).
- <sup>22</sup> John D. Unruh, “Post conflict land tenure, using a sustainable livelihood approach” Livelihood Support Programme (LSP) working paper 18 (Rome: FAO, 2004), at: <ftp://ftp.fao.org/docrep/fao/008/j5415e/j5415e00.pdf>; FAO, *Access to rural land and land administration after violent conflicts*, Land Tenure Studies No. 8 (Rome: FAO, 2006), at: <http://ftp.fao.org/docrep/fao/008/y9354e/y9354e00.pdf>.

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- <sup>23</sup> “Quick guide to post-conflict land issues,” (Nairobi: UN-Habitat/Global Land Tool Network, 2009), at: [http://humanitarianlibrary.org/sites/default/files/2014/02/Quick\\_Guide\\_to\\_Post-Conflict\\_Land\\_Issues-Discussion\\_Draft\\_June\\_2009.pdf](http://humanitarianlibrary.org/sites/default/files/2014/02/Quick_Guide_to_Post-Conflict_Land_Issues-Discussion_Draft_June_2009.pdf).
- <sup>24</sup> Principle 24 continues: “States[,therefore, shall] respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.” Rio Declaration on Environment and Development, The United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, at: <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.
- <sup>25</sup> Nicolas Pons-Vignon and Henri-Bernard Solignac Lecomte, “Land, Violent Conflict and Development,” OECD Development Centre, Working Paper No. 233, at: <http://www.oecd.org/dev/29740608.pdf>; and European Union and UN Interagency Framework Team for Preventive Action, *Land and Conflict: Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict* (Geneva and Nairobi: EU and UN, 2012), at: <http://reliefweb.int/report/world/toolkit-and-guidance-preventing-and-managing-land-and-natural-resources-conflict>, Executive Summary at: [http://www.un.org/en/land-natural-resources-conflict/pdfs/GN\\_ExeS\\_Land%20and%20Conflict.pdf](http://www.un.org/en/land-natural-resources-conflict/pdfs/GN_ExeS_Land%20and%20Conflict.pdf).
- <sup>26</sup> Final report of the Special Rapporteur, Paulo Sérgio Pinheiro, “Housing and property restitution in the context of the return of refugees and internally displaced persons,” E/CN.4/Sub.2/2005/17, 28 June 2005, at: <http://www.hlrn.org/img/documents/ECN4Sub2200517%20restitution%20en.pdf>.
- <sup>27</sup> *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons* (Geneva: Centre on Housing Rights and Evictions, 2007), at: <http://2001-2009.state.gov/documents/organization/99774.pdf>.
- <sup>28</sup> World Bank and UN-HABITAT (United Nations Human Settlements Programme), conference proceedings “Toward a Land Management Policy for Iraq,” Beirut, Lebanon, 27–28 May 2010, at: <http://www.gltm.net/en/newspage/conference-on-toward-a-land-management-policy-for-iraq.html>; *Restoring Values: Institutional Challenges to Providing Restitution and Compensation for Iraqi Housing and Land Rights Victims* (Cairo: HIC-HLRN), 2005), at: <http://www.hlrn.org/img/documents/all%20parts%20english.pdf>.
- <sup>29</sup> Conference of African Ministers in charge of border issues, at: <http://www.africa-union.org> and <http://www.peaceau.org/uploads/ex-cl-726-xxi-e.pdf>.
- <sup>30</sup> Implementing the elements of reparations: restitution, return, resettlement, rehabilitation, compensation (for values not subject to restitution), guarantee of nonrepetition and victim satisfaction. See “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/RES/60/147, 21 March 2006, at: <http://www2.ohchr.org/english/law/remedy.htm>.
- <sup>31</sup> *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, 9 March 2012, at: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf> and [http://www.hlrn.org/img/documents/vg\\_en\\_final\\_march\\_2012.pdf](http://www.hlrn.org/img/documents/vg_en_final_march_2012.pdf).
- <sup>32</sup> Notably, these include learning modules and materials developed in the framework of the implementation of the Tenure Guidelines, including: “Introduction to the Responsible Governance of Tenure,” “Addressing Disputes and Conflicts over the tenure of Natural Resources” and “Addressing corruption in the tenure of land, fisheries and forests” (2014) at: [http://www.fao.org/nr/tenure/e-learning/en/?no\\_cache=1](http://www.fao.org/nr/tenure/e-learning/en/?no_cache=1); as well as “Governing land for women and men: A technical guide to support the achievement of responsible gender-equitable governance of land tenure” (2013), at: <http://www.fao.org/docrep/017/i3114e/i3114e.pdf>



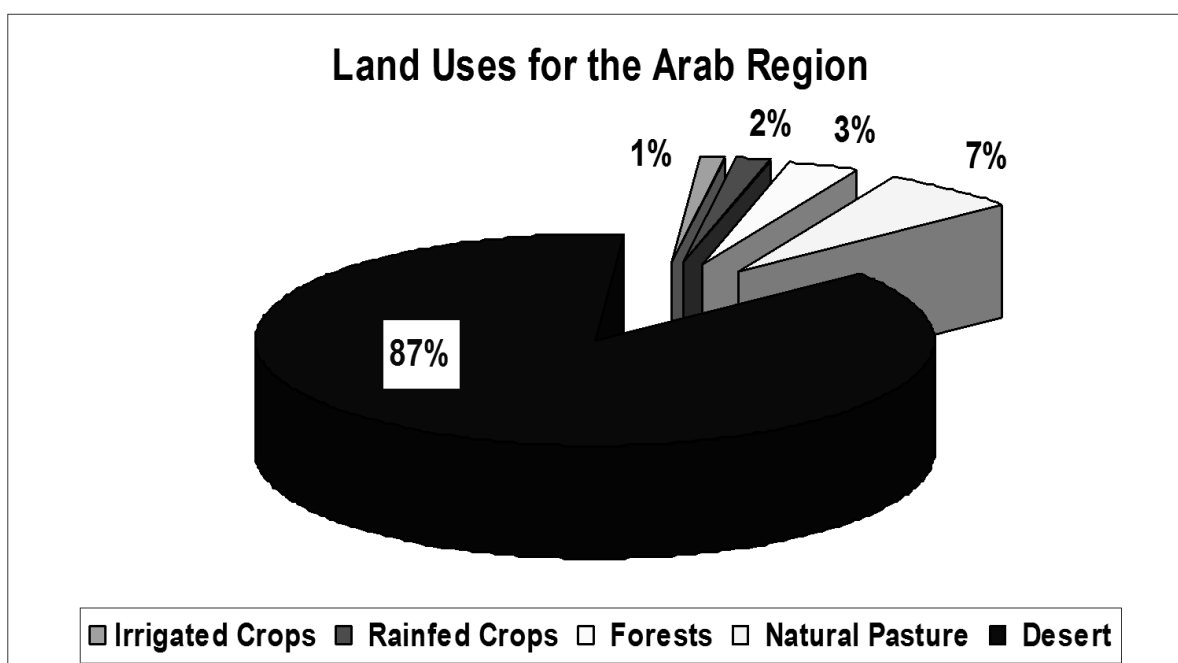
## Water Insecurity in the Arab Region

*Aziz Latrach*

To understand the problematic of water in the Arab region,<sup>1</sup> we must face three prominent issues: (1) natural and climatic challenges, (2) misuse of water resources and (3) the importance of water resources in the geopolitical conflicts in the region.

### Natural and Climatic Challenges

The Arab world, and the Middle East/North Africa region in general, is located in the arid and semi-arid region, penetrated from west to east by wide deserts that are almost devoid of rain. However, the nearby coastal and mountainous areas are exposed most of time to nautical airflow and air depressions causing precipitation in specific seasons.



This region, while comprising one-tenth of the world's land area, is classified as poor in freshwater sources. It contains less than 1% of all surface runoff and about 2% of the total rainfall in the world. Arab water resources are distributed as following: Mashriq 9.40% compared to 22% of the Maghreb countries, and 0.31% in the Arab countries of the Nile Basin and 1.6% from the Arabian peninsula.

Sources of water available in the Arab region are undoubtedly much affected by the natural and climate factors, which is evident on the map of water resources in the region. Below, we will discuss these details by surveying the natural and artificial sources of water.

### Traditional sources of water

#### *Rain*

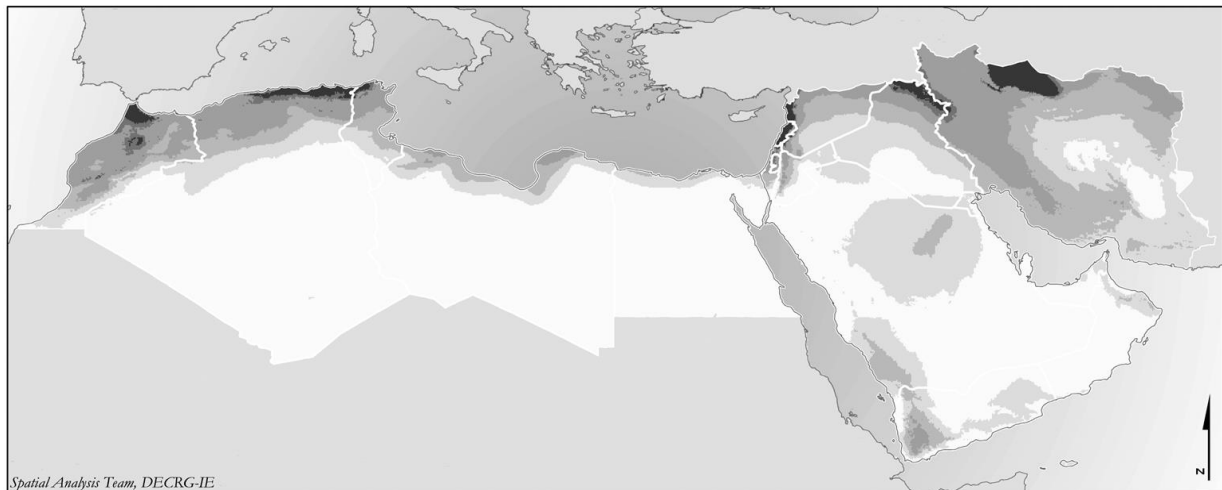
The rain counts as the principal source of water in the region, but rainfall is low in quantity and poor in distribution. Moreover, rainfall is continuously declining due to successive years of drought and climate change. Among the Arab countries that rely heavily on rainfall are: Morocco, Algeria, Tunisia, Syria, Lebanon, Iraq, Somalia, Sudan and Jordan. The estimated annual rainfall is about 2,300 billion

cubic meters. The annual rates of rainfall range between 250 and 400 mm, but may exceed 1,000 mm in some areas, such as Lebanon, Syrian coast, the highlands of Yemen, the south of Sudan and the northern areas of the Maghreb countries. The rainfall in the Arab region is distributed in divergent proportions: 60% of rains occur in a summer tropical system, most of which fall in the Sudan Basin, while this amounts to 40% in the Horn of Africa/Yemen. A wintry Mediterranean system covers the Maghreb of North African and northern latitudes of the Levant.

The rains in the Arab countries are estimated at about 2,238 billion m<sup>3</sup> annually, 1,488 billion m<sup>3</sup> of which fall on 20% of the land space.<sup>2</sup> The remaining quantities fall on areas where the rainfall rate is between 100 and 300 mm, and other areas where the rate does not exceed 100 mm. By 2030, the region's water deficit is estimated to be about 261 billion m<sup>3</sup>.<sup>3</sup>

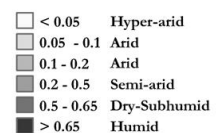
### Rivers

The Arab region lacks large inland rivers with permanent runoff. About 34 small and medium-sized rivers are sustained rivers, in addition to thousands of seasonal valleys. The permanent rivers are represented in Nile, Tigris and Euphrates Rivers, in addition to a small, but sensitive and endangered one: the Jordan River.



*Spatial Analysis Team, DECRG-IE*

Geographic projection



### ARIDITY ZONING

Precipitation divided by Reference Evapotranspiration

The renewable water resources per year in the Arab region reaches about 350 billion cubic meters, 35% of is derived from river flows coming from outside the region. For instance, the Nile River sustains 56 billion cubic meters, the Euphrates River 25 billion cubic meters, and Tigris River and its branches bring 38 billion cubic meters. Turkey, Ethiopia, Iran, Kenya, Uganda and Zaire control about 60% of the water sources flowing into the Arab world.

### Groundwater

Countries in the region also contain groundwater, which is accessed through wells and springs. The area of groundwater is spread over three core basins: the East Arch lies south of the Atlas Mountains in the Maghreb, the Nubia Basin lies among Egypt, Sudan and Libya, and the *Dees* Basin is between Jordan and Saudi Arabia. The groundwater in the Middle East/North Africa cannot be a reliable resource, because it is already under risk of depletion.

## **Nontraditional Sources of Water (Artificial Water)**

The nontraditional water sources are represented in water from desalination, drainage water and sanitation, agricultural runoff and industrial wastewater. The Arab world has a strategic reserve of nonrenewable water resources, only about 5% of which is invested. The estimated amount of desalinated and treated water is about 10.9 billion m<sup>3</sup> per year, including 4.5 billion m<sup>3</sup> desalinated water and 6.4 billion m<sup>3</sup> from sanitation, agricultural and industrial water. The Middle East and North Africa is at the lowest rate of actual renewable water resources per capita in the world.

### ***Water Desalination***

The rates of population growth in the Arab world count among the highest in the world (population grew from 221 million people, in 1991, to more than 300 million today, and expected to reach 735 million people by 2030).<sup>4</sup> Because of the consequent projection of future water needs, Arab countries have resorted to nontraditional (artificial) sources. Thus, Libya, for instance, has undertaken a large industrial project called “the Great Man-made River,” is a network of pipes that supplies water to the Sahara Desert in Libya, from the Nubian Sandstone Aquifer System fossil aquifer. It is the world's largest irrigation project,<sup>5</sup> which the late Colonel Muammar Qadhafi called the “Eighth Wonder of the World.”<sup>6</sup> The Persian Gulf states desalinate sea water, in order to secure drinking water. Kuwait relies on sea water for 95% of its supply.

The Persian Gulf is the world’s region most using advanced technologies in water desalination. About 80% of the Flash Multi Stage (FMS) factories operate in this area, relying on traditional sources of energy (oil and gas). The Gulf states spend about \$133 billion a year in water management, and the desalinated sea water forms more than 75% of the water used in the Arab states of the Persian Gulf.

With the velocity of population growth and the increasing demands on water for industry and agriculture, as well as the burgeoning demand for drinking water, the steady drying of water traditional resources and the high cost of desalination of sea water to ensure water security, it is incumbent on the Arab governments to accelerate investment and innovation in techniques of using the sanitation and wastewater of all kinds. Equally urgent is the adoption of targeted programs and plans to rationalize the use of water in a way that can ensure the necessary supplies of vital sectors in the region and its increasing population with their daily needs.

### ***Treated Water***

The treatment of wastewater before draining into the environment is essential for reuse. Thus, the treated wastewater offers significant advantages, especially in the Arab countries that suffer from water scarcity. It can be a good source for agriculture and other uses. Also using the wastewater in a proper way for food production can form one of the effective ways to reduce competition over water for agricultural purposes in areas that suffer from increasing water scarcity.

With proper planning and implementation for this option and respect for environmental standards for the re-use of treated wastewater in the different sectors, the Arab countries would benefit from a “three-dimensional” gain, whereas it will be useful for urban inhabitants, farmers and the environment. The available techniques enable farmers, in particular, to avoid some of the water pumping costs, while taking advantage of nutrients in the wastewater, also reducing the cost of fertilizer. Egypt and Syria are considered the Arab countries most dependent on treated water, using up to 5.8266 billion m<sup>3</sup> per year in Egypt, and 1.449 billion m<sup>3</sup> per year in Syria. Generally, the quantities of treated water are very limited in the Arab states, totaling only 9.2 billion m<sup>3</sup> per year.



### ***Dam Policy***

Morocco is one of the leading Arab countries in the field of damming water courses. Since the 1960s, Morocco chose an approach to water policy that envisages the provision of surplus water, and securing it by building big, medium and small dams. However, specialists have criticized this policy for lacking a strategic dimension and for its shortsightedness. The decision makers did not take into account the medium- and long-run fluctuations in run-off that already was confirmed by the inability to cope with the successive crises of drought that Morocco faced during the 1980s. The flooding disasters of the 1970s, and the 2009 and 2014 seasons emphasized the increasingly erratic nature of precipitation. This, of course, requires officials today to accelerate the assessment of this experience, adjust to correct shortcomings and to avoid the previous strategic errors.

### **Misuse of Water Resources**

Several aspects of water misuse prevail in our region. These include many of the aspects that the UN Special Rapporteur of the right to water mentioned in her report from her country mission to Egypt in 2010.<sup>7</sup> The most important of manifestations of misuse are.<sup>8</sup>

### ***Water Wastage***

Water use in the Arab world is divided among three main sectors, namely agriculture, industry and domestic purposes. Agriculture occupies the first rank in water consumption by 87% of the general volume of consumption, and crops destined for export consume the bulk of water consumption. More than 60% of this portion is wasted due to evaporation, poor irrigation infrastructure and the adoption of antique irrigation methods and groundwater depletion.

The water level is declining in various basins at a pace of 2.5 meters per year: for example, in *Sais* plain (*Sahl Sayis*), in the south of Morocco, the water level declined by 60 m during the last two decades. The peasants in the area *Cardan*, on the Souss plain south of Morocco, were forced to leave thousands of acres of their reclaimed lands after running out of groundwater.

While industry exploits 7% of public water; drinking and household uses amount to 6%. Significant amounts of water are lost due to the lack of maintenance of water infrastructure (cities are losing more than 30% of the water used for household purposes).<sup>9</sup>

Meanwhile, the problem of water security in the region is getting worse, due to the implications of global warming and overexploitation of surface water in most of the Arab countries. Many estuaries no longer empty into the seas and oceans as they did in the past.

### ***Pollution***

The bulk of the water resources in the region, whatever their source, is susceptible to very high rates of pollution, with toxic wastes dumped by factories in the public waters and chemical leaks from fertilizers used randomly in agriculture. As we can cite by example in the case of Morocco, we find that, in urban areas, out of 500 million m<sup>3</sup> of wastewater, more than 25% flows out into ocean. 98% of the 10,800 tons of solid waste is disposed of directly in the natural environment.<sup>10</sup>

### **Desertification**

Desertification is a progressive process of creeping sand, soil erosion and depletion of forest and agricultural lands. One manifestation of desertification is the decline of surface and groundwater, degraded vegetation, high salinity of the soil and the lack of fertility due to climate change (global warming).

All activities of humankind that subvert the rules of the ecosystem, bear a major responsibility for increasing the speed of desertification and imbalance of the ecosystem process. Much of the world's desertified land, or land threatened by desertification, is located throughout the Arab world, particularly the countries of near-Saharan Africa, which is one of the most threatened of all desertification areas.

Figures indicate that about 357,000 km<sup>2</sup> of agricultural or arable land forms about 18% of the total area of Arab countries, amounting to 1.98 million km<sup>2</sup>. This now has become subject to desertification. In the Persian Gulf countries, 68% of their lands are desertified areas. In countries on the edge of the Sahara—Egypt, Libya, Tunisia, Algeria, Morocco, Western Sahara and Mauritania, and neighboring countries, we find 650,000 km<sup>2</sup> of land turned into desert within only five years. In Sudan, the front line of desertification, the desertification of Nubian lands is advancing at an annual rate of 90 to 100 km<sup>2</sup> in recent years. The degrees of desertification have increased to the point where it affects %75 of the total land space of Iraq, and particularly the arable areas.<sup>11</sup> In Syria, the salinized land ratio is nearly 50% of the agricultural land, where the areas most affected include the Euphrates and Khabour valleys, as well as areas southeast of Aleppo and in the extreme east of the country, north of al-Bukamal.<sup>12</sup>

Several factors will contribute to accelerating desertification. Of these, we must take into account the rapid expansion of the population of the Arab world in the coming years, which will result in further expansion of agriculture and overgrazing, deforestation, migration and settlement inappropriate places, in addition to the expansion of cities at the expense of agricultural land. However, exacerbating these factors is the continuum of inappropriate policy and governance, as well as the conflict, occupation and war.

With regard to the limited area of forest in the Arab world, which is estimated at about 135 million hectares, 9.6% of the total area, the exploitation of it is still random and brutal in many cases. Morocco loses about 20,000ha of forest per year. The levels of biomass consumption exceeds the production capacity of forests and grasses in Morocco and other Arab countries such as Syria, Lebanon, Algeria and Tunisia. So overexploitation of forests and other depleted vegetation become important factors in the environmental equation and determine the direction toward further drought and desertification in the Arab world.

The danger of desertification and the direct threat it poses to water security requires the development of urgent strategies and plans to stop the advance of desertification and to reclaim desertified land and the revival of the soil and maintain fertility in desertification-prone areas. Strict forest protection and more-effective means to stop soil erosion are needed.

### **Neoliberal Diktats**

The neoliberal trend of trade, investment, development and governance in the region seeks to transform the public nature of basic social services by subjecting it to the logic of the market. This movement links services to actual costs and promises to improve performance.

Since the 1980s, the Arab countries are involved in the series of deregulation of the social public services by “opening up” policy by joining the World Trade Organization and submitting to its dictates through its Western state-dominated decision process. This is rationalized as adherence to the principles of “free trade” agreements, as well as commodification of public services through what is called the General Agreement on Trade in Services. The scarcity of water resources will become increasingly pronounced in the future, since the International Conference held in Dublin 1992,<sup>13</sup> the United Nations considered water as a mere commodity. As of that date, the World Bank,

backed by a multinational corporations are working to remove the public dimension and social function from this vital and fundamental resource of life, reversing the obligation of states to respect protect and fulfill the basic human right to water, and turn it into a mere commodity.

If the oil is currently considered the black gold, the water will become blue gold in the coming centuries. So, it is not surprising to note the giant companies now building "water carriers" such as "oil tankers." These commercial enterprises also feature the development of giant plastic containers with a length of 200m and capacity of 365,000 deadweight tonnage.<sup>14</sup>

Privatization of water has become as part of the first reflexive response of Arab countries toward "rationing and regulation of the water sector." This augurs a policy trend that faces the water crisis by heaping the burden on the citizens, in addition the burdens already generated by pervasive corruption and authoritarian governance.

With the Arab governments privatizing our water resources, the problematic of water security is becoming more complicated, as privatization forms one of the neocolonial mechanisms that mortgages our resources at the hands of private interests, global water companies and international financing institutions, with the World Bank, the International Monetary Fund and the World Trade Organization and policy drivers.

For example, the privatization initiated by Morocco has come through a measure that is called "commissioned management, since the mid of 1990s. This policy has turned management of public water of Casablanca to the benefit of a consortium, *LYDEC*, led by the French company *Lyonnaise des eaux* in 1997. In 1998, Rabat's electric, sanitary, and water services were also outsourced to a Spanish and Portuguese company, *REDAL*, which was later to become a subsidiary of Veolia in 2002.<sup>15</sup> Veolia also benefited from a measure of the services of water and electricity in the cities of Tetuan and Tangier distribution after the creation of a unified company called *Amandis*.

However, this policy approach has colonial roots, During the French Protectorate, beginning in 1912, water supply and sanitation in many large Moroccan cities, including Casablanca, Rabat, Salé, Tangiers and Meknes, were managed under a concession to the private company *Société Marocaine de Distribution d'eau, de gaz et d'électricité* (SMD), a consortium led by *Lyonnaise des Eaux*. Under the control of the Moroccan king's holding company, *Omnium Nord-Africain* and its parent company, *Société nationale d'investissement*, the monarch was able to dictate the direction of foreign investment. Just one year after the free-trade agreement with the EU was signed, in 1997, the water concession went to *LYDEC*—without a competitive tender.<sup>16</sup>

This is the same approach that involved Lebanon enabling the French company, *Ondeo*, to enter into a 2002 contract with the Lebanese authorities in the amount of \$21 million for the transfer of water piped into tanks and homes.<sup>17</sup> The company retained the authority to cut off water service for every consumer refuses to participate or accesses these services illegally.

The privatization of water followed Law No. 221 (2000) on the "organization of the water sector" in Lebanon (with successive amendments and related regulatory decrees). As such, this law poses a risk to water as a public resource and constitutes an infringement of the rights acquired on the water as a human right.

This policy trend is a global phenomenon, such that an estimate 16% of the world's consumers will be under some form of water privatization scheme by 2015.<sup>18</sup> Therefore, we need to pay close attention to the growing activities of companies trading in the drinking water in several Arab countries, as privatization accelerates despite the decline in wells, springs and other water sources

at the expense of the water security of future generations in the region. We also need to be concerned about maintaining public ownership of water as a collective commons and a right enshrined in the constitutions and laws most countries in the region. Protection of this resource involves public engagement in determining its disposition according to the requirements of national sovereignty and public benefit, especially if we know that the public property. Otherwise, the governments concerned will find themselves complicit in the robbery and deprivation of this vital resource and human right.

### **Geopolitical conflicts**

In the 1970s, the world witnessed several shocks in the distribution of fuel oil. The 21<sup>st</sup> unfortunately could see much more geopolitical and commercial shocks linked to control of water, the indispensable source of life. Sudan, Egypt and Ethiopia are on the verge of disputing over the waters of the Nile. The Tigris and Euphrates basin is the subject of disputes among Turkey, Syria and Iraq. The Jordan basin, including South Lebanon, is a subject of a dispute between Israel, on the one hand, and Lebanon, the Palestinians and Jordan, on the other. China, Laos and Thailand face dispute over the Mekong River water. China and Russia have been disputing over the Amur River/Heilong Jiang. The United Nations has counted 300 possible international disputes over water.

The Dublin Declaration reflects the common international understanding of the values at stake in the law and practice of water management:

- Principle 1: Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment;
- Principle 2: Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels;
- Principle 3: Women play a central part in the provision, management and safeguarding of water;
- Principle 4: Water has an economic value in all its competing uses and should be recognized as an economic good.<sup>19</sup>

In the management of transboundary watercourse, five doctrines of international law guide rights to use of water as a subject of:

- Absolute territorial sovereignty,
- Absolute territorial integrity,
- Prior-appropriation rights,
- Limited territorial sovereignty, and
- Community resource.<sup>20</sup>

The first doctrine of absolute territorial sovereignty (a.k.a. the Harmon doctrine) , in its absolute form, posits that each state has absolute rights over all water in its territory and may use that resource at its full discretion, including extracting as much as possible, or altering its quality, regardless of the consequences in downstream or contiguous states.<sup>21</sup> However, this doctrine remains unpopular with the majority of legal experts.<sup>22</sup>

The second doctrine of absolute territorial integrity holds that the upper riparian state may not interfere with the natural flow of a transboundary watercourse without the consent of downstream states. Downstream states favor this doctrine. It was the basis of the 1929 and 1959 Nile treaties, which principle is also based on the “good neighborliness” doctrine in the Roman law maxim: *sic utere tuo*.<sup>23</sup> However, one major criticism of this doctrine is that, like its foregoing absolute-sovereignty counterpart, it is extreme in that it creates something akin to veto rights in favor of downstream states against upstream states.<sup>24</sup>

The third doctrine of prior-appropriation rights, or “natural and historic rights,” in the terms of the previous Nile Treaties, provides that any riparian that puts the water of an internationally shared river to use first establishes prior and incontestable rights over that use. In theory, this principle favors neither upstream nor downstream parties and, therefore, appears to be equitable. However, practical application has found this doctrine restrictive and unworkable, whereas the state that puts the waters into use first enjoys veto rights over others. This creates an undesirable scenario, particularly in light of the 1997 UN Convention and other instruments of law on international transboundary water courses. Therefore, it may be assumed that this doctrine is no longer in force.<sup>25</sup>

The fourth doctrine enshrines the principle of limited territorial sovereignty and integrity.<sup>12</sup> This theory asserts qualified sovereign and territorial claims over international watercourses, whereby co-riparian states have reciprocal rights and duties in the use of the waters of a transboundary waters. The limited-territorial-sovereignty doctrine considers the river to be common property (*res communis*) (common property), which legal notion has enjoyed wide consensus in connection with other resources (e.g., high seas, air and outer space). While its application in other cases refers to resources beyond the territorial jurisdiction of states, it has been most-commonly used with respect to the common heritage of all mankind. Internationally shared rivers may be considered “local” common heritage, for all mankind in the basin states.

The fifth doctrine involves equitable use, which already is hallowed in treaty and customary international law. It is the most-widely endorsed theory for application to international watercourses as shared resources subject to equitable use by all riparian states. This doctrine rests on the foundation of equality of rights and relative sovereignty.<sup>26</sup> However, it should not be confused with equal division. It calls for accommodation of the interests of all riparian states and mutually agreed divisions.

Nevertheless, these principles have not stopped major disputes from erupting over the exploitation of international rivers. What makes matters worse is the fact that some countries in the international community have been persuaded to adopt the proposal of water pricing, and thus international sale of water. In the wider MENA region, these countries are led by Turkey and Israel. More seriously, too, is that certain international organizations such as the World Bank, and even the UN Charter-based FAO have adopted this proposal.

### **Israeli Control of the Arab Water**

The Zionist Movement has had designs on Arab water resources since the time of its founder, Theodor Herzl, at the turn of the 20<sup>th</sup> Century. Ever since, water has remained one of the most important political and military elements in Israeli strategy of expansion and colonization on Arab lands. Water experts at the Arab Water Security Conference in Cairo, in February 2000 detailed how Israel’s methodological occupation of Arab water is no less dangerous than the occupation of the land.<sup>27</sup>

Since Israel launched its war of aggression in 1967, water (“blue gold”) was one of the first targets, occupying the water sources of both the Jordan River headwaters, the Golan Heights and, thereafter, the Litani River (Lebanon). Thus, the Zionist colony controlled 75% of the occupied territories water sources. In percentage figures, the Israeli capture of Arab territory accounted for 53% of the Palestinian West Bank waters and tributaries of the Jordan River, and 22% of the water of the Golan Heights. After its invasion of Lebanon in 1982, Israel diverted the Litani River water to the Galilee (captured by Israel in 1948), to officially announce, at the time of the 1991 Madrid Peace Conference, that “the water in the occupied Arab territories is part of Israel.”<sup>28</sup> The *Jerusalem Post* followed with a headline: “The hand that controls the faucet rules the country.”<sup>29</sup>

## **Palestinian Water**

Since the emergence of the Zionist colony, Palestinian water has become a central goal of the Israeli ambitions under the theme of "water in the forefront of security," worked to control the sources of water that the Palestinians benefit from them in the West Bank. This was regulated through the Military Order No. 92, promptly transforming the invasion to military occupation (15 August 1967), about (water authorities). It authorized the military commander with absolute power to determine the amount of water that Palestinians are entitled to use and consume.

In 1982, another military order prohibiting Palestinian farmers from planting certain types of crops. To achieve this, the Israeli occupation forces deliberately destroyed 140 water pump sets (all of which Palestinian farmers had built)<sup>30</sup> and allowed Israeli settlers to dig wells carrying 17 million m<sup>3</sup>, equivalent to 40% of the amount of water wells in the region. Israel today controls more than 80% of the groundwater, and more than one-third of the West Bank water Palestinian, or about 500 million m<sup>3</sup>, in defiance of UN resolutions, including the resolution adopted at the water conference in March 1977, which reconfirms "the inalienable right of peoples and countries under colonial and foreign domination, and the legitimacy of their struggle to regain effective control over their natural resources, including the water resources."<sup>31</sup>

For the Gaza Strip, where the groundwater is the main source of water (70–80 million m<sup>3</sup>), rain is scarce. Gaza suffered as a result of the occupation and the long-running siege, because pumping water and groundwater depletion by settler colonies over years and Israel's preemptive pumping of the Jabal Khalil-Gaza ground water table has exacerbated seawater intrusion and increased salinity of Gaza's land.<sup>32</sup> More than 50% of the wells in Gaza become unfit for drinking or irrigation due to high degrees of salinity, which has led also to the deterioration of agriculture.

## **Lebanese Water**

Israeli ambitions to control Lebanese water date back formally to 3 February 1919, when the Zionist Movement submitted a memorandum to the Supreme Council of Paris Peace Conference showing the landmark limits of their proposed Zionist colony in Palestine. Those borders extended from the harbor near the city of Sidon to include the headwaters in the foothills of Mount Lebanon range to Qar'aun Bridge in the western Bekaa. However, the Zionists failed to win support for this ambitious scheme.

In 1954, Israel announced a project by the U.S. engineer John Cotton to divert Lebanon's Litani River water into Israel.<sup>33</sup> This continuing ambition is seen as motivating the continuing Israeli occupation of the Shib'a Farms (*Mazāri' Shib'ā*), forming an Israeli military cordon inside Arab territory since 1981 and attaching that territory contiguous with Israel's occupation of the Syrian Golan Heights.

Israel has tunneled 17 km into Lebanon to siphon the Litani River. Simultaneously, Israel is taking more than 150 million m<sup>3</sup> of Lebanese water annually to implement a ten-year, 25,000 ha irrigation program.<sup>34</sup>

## **Dispute over the River Jordan**

Jordan suffers greatly from Israel's seizure of the Jordan River, where it flows from Jordanian territory and Israel prevents the Jordanians from utilizing its waters. Israel also erects dams on the river to control its water. In the 1994 peace treaty between Israel and Jordan, it was agreed that Israel allow Jordan to store 20 million m<sup>3</sup> of water out of the flooding Jordan River during winter, and about 10 million m<sup>3</sup> of desalinated water from the springs of saline transferred to the Jordan River. That is in addition to 10 million m<sup>3</sup> Israel is to provide Jordan on specified dates in the summer. Israel never implemented this agreement.<sup>35</sup>

### **Conflict over Syrian Water**

In the Golan Heights and its mountains, from *Jabal al-Sharikh* to *Jabal al-Shaikh*/Mount Hermon, Syrian water sources were not spared Israeli looting schemes. According to the Syrian official reports, Israel took advantage of the water through projects in the occupied Syrian heights in the following proportions: 130.2 million m<sup>3</sup> in the southern Golan Heights, 6 million m<sup>3</sup> in the central region, 70.8 million m<sup>3</sup> in the northern region. By proportion, 30% of Israel's water demands comes from the Golan Heights.

### **Nile River Water**

The Nile is considered one of the longest rivers in the world, at 6,695 km. It flows from Lake Victoria in Central Africa, and is shared by ten countries: Ethiopia, Zaire, Kenya, Eritrea, Tanzania, Rwanda, Burundi, Uganda, Sudan and Egypt. If Sudan is a course of the Nile, Egypt represents its course and its mouth, while the other countries are its source and its basin. Egypt is the most vulnerable countries to the Nile River, because of its 94% desert and the scarcity of rainfall.

Israel aims to have indirect influence on the Nile water share received in Egypt and Sudan. As a pressure, Israel uses an absurd justification to influence the Ethiopian authorities, which is to claim that the water shares that are decided for the countries of the Nile Basin is not fair; where it was decided at a time prior to their independence. Israel expresses its readiness to provide its technology to Ethiopia to direct the course of the Nile according to its interests. News reported Israeli aid to Ethiopia to build dams and other facilities that enable them to control the waters of the river.<sup>36</sup> United States takes the same approach, which turned out clearly when Egypt tried to get out of the circle of U.S. influence in the Middle East by objecting to the latest U.S. attempt to strike Iraq. USAID, DFID and the World Bank have extended grants and credits for related infrastructure and evictions amounting to population transfer,<sup>37</sup> Ethiopia largely self-financed the actual *Grand Ethiopian Renaissance Dam*,<sup>38</sup> which has worrying consequences for Egypt.

### **Waters of the Tigris and Euphrates**

The Euphrates and Tigris Rivers come from Anatolia, Turkey. They cross Turkey, Syria and Iraq, and when the Euphrates meets the Tigris at Qurna, north of Basra, they form together the Shatt al-Arab. Although these two rivers have international river specifications, Turkey refuses them to be included within the international river regime, and considers them as Turkish rivers. The Euphrates runs the length of 2,780 km from its source in the mountains of Armenia, through Turkey until its confluence with the Tigris. It traverses 761 km in Turkey, 650 in Syria, and 1,200 km in Iraq. Syria relies on the Euphrates water by 90%, while Iraq relies on it entirely. Euphrates dams include: *Tabaqa* Dam in Syria, and *Ramadi* Dam, *Habbaniyah* Dam and *Hindia* Dam in Iraq.

The Tigris River is 1,950 km long, including 342 km in Turkey and 37 km as border between Syria and Turkey, 13 km as border between Syria and Iraq. Inside Iraq, it continues 1,408 km. It rises in the Taurus Mountains of Turkey. Among the dams built on the Tigris in Iraq are al-Thirhar Dam, Kut and Amara dams. These rivers represent a hotbed of tension and a real threat to the Arab water security, due to potential conflict between and among Turkey, Syria and Iraq on one hand, and between Syria and Iraq on the other hand.

In the face of severe natural water scarcity, exacerbating climatic challenges, neoliberal policies, the ferocity of Israeli ambitions and regional disputes converge to threaten water security for the inhabitants of the Arab world. This combined threat in our region risks the next war over water, where the battleground will afflict the "Arabs" as the victims of domestic and/or extraterritorial

private interests. Meanwhile, the Arab countries do not have full control over their sources of water. Fully 60% of Arab water comes from external sources.

In this context, a “just balanced and comprehensive peace in the region, based on international legitimacy” requires us to respect the cause of the Arab water security as our first human security priority. An Arab water security movement is vital, collectively to addresses the threats to the water security and the security of peoples of the region as a whole. It is needed especially for our future generations.

## Endnotes:

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## **2. Tenure Rights**



## Displacement by Force of Law: Security of Tenure and Legal Lacunae in Egypt

*Muḥammed `Abd ul-`Azim al-Bahay*

Most urban migrants from the rural areas do not belong to high-income, or middle-income segments of society. Typically, their living conditions decline day by day amid the scarcity of programs and services of successive governments to support the low-income or impoverished citizens to attain and sustain affordable housing in the cities. The official housing markets have not provided for these categories of inhabitants, which leads to the growth of increasingly poor and marginalized neighborhoods.

This phenomenon, not exclusive to Egyptian cities, is also global, where informal solutions form the only way, or the last resort for the poorest categories to find shelter in most cities of developing countries, as well as some global cities in the developed countries.

In addition to the challenge of finding decent and habitable housing conditions in the informal market, security of tenure remains a main objective in realizing adequate housing for poor and homeless families across the world. An assessment of housing tenure security is necessary to determine the risks of forced eviction that the poor and marginalized communities often face, as well as the extent to which households can access basic services such as water, sanitation and electricity.

International law norms represent the legal framework for states to guarantee security of tenure, obliging governments to respect, protect and fulfill legally secure tenure for adequate housing as a human right, prohibiting forced evictions as a “gross violation” of that human right.<sup>1</sup> General Comment No. 4 of the UN Committee on Economic, Social and Culture Rights (CESCR) interprets state party obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) such that: Legal security of tenure: Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. *States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups*<sup>2</sup> (emphasis added).

According to this article, the security of tenure can be defined simply as “the right of each person and groups to be protected by the state against arbitrary dispossession and forced eviction.” However, a more-complex contemporary definition also recognizes a continuum of tenure arrangements and acknowledges that security of tenure also forms an accessory right, enabling the realization of other human rights. The UN Special Rapporteur on adequate housing has provided that security tenure also forms:

A set of relationships with respect to housing and land, established through statutory or customary law, or informal or hybrid arrangements, that enables one to live in one’s home in security, peace and dignity. It is an integral part of the right to adequate housing and a necessary ingredient for the enjoyment of many other civil, cultural, economic, political and social rights.<sup>3</sup>

However, the Egyptian legislation related to property makes many forms of tenure precarious, such as the law on expropriation for the public interest, or by adopting specific and extraordinary legal

regulations for the dispossession of specific area under pretext of national development projects. Thus, other legal provisions allow the state to issue administrative regulations forcibly to evict some residents of “private” property of the state, without obliging the state to provide alternatives or obtain judicial orders for the eviction.

#### **Expropriation Ḥikr<sup>4</sup> Abu Duma Land for Public Interest according to Law 10/1990**

In 1976, President Anwar al-Sadat issued Decision No. 1051 to expropriate the land of Ḥikr Abu Duma (long-term lease land at Abu Duma), as the houses in that area along the Nile Corniche were dilapidated and unsuitable for implementing nearby touristic and commercial projects. However, the residents of the area appealed against their dispossession before the court, which annulled this decision in 1990, as the government did not provide compensation for the affected long-term residents.

In the same year, following the court decision, parliament adopted the new Law of Expropriation for Public Purpose No. 10 (1990). President Ḥusni Mubarak issued a new Decision No. 2423 (1994), once again ordering the acquisition of Ḥikr Abu Duma, in accordance with the new law, changing the name of the area to Nile Duma.

This case provided an impetus for legislating Law 10 (1990), Article (2) of which clarified that, for the purpose of this law, public interest works include:

- Establishing, expanding, modifying and extending roads, streets, squares, or establishing new neighborhoods;
- Water and sanitation projects;
- Irrigation and drainage;
- Energy projects;
- Establishing or modifying bridges, surface bypass and the bottom corridors;
- Transportation projects;
- Urban planning and improving the public facilities;
- All public interests mentioned in other laws.
- Any other activities that the Prime Minister determines as related to the public interest.<sup>5</sup>

Although Law 10 specified eight cases that constitute public interest, the discretionary authority granted to the Prime Minister to determine other cases as public interest needs to be monitored, in order to ensure that decisions meet strict public-purpose criteria.

As noted, the law omits any obligation on the part of the state or government body to carry out consultations with the communities affected by the expropriation. This omission is in clear violation of the para. 15 (a) of CESCR’s General Comment No. 7 on state obligations under ICESCR to provide “an opportunity for genuine consultation with those affected.”<sup>6</sup>

Article (5/1) provides that the Expropriation Committee shall write a report to record the properties, names of the owners, other right holders and their residence addresses, and that all these data should be under audit. Also, all committee members and others attending the property inventories must sign a statement certifying the accuracy of the data provided in the report.

Article (6) sets out the compensation should be evaluated by a committee formed in each province under appointment of the Ministry of Public Works and Water Resources, which is included in its membership. Other committee members include representatives of the cadastral survey (as chief), the

Agriculture Directorate, Housing and Public Works Directorate, and the Real-estate Tax Department. Each two years the members should be changed.

The compensation shall be estimated according to the prevailing price at the time of adopting the decision. The Expropriation Committee submits the report to the treasury of authority (*Maslahat al-Khizāna*) within a month of the expropriation decision. The law also stipulates that the owners may receive all or part of the compensation in kind.

Article (7) states that the relevant authority initiating the expropriation implement the necessary procedures, the preparation of an inventory process providing data about the real property recorded at the location, as well as the name(s) of the owner(s), other right holders and their addresses, with the estimated compensation determined by the Committee.

The expropriation law lacks the clear and understandable procedures for the functions of the concerned Committee, limits the needed monitoring of the Committee and its data-validation functions. The records of the Real-estate Tax Authority have not been updated for decades, while most of the real estate in Egypt remains unregistered. These lacunae, as well as corruption on the part of certain Committee members and their lack of ability or experience at using appropriate valuation methods have led to increasing complaints of persons affected by forced eviction.

Although, the Expropriation Law obliges the state to compensate those affected by expropriation, it does not specify a schedule of payment, either before or after the eviction. Also Article 6 does not consider all of the losses and consequences resulting from the eviction, in contravention of General Comment No. 7, which provides: “state parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.”<sup>7</sup>

In the case of 5,000 Hikr Abu Duma families, the inventory committee estimated the compensation for them by valuing one room of a home at L.E. 7,000 (€809), and the residents received the compensation after being evicted from their homes. However, the government sold the land to businessmen and investors at L.E. 7,500 (€866) per square meter (m<sup>2</sup>), while experts estimate the real price at not less than L.E. 40–50,000 (€4,620–5,775) per m<sup>2</sup>.

### **Expropriation of Nubian Lands under Exceptional Laws**

In early twentieth century, the Nubian territory in Egypt consisted of 39 villages along 350 kilometers, with Nubian homes extended in 535 hamlets in the south of Aswan Province. In 1902, after construction of the first Aswan Dam and reservoir, the water level behind the reservoir rose to 106 meters, flooded the homes, agriculture lands and crops of ten Nubian villages they are: Daïor, Dahmīt, Ambercap, Kalabsha, Abu Hur, Marwaw, Qersha, Qeshtemanah Sharq (East), West Garf Ḥusain, al-Dakkah. Within ten years, in 1912, the first heightening of the reservoir raised the water level up to 114m and flooded other eight Nubian villages: Quarta, al-`Allaḳi, al-Sayālah, al-Maḥarraḳah, al-Madhīk, al-Sobuo`a, Wādī al-`Arab, Shatermah. In 1932, the second raising of the water level flooded another ten villages: al-Malky, Korosko, al-Rayḳa, Abu Ḥandal, al-Diwān, al-Dūr, Tawmās, `Afiya, Qitah, Abrīm, Abrim Island.

After more than 30 years of destruction and displacement the Nubian villages, the Egyptian Parliament issued Law No. 6 (1933), expropriating Nubian lands and estimating the compensation from Nubian land losses in 1902, 1912, and 1932. Despite laws regulating expropriation, in general, such as Law No. 27 (1906) and Law No. 5 (1907), lawmakers adopted Law No. 6 in order to avoid the huge cost of

compensating the Nubians.<sup>8</sup> And expropriate the whole Nubian lands, and provide only 15 days to present grievances against the established compensation, which time is not sufficient time for the affected people to evaluate the compensation offer, while they were largely unaware of the grievance mechanism or the true value of their losses, costs and damages as compared with the monetary or in-kind compensation.

This approach of land expropriation by the government remained continuous. Despite the Egyptian government standards regulating expropriation for public purposes by the 1960s, such as Law No. 577 (1954) and Law No. 252 (1960), Gamal Abd al-Nasser, as president of the United Arab Republic, adopted Decree/Law No. 67 (1962) for expropriating the land and buildings flooded by the water of the Aswan High Dam. This legal device facilitated implementation of the forced-migration process, which was not provided by following the ordinary Law for Public-Purpose Expropriation.

Although this exceptional law achieved the purpose of the Nubian displacement in a short time, it denied their right of access to the justice, where Decree/Law No. 67 provided that any affected persons can approach the Complaints Committee, an administrative body that made definitive judgments not subject to appeal. It seems that this project is the main reason for issuing this exceptional law, where the other expropriation law provided for legal remedies subject to appeal against the administrative decision before the First Instance and Appeals Courts.

The Complaints Committee determined that, if the petition was related to the property issue, the claimant shall submit documents proving the right of property, otherwise, the complaint will not be considered. That requirement was difficult for the Nubians, because the Egyptian Constitution and legislation did not recognize the historical land rights of the indigenous Nubian people. Therefore, the Nubians could not submit official documents to prove their rights to land that formal law defined as “public state land.”

The Committee was comprised by a Ministry-of-Justice-appointed judge, as president, and one representative each from the Ministry of Social Affairs, Ministry of Public Works (Survey Authority), and the local council of Aswan Province, to consider the environmental, social and cultural circumstances, but none of these elements has been considered as they lack the experience and efficiency to evaluate this elements.

Additionally, the Committee lacked neutrality, while it received appeals to the compensations or property disputes, Decree/Law 10745 (1962) made it the same committee responsible to estimate the compensation value allocated to the inhabitants. As of now, 5,221 displaced Nubian families did not receive their compensation for the eviction.

### **The Encroachment-on-public-land Pretext**

A dispute of more than 20 years between the Cairo Governorate and al-Qalyubia Governorate, over 21 hectares of land on border between them, ended by allocated of this land to al-Qalyubia Governorate. `Arab al-Ḥusn is a residential area located on 17,000m<sup>2</sup> within these 21 hectares, whose population had been living there for more than 40 years. On 21 March 2010, security forces attacked the residents with eight front loaders, forcibly evicting them and accusing them of encroachment on public land under the Article 970 of the Civil Code that provides:

It is not permissible to own or acquire any right by acquisitive prescription on the *private properties* of the state, or of the public legal persons, or of the property of economic unites that belong to public authorities, the public-sector companies and the charitable endowments.

Article 970 was added in 1957 to set a new rule prohibiting the ownership of private properties of state by acquisitive prescription. Before 1957, possessing “public” properties of the state allocated for the public interests—e.g., roads, bridges, the River Nile, etc.—was not permissible. However, it was possible to own “private” properties of state such as desert land, the Nile islands, river banks, etc. if the claimant had occupied the property continuously unchallenged for 15 years before the date of the law.

In 1957, Egyptian law not only prevented the acquisition of private property of the state, but also allowed the state to end this tenure by administrative decision without court judgment, and without obligation on the part of the state to provide alternative housing or lands for those subsequently evicted.

These cases mentioned above are not the only way that Egyptian law undermines tenure security. The cases of expropriation for public purpose are most common by way of exceptional laws and regulations. Therefore, legislative reform needs to consider:

- Codifying the private state land tenure for residents by the acquisitive prescription (1,070 informal settlements in Egypt are built on private state land);
- Safeguards for the poor against land grabbing under the pretext of expropriation for public purpose, and obliging the state to provide suitable alternatives and equitable reparations for those affected with a legal mechanism that provides judicial redress.

Egyptian law related to the expropriation property for the public purpose still enshrines articles that contradict the state’s obligations in respect, protect and fulfill the human rights to property rights and adequate housing with security of tenure. However, in 2012, Egypt played an active role in the international process to adopt a set of principles on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Legal reform that aligns legal recognition, allocates tenure rights prioritizing the poor and ensuring remedies in expropriation cases, Egypt would avoid contradicting its existing obligations under international treaty law, as well as harmonize its voluntary commitments under applicable regional and international instruments.<sup>9</sup>

The new Egyptian Constitution adopted in January 2014, in its Article 63, has banned and criminalized all forms of arbitrary forced displacement without statute of limitations.<sup>10</sup> However, this term “arbitrary forced displacement” is distinct from “forced eviction,” and could exclude many forced-eviction cases from the concept of displacement, specifically in the cases of informal settlements and marginalized areas. Article 35, which protects the property rights, does not define cases of expropriation for public interest, and does not ensure that the expropriation decision shall be issued by final judicial ruling.<sup>11</sup>

Although the new Constitution’s Article 236 recognizes the right of the Nubians to return to their original territories and implementation of comprehensive development for the marginal and underprivileged territories within 10 years, presidential Decree No. 444 published in the official gazette in November 2014, declared 16 of 44 Nubian villages as a border military zone, which restricts the Nubians’ return to their original villages.<sup>12</sup>

Finally, the new Constitution recognizes some economic and social rights related to housing and land, it is not drafted with the human rights approach, leaving potential gaps in implementing current treaty obligations. These lacunae point to the need for greater efforts at monitoring and advocacy to realize



these rights with needed amendments to laws and regulations that meet the state's obligations to respect, protect and fulfill housing and land rights.

## Endnotes:

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- <sup>1</sup> UN Commission on Human Rights resolution "Forced evictions," 1993/77, 10 March 1993 "Affirms that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing," para. 1.
  - <sup>2</sup> UN Committee on ESCR, *General Comments No.4: The Rights to Adequate Housing (Art.11 (1) of the Covenant)*. OHCHR, 13 December 1991, E/1992/23, at: <http://www.refworld.org/docid/47a7079a1.html>.
  - <sup>3</sup> Raquel Rolnik, "Guiding principles on security of tenure for the urban poor," in Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/25/54, 30 December 2013, pp. 3–4, at: [http://www.hlrn.org/img/documents/A\\_HRC\\_25\\_54\\_EN.pdf](http://www.hlrn.org/img/documents/A_HRC_25_54_EN.pdf).
  - <sup>4</sup> According to Article 1002 of Civil Code, *al-hakr* is kind of usufruct tenure of endowment land for construction, or, agriculture, or other purposes, but not contradicting with the endowment's charitable purpose.
  - <sup>5</sup> Law 10 (1990) "Expropriation for Public Interests" [Arabic], at: [http://abonaf-law.com/download/GalleryServices/92\\_%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%B1%D9%82%D9%85%2010%20%D9%84%D8%B3%D9%86%D8%A9%201990%20%D8%A8%D8%B4%D8%A3%D9%86%20%D9%86%D8%B2%D8%B9%20%D8%A7%D9%84%D9%85%D9%84%D9%83%D9%8A%D8%A9%20%D9%84%D9%84%D9%85%D9%86%D9%81%D8%B9%D8%A9%20%D8%A7%D9%84%D8%B9%D8%A7%D9%85%D8%A9.pdf](http://abonaf-law.com/download/GalleryServices/92_%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%B1%D9%82%D9%85%2010%20%D9%84%D8%B3%D9%86%D8%A9%201990%20%D8%A8%D8%B4%D8%A3%D9%86%20%D9%86%D8%B2%D8%B9%20%D8%A7%D9%84%D9%85%D9%84%D9%83%D9%8A%D8%A9%20%D9%84%D9%84%D9%85%D9%86%D9%81%D8%B9%D8%A9%20%D8%A7%D9%84%D8%B9%D8%A7%D9%85%D8%A9.pdf).
  - <sup>6</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: "The Rights to Adequate Housing (Art.11 (1): Forced Eviction," E/1998/22, 20 May 1997, para. 16, at: <http://www.hlrn.org/img/documents/GC7.pdf>.
  - <sup>7</sup> Ibid., para. 13.
  - <sup>8</sup> "Tahjir al-Sukan min al-Nuba ila Rafah," ["Expulsion of the Population from Nubia to Rafah" (Arabic)], *al-mogaz website* (29 October 2014), at: <http://almogaz.com/news/politics/2014/10/29/1706739>.
  - <sup>9</sup> *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Committee on Global Food Security (CFS), Food and Agriculture Organisation, Rome, 2012. at: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.
  - <sup>10</sup> Article (63), *the Constitution of the Arab Republic of Egypt* (unofficial English translation), January 2014, at: <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>.
  - <sup>11</sup> Ibid.
  - <sup>12</sup> Presidential Decree No. 444, *Official Gazette of the Arab Republic of Egypt* (Arabic), Issue No. 48 (29 November 2014) at: <http://www.elwatannews.com/hotfile/details/819>.

## Occupied Palestinian Small Farmers' Rights to Property and Development

Ali Kadri

The social transformations in the occupied Palestinian territory (oPt), in particular the West Bank (WB) resulting from its occupation by Israel in 1967 were abrupt and massive by any account. In particular, when in 1968 West Bank labor was permitted to work in Israel, the number of workers commuting daily from the WB to Israel rose from a negligible proportion of the indigenous labor force, to 35% of all employed persons, and 60% of all wage paid workers.<sup>1</sup> The evolution of this situation from a case on the margins into a phenomenon cannot be attributed to salient wage differences that induced labor to move. For the few jobs that became available in the WB under occupation, economic integration nearly equalized the remuneration from similar types of job.

However, with nearly two thirds of the total land area of the WB confiscated by Israel for settler colonies, the reason for this transformation can be attributed primarily to massive Israeli land expropriation that diminished the asset holdings of farmers and precipitated the shift away from the land as the major contributor to income. In an analogous context to that of enclosures and primitive accumulation in rural England at the time of early industrialization, land confiscation has eroded the traditional welfare support base of the WB farmer and, not surprisingly, with few assets and meager work opportunities to fall back on at home, working for a wage in Israel became a matter of survival rather than choice.

Over 90% of commuting workers lost propertied farmland to settlements and, with the ongoing conflict failing to taper down, unemployment in the WB continues to hover at 30%. As a matter of course, the persistently unemployed are being put to use as an instrument of political pressure in the theater of political conflict. The purpose of this paper is to show more concretely that the principal cause behind the slow economic development of the occupied Palestinian territory (oPt) rests, in part, on an utter disregard for the property rights of the small Palestinian farmer and, ultimately, a violation of the obligation of the Israeli state towards a non-self-governing territory as per articles 73 and 74 of the Charter of the United Nations.

**Table1: Farm size distribution in the West Bank for two selected years: pre- and post-occupation (in dunams<sup>2</sup>)**

Year	1965	2002
< 10	49.7	40.5
20–49	21.0	31.0
50–200	7.0	7.0

*Source:* Department of Statistics, Census of Agriculture, Amman, 1982, and Bureau of Palestinian Statistics, various years.

### General Outline

At the outset of the Israeli occupation, the WB exhibited the general economic characteristics of a developing region. In fact, the majority of the population (about 65%), were rural, and farming was undertaken to meet the immediate needs of the family. Agriculture as well as industry were characterized by rudimentary levels of technology, and therefore, dependent on labor and labor productivity. In either sector, the degree of concentration in landed property or capital was low with agriculture employing the greater proportion of the labor force, (see Table 1). However after two decades of occupation, the importance of agriculture to employment began to decline (see Table 2).

Year	1969	1971	1973	1975	1981	1987	1990	2002
% of labor force	44.8	34.2	26.5	27.4	24.1	16.7	19.6	20 (approx.)

*Source:* Statistical Abstract of Israel and Bureau of Palestinian Statistics, various years. Detailed data is provided up to the point where structural change was nearly complete by the time of the first Intifada (1987–91); the same for all tables in this report.

The share of agriculture, including olive cultivation, from GDP has continuously shrunk over the period of occupation (see Table 3), and as far as the farmed area is concerned, olive-culture has expanded in order to work against land confiscation.

However, the added value contribution to total GDP from olive-culture remained small irrespective to how much of the labor force it supported both seasonally and informally. Table 3 presents an indication of the decline in this sector,<sup>3</sup> annotated by the fall in the associated number of participants; the present share of agriculture still hovers around 25%.

Year	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	2002
%	45%	29%	34%	29%	35%	30%	38%	33%	30%	27%	20%	20%	32%	24%	(ca.) 25%

*Source:* Statistical Abstract of Israel and Bureau of Palestinian Statistics, various years.

Table 4 reveals a steep decline in agricultural employment after which the level settles at about 25,000, which implies that the percentage out of the labor force declined. The slight rise in the employment level in 1991 is due to the policy of self-reliance pursued during the "intifada" or uprising. One argument explaining the steady decline in agricultural employment emphasizes that the modernization of this sector may have resulted in the reduction of the labor necessary per capital unit, i.e., as a result of increased efficiency and higher marginal productivity of labor. According to an Israeli government source, "technological improvements have been introduced into the West Bank's agriculture as a result of the spill-over from Israeli technology."<sup>4</sup> However, the mechanization of small farms at a rate that halved the total employment in the farming sector within a period of five to seven years is improbable. Such a transformation requires easy access to capital markets, and provisions for the marketability of the finished product, i.e., conditions which are minimal in this area. Furthermore, according to Brian Van Arkadie when compared with Jordanian agriculture it is "striking" how little of West Bank's agriculture has become irrigated, as it is mainly irrigated agriculture that benefits from technological improvement. He also notes that the acreage of irrigated farming is quite small and agriculture remains labor intensive, and where, in the absence of jobs outside agriculture "it makes good economic sense" to work on the farm.<sup>5</sup>

Year	1967	1970	1975	1980	1985	1987	1989	1991	2002
# of persons	58	42.3	31.8	28.4	24.4	22.8	23.7	25.8	25 (approx.)

*Source:* Statistical Abstract of Israel and Bureau of Palestinian Statistics, various years.

Although it is not possible to obtain an accurate reading of the extent of the elasticity of labor absorption due to technological innovations in WB agriculture, it is still possible to acquire an approximate measure of marginal productivity through the per worker value of output and per worker output. These measures can serve as proxies for technological innovation, and more to the point, reveal as to whether it was possible for rapid farm mechanization to abruptly reduce or, more aptly, halve the number of workers in the agricultural sector. Tables 5 and 6 are calculated using the Israeli published figures.

Year	1971	1977	1978	1979	1989	1990	1991	2002
Amount (in ILS)	.51	.36	.49	.49	.56	.57	.51	.50 (approx.)

Source: Calculated from the *Statistical Abstract of Israel* and Bureau of Palestinian Statistics, various years.

Year	1971	1977	1978	1979	1989	2002
Ratio	1.15	1.25	1.33	1.3	1.36	1.3 (approx.)

Source: Calculated from the *Statistical Abstract of Israel* and Bureau of Palestinian Statistics, various years.

Contrasting the steady rate of actual per worker output (tonnage), with the abrupt decline in the number of people employed in this sector, proves, *prima facie*, that the huge exodus from the farms cannot be explained by minor developments in agricultural technology. This point is further satisfied when the value of output per worker (constant money value), did not undergo any significant changes over the length of this period as well. Tables 5 and 6 illustrate that the steady levels in per worker output do not imply any major technological additions to this sector. More importantly, this overly exaggerated “technology shock” could not have accounted for the displacement of half the labor force associated with this sector.

In 1967, agriculture contributed 42% to the gross domestic product.<sup>6</sup> It employed 58,000 workers, in a cultivated area of 2.3 million dunams—almost half of the total area of the West Bank. By 1983, agriculture's share of the GDP declined to 27%, and the agrarian labor force was nearly halved to 29,300. However, the more poignant impact is witnessed in the shrinkage of the cultivated area to 1.7 million dunams (half its size in 1967).<sup>7</sup> By simple comparisons of shares, the cause of the agricultural labor exodus is due to the diminished cultivation, rather than the shift to capital intensive farming.

Apart from the general difficulties that this developing agricultural sector faces, such as poor irrigation and transportation systems and competition with the Israeli economy, the land confiscation and settlement policies pursued by the Israeli state definitely curtail growth, reduce employment and overall economic development in this sector.

### **Land Confiscation**

Various esoteric interpretations to the Palestinian Civil Code were adopted in order to seize the property of the farmer, i.e., the emergency law of 1945, the law of management, the law of unused land, the forestry law, etc. By 1982, 52% of the total area of the West Bank was taken over by the state of Israel, the majority of which represents prime farmland.<sup>8</sup> Furthermore, prior to signing of the latest peace accord between the Palestinian Liberation Organization (PLO) and the State of Israel, over three quarters of the West Bank area had already been confiscated by Israel.<sup>9</sup> The continuation of this policy in itself can account for the displacement of a vast number of farmers during the early periods of the Israeli military administration and thereafter. This alone provides the bulk of the answers regarding the sources of commuting labor. The more important theoretical implication of this forced dislocation of farmers arises as to whether Israel needs to resort to this measure and other extraordinary means to

reproduce this migrant labor? If this is the case, is the dynamism of Israeli capital partly responsible for the policy of settlement expansion apart from the ideological motivation?

The settlements also serve a vital military purpose. Geographically, these settlements occupy strategically located positions, which circumscribe local towns and villages. From the perspective of Israeli jurisprudence, although the settlers do not reside in Israel, the civil rights of Israeli settlers in the West Bank are the same as those of the citizens of Israel. The settlements, therefore, are an organic continuation of the more modern Israeli formation inside the West Bank. However, they do not transmit to the West Bank any of the modern Israeli technological bases, which can potentially serve either as a long-term employment project, or as a resource from which the underdeveloped technological base in the West Bank can benefit. According to Janet Abu-Lughod, the attitude that surfaces on both sides as a result of an intense political environment limits the interaction between the two entities to sporadic moments.<sup>10</sup>

It is possible for the settlements to employ local labor in agricultural production, however, the number of Arabs employed in these processes remains relatively small. The development of agriculture in the settlements is reflected adversely in the continued loss of local farmland, and in the deprivation of the Palestinian farmer from the right to water. Although both entities share in the water table, the indigenous population is not allowed to drill any new wells or to deepen old ones already in use. According to Hisham Awartani, "The current restrictive policies have severely restrained further expansion of the area of land under irrigation."<sup>11</sup> The settlers have the rights of drilling and use of local water without consideration to the precariousness of this issue politically nor ecologically.<sup>12</sup>

Given that the state of Israel controls the supply of water, this renders the farmer largely dependent on the Israeli authorities. The cost of irrigation water in the West Bank is systemically higher than Israel's. The disparity in the use of water in the region is observed, whereas, in 1978, 16,000 Israeli settlers used 14 million cubic meters of water and 690,000 Arabs used 33 million cubic meters of water.<sup>13</sup> Presently, there are over 100,000 settlers in the West Bank making the strain on nonrenewable water resources even greater, and by implication, the pressures on local farming and its future viability. These considerations point to the implacability of farming conditions that should, all in the main, result in the decline of the agricultural sector and its associated labor force.

In light of the farmers' limited available capital, and the absence of an institutionalized political will, modernizing West Bank agriculture up to a relatively competitive level becomes highly doubtful. The absence of capital is related to what L. Harris terms the "the financial repression of the territories." He says: "When the West Bank and Gaza were occupied by Israel one of the initial acts of the new administration was to (completely demolish) existing Arab financial and monetary institutions."<sup>14</sup> This, in addition to ad hoc measures imposed by the military authorities; make the conditions for modernization, simply, unrealizable. A local newspaper listed in a summary report the following obstructive legislation and practices imposed on local farming:<sup>15</sup>

- (a) The Israeli military authorities designate area, type, and quantity of crop;<sup>16</sup>
- (b) Restricting agricultural trade through Israeli agencies;
- (c) Sales and export taxes in the range of 15%;
- (d) Severe restrictions on irrigation waters and new drilling;
- (e) The construction of military roads amidst cultivable crops, and the designation of a twenty meters security zone on both sides of the road.

The agricultural sector exhibits certain inherent factors which hamper its development. Most notable of these trends is found in marketing. The near absence of food storage and or processing plants necessitates the immediate delivery of the product. Given the seasonal nature of crop production and the volatile political situation, any incongruity with the timing of general strikes and/or curfews may result in the complete loss of the produce.

If, in addition to the above, competitiveness with the Israeli product is considered, the marketing problem is further exacerbated. According to Van Arkadie: "there are efforts conducted by Israel to make the West Bank product complement the subsidized Israeli product."<sup>17</sup> In Israel apart from the high subsidy to agriculture, this sector remains highly mechanized and is concentrated in largely socialized farm areas, e.g., the Kibbutz. In contrast to this, the Arab producer is mainly based in small farms. The economic implications of this surface lie in the higher per-unit cost of production and loss of scale.<sup>18</sup> In this regard, Awartani says: "The crux of the problem, in regard to profitability, stems from the fact that the price system for production inputs and farm produce has been radically restructured to the disadvantage of farmers. The costs of such major inputs as labor, animal ploughing and irrigation water have risen by 5–18 times, whereas the price of major products (for example olive, olive oil and oranges), has risen by 2–3 times. Most of the imbalance in the market structure is caused by the unrestricted entry of subsidized Israeli farm produce to the occupied territories' market."<sup>19</sup>

The importance of the political environment in determining the value of total output in agriculture comes to light during the politically charged period of the uprising. Table 7 below takes into consideration the developments in agricultural output pre and post the uprising of 1988.

<b>Year</b>	1983/84	1984/85	1985/86	1989	1990	1991	2002
<b>ILS</b>	167	231	305	171	216	172	180 (approx.)

Source: Calculated from *Statistical Abstract of Israel*, various years.

On average, the figures on the real value of output in Table 7 exhibit a relative decline as of 1989, during the period of the uprising. This occurs despite the fact that during the uprising a policy of steadfastness, self-reliance, and return to the land was pursued. The actual volume of agricultural output for the years of the uprising has not fallen. This underlines the relative independence of output from its market value, and concomitantly, the significance of the volatile political environment in affecting this sector. In fact, the growth in this sector is completely dependent on political and not economic factors. The expansion of olive culture is but a case in point. Sarah Graham- Brown posits that there is a politically construed plan in Israel aimed at depleting this sector from its input resources.<sup>21</sup> Van Arakadie draws a very grim picture about the overall and per capita level, of absolute and relative decline in this sector. By implication, the Agrarian labor force follows, in a similar trend, the decline in agriculture.<sup>22</sup>

In brief, two distinguishing factors, in parallel, arrest the expansion of this sector: firstly, political factors; i.e., principally, the continued loss of land to "settlement" policy, and political instability in general; and secondly, economic factors; i.e., the lack of marketability of agricultural products, and the absence of reinvestment in this sector. These factors combined can reproduce the conditions for the pauperization of this region.

Certainly economic factors such as competitiveness, scale, and higher technology relative to the Near East's economy, are inherent in industrial Israel and can be employed as means for removing additional laborers from the land. This role is facilitated by the potential and actual weakness of small-scale

farming, as the latter does not have the necessary structural configuration- technology and scale- to survive the advent of modern-scale economies. The economic measures translate themselves mainly into the procedure for the imposition of a common market on the West Bank by Israel. Small-scale industry or the nuclei of future industrial activity in the West Bank is left exposed to the intrusions of the more modern and substantial Israeli industrial structure. As to the political measures, the peculiar political environment was instrumental in providing Israel with the grounds for the implementation of extreme practices like uprooting crops, demolition of houses and entire villages in the West Bank<sup>23</sup>. These measures underpin the creation of additional reserves of wage labor, and, are generally historical landmarks that revamp traditional ways of life, and which, as in this instance, may aggravate the impoverishment of the population, causing it to deliver its labor services in the more modern Israel.

This shift away from the land as a source of income in favor of wage labor in Israel while maintaining the farm or village as a place of residence led Sarah Graham-Brown to argue that this was no ordinary process of converting people into wage laborers. In this case, the employer had to pay the subsistence wage of an employee residing in the village (West Bank), a wage that is much lower than what it (the wage) would have been had the migrant worker resided in the city (Israel).<sup>24</sup> This is precisely the point from which the argument of the cheapness of the West Bank's commuting labor force has been derived. Yet, as Michael Burawoy aptly points out: there remains the question of "cheap for whom?" The social cost of the reproduction of the labor force is being borne totally by the economic structure of the West Bank.<sup>25</sup> The more equivocal question that emerges is whether the cost of reproducing the labor force in the West Bank is being adequately covered by the remuneration of the migrant, or, are the politics of occupation directly being translated by the economics of occupation?

The long-standing occupation of the West Bank and its economic quarantine may be in part due to the predicament of Israeli capital accumulation.<sup>26</sup> Thus, the extreme political measures that limit the economic potential of the West Bank in order to make Palestinian labor superfluous to it are, in part, the mediated contradiction of Israeli capital, or as the immediate contemplation of facts reveals: Israel, driven by self-interest, has created a pool of surplus labor in the West Bank by imposing restrictive conditions on the expansion of local industry and, more importantly, by taking away the farm land of the Palestinian farmer.<sup>27</sup>

From the outset of occupation until 1993, the unemployment rate in the West Bank remained extremely low (these averages do not include the high rate of imprisonment of young Palestinian men and women). The range of the rate of unemployment for the period 1975–1988 was between 1 to 3%.<sup>28</sup> When in early 1993 Israel prohibited territorial labor from working in Israel the unemployment rate in the West Bank rose to 50%. Although several months later Israel allowed 68,000 workers—about half the commuting labor force—to go back to work, the unemployment rate in the West Bank remained as high as 25%.<sup>29</sup> In the presently ongoing Intifada, the unemployment rate stands at about 30%. Clearly, there is no readjustment back to the old system of farming, or, there was not any significant re-absorption of labor on the farm or in other local industries.<sup>30</sup> That makes for a case of disarticulation between economic and social conditions or, put more appropriately, the creation of a developing world industrial working class without it having dynamic national industry.<sup>31</sup>

When Israel introduced considerable cuts and curtailments in territorial agriculture and industry, the surplus labor that the West Bank sent to Israel no longer could be re-assimilated at home, because in the West Bank itself, these productive sectors are stagnating. In the words of Emmanuel Jarry: "the labor drain and trade imbalances are but reflections of the economic asphyxia of the occupied

territories,"<sup>32</sup> or, more adequately put, a consequence of the stifling of the small farmer's property rights, amongst other restrictive measures on trade, industry and mobility.

The meaning to be conveyed here is that the two different economies in unity are being led as a united whole by the stronger politico-economic system, Israel. The already established relationship is that Israel, or the leading economic system, has in the way of reproducing its capital introduced political measures aimed at separating the local producer (farmer) in the West Bank from his/her traditional way of making a living. In turn, this producer is hired in those Israeli industries that require his/her labor service. To the expanding Israeli industries, unorganized cheap labor entails higher profit at the same productive capacity. However, the erosion of the traditional way of life in the West Bank is not a gradual and calculated measure. The politics of occupation accelerated the process of pauperization and allowed Israel to exercise economic and political pressure on the Palestinians.

### **Labor Dynamics**

The International Labor Organization (ILO) report says: "The social protection of Palestinian workers in Israel remains a subject of great concern to the ILO. Two thirds of the approximately 110,000 ... have no protection. The one third of these workers who are in a regular situation... have to contribute to a tax system from which they do not seem to benefit." It further states the need for effective social protection, and adds: "This would redress a situation which is clearly unfair and which arouses both controversy and frustration."<sup>33</sup> On preliminary grounds, it can be said that the remuneration from wages does not fully compensate the cost of the reproduction of the labor force : firstly, there are the losses to the West Bank because of land confiscations and loss of wealth, i.e., the extraordinary measures that Israel puts to use in order to generate the necessary labor, resulting in stagnation of industry and agriculture due to the common market, political repression and violence, etc.; and secondly, the deterioration in the economic infrastructure, including health and education, as the taxes paid by these West Bank workers in Israel are not reinvested in the West Bank<sup>34</sup>. In fact, the chronic trade imbalance of the West Bank with Israel (about 60% of GDP), in large part, is offset by the amount of foreign remittances; i.e., foreign aid and payments from abroad, received by the West Bank. Indeed, to a large extent, the Israeli economy gets rewarded for what it destroys in the West Bank when reconstruction resumes with Israeli products. As a tangential corollary to this, the capacity of the West Bank to promote human and physical resources diminishes with occupation related closures and destruction.<sup>35</sup>

Israeli and Arab economists alike have noted this disparity in the overall exchange-taking place between the West Bank and Israel. According to Baruch Kimmerling, Israel stands to draw more in taxes on income and in resources other than labor from the West Bank, a surplus reaching in some estimates hundreds of millions of dollars per year.<sup>36</sup>

Alkatib reports that: "Israel has a yearly net income of \$1 billion from the oPt. The authorities expenditures are...240 million\$ between 1977 and 1983...34.3 million\$ a year."<sup>37</sup> Arie Bergman's argument, in support of the foregoing, concludes as follows: "In general, it can probably be said that Israel's activity in the areas does not saddle the economy with any significant burden for the entire 8 year period 1968–75 it is estimated to have averaged less than half a percent of the country's GNP, without taking into account income from oil production in Sinai (which completely balanced the Military Government's surplus of expenditure over revenue). Notwithstanding the big increase in 1974–75 in the areas' adverse balance on current account with Israel, there did not seem to be any substantive change in the burden. In discussing the burden in its broad sense, allowance should be made for the advantages accruing to this country from the conduct of free trade with the areas and from the supply of types of



labor in demand here. It would therefore seem that the term 'burden' is inappropriate when discussing economic relations between Israel and the administered areas."<sup>38</sup> Still, the biggest gain to the state of Israel comes from reconstruction projects in the oPt, which is primarily financed by donors. Here, it may be relevant to note that the benefits accruing to Israel as a result of demolishing construction or limiting indigenous economic expansion in the WB are somewhat significant but not so important when compared with the windfall accruing from its particular relationship with the U.S. and Europe.

As of 1988, the beginning of the first national uprising, the outlay by the Israeli government in order to meet the cost of the military administration of the West Bank soared in comparison to previous times. However, even when the Israeli administration incurs losses in the oPt this may not, in light of the previous argument, imply that Israel is likely to contemplate a full withdrawal from the occupied areas. The calculus of occupation hinges theoretically on whether Israeli capital gains more from the surrounding Arab region than it does from its relationship with world capital. So far, the latter point held sway. At least, it can initially be corroborated ipso facto by the unusual inception of a highly developed economy- Israel, in the relatively less developed Middle East- a sort of branch plant economy. The inherent dependency of Israeli Capital on Western capital may prove difficult to resolve even under post-Cold War conditions. Highly developed Israeli industry is dependent on the variety of preferential trade scenarios with Western markets, and/or, markets that fall under the influence of Western capital. The bulk of Israeli trade is conducted with Western markets. In fact, with the exception of the Sinai petroleum imported from Egypt under the terms of the Camp David Accord, relatively little commodity or cultural trade has been conducted with this Arab economy. To this effect, the then serving Israeli Prime Minister, Mr. Shimon Peres, emphatically stated at the first Middle East Economic Conference that Israel does not need to trade with the Arab world.<sup>39</sup>

### **Remarks and Open-ended Questions**

Land confiscation and, its consequent, the commuting labor force has become an important political instrument in the theatre of the Arab-Israeli conflict. Recently, Israel has replaced much of the Palestinian commuting labor by other migrants and seasonal laborers. Consequently, unemployment in the oPt has stayed at astonishingly high rates worsening the already dire living conditions under conflict. In the midst of a 'Middle Eastern' political scenario, the farmers/workers and their families require some form of social protection, the least of which should keep the following recommendation from the International Labour Office as its ceiling:

The social protection of Palestinian workers in Israel remains a subject of great concern for the ILO. Two-thirds of the approximately 110,000 workers are in an irregular situation ... and have no protection, whether social or legal. The one-third of these workers who are in a regular situation have to pay dearly for protection which is reduced by the imposing of residence criteria, and have to contribute to tax system from which they do not seem to benefit....the adverse consequences to which this situation gives rise make it all the more necessary to institute appropriate and effective social protection for the Palestinian workers and their families through a system which the International Labor Office proposes to help to define and set up. This would make it possible to redress a situation which is clearly unfair and which arouses both controversy and frustration.<sup>40</sup>

A policy recommendation would be one where the system of social protection embraces a mechanism, which accounts mainly for losses associated with land ex-appropriation and drawn out periods of imposed unemployment. Indubitably, any lasting peace should not rest solely on economic considerations alone, but on political considerations, especially in respect to the rights of Palestinians to self-determination, repatriation and compensation. Confiscating further lands and forcing thousands

into perennial unemployment may harden the political position of the Palestinian opposition forces. The question is: Can the occupying power continue to further its control by such means? Or, alternatively, can it at a later stage drive indigenous population out of the territories or into conditions of hunger?

In light of the above, and in the absence of inhumane scenarios, e.g., mass deprivations and pauperization or forcible mass expulsions, it would appear that the rational alternative would be represented in an alternative reconsideration of the Palestinian question. A diametrically opposed position implies the adoption of an unconventional or political-cum-economic liberalization framework. The political, as such, must precede the economic liberalization scenario in as much as Israel relinquishes the ideals of a purely Jewish state and allows the Palestinians equal national, civil and economic rights within Israel and in an independent Palestinian State.

### Endnotes:

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<sup>1</sup> These figures represent an average over various years during the height of border openness; *The Statistical Abstract of Israel*, an Israeli Bureau of Statistics Publication, various years. Commuting workers are generally forbidden to stay overnight in Israel. This move entails the crossing of an international border, however, it originates in an administered territory home sector. It is a unique case in that it shares the characteristics of a permanent migration situation, not only in the *de jure* sense, but also insofar as it reallocates resources. Moreover, the risk factors associated with commuting become as consequential as those associated with permanent relocation situations. The term "oscillating labor" was used to differentiate such cases from the salient commuting incident. Also, the majority of commuters, a little over ninety percent, have lost land by confiscation. See Ali Kadri, "Survey of commuting labour from the West Bank to Israel," *Middle East Journal*, Vol. 52, No. 4 (autumn 1998).

<sup>2</sup> A dunam is a measure unit for land. It nearly equals 1000 square meters (m<sup>2</sup>).

<sup>3</sup> The average growth rate in agriculture, excluding the seasonal olive component, over ten years (1976–85), is -.03 percent. *Statistical Abstract of Israel*, various years.

<sup>4</sup> *Facts about Israel*, Ministry of Foreign Affairs, Jerusalem, 1985.

<sup>5</sup> Brian Van Arkadie, *Benefits and Burdens: A Report on the West Bank and Gaza Strip Economies since 1967* (New York: Carnegie Institute for Peace, 1977), p. 133.

<sup>6</sup> Prior to the Israeli occupation, in 1966, agriculture contributed about 65 percent of GDP. The drop in 1967 is due to the war. Fawzi Gharaibeh, *The Economies of the West Bank and the Gaza Strip* (Boulder CO: Westview, 1985).

<sup>7</sup> O. Khalid, "The Effort to Curtail the West Bank's Economy," *Alhadaf* (December 1985).

<sup>8</sup> The pretext of national security was employed more often than not for this purpose. Raja Shehadeh, "The Land Law of Palestine: An Analysis of the Definition of State Land," *Journal of Palestinian Studies*, Vol. 11 (1981–82).

<sup>9</sup> According to the Archbishop of Jerusalem, Hilarion Kabouji (Capucci), the self-rule authorities will only be able to administer less than a quarter of the total area of pre-1967 West Bank. Kabouji speaking at the Jerusalem Conference, Abu Dhabi, U.A.E., 14 January 1995.

<sup>10</sup> Janet Abu-Lughod, "Israeli Settlements in Occupied Arab Lands: Conquest to Colony," *Journal of Palestinian Studies*, Volume 11, 1981–82, p. 19.

<sup>11</sup> Hisham Awartani, "Agricultural Development and Policies in the West Bank and Gaza," George Abed, ed., *The Palestinian Economy: Studies in Development under Prolonged Occupation* (London and New York: Routledge, 1990), p. 143.

<sup>12</sup> Emmanuel Jarry, "The Slow Economic Strangulation of the West Bank and the Gaza Strip," *Le Monde Diplomatique* (September 1981).

<sup>13</sup> *Ibid.*

<sup>14</sup> Laurence Harris, "Money and Finance with Undeveloped Banking in the Occupied Territories," in Abed, *op. cit.*, p. 191.

<sup>15</sup> *Alfajr*, Vol. VI, No. 238 (September 1985).

<sup>16</sup> This design is implemented in concert with the demands of the Israeli agricultural sector.

<sup>17</sup> Van Arkadie, *op. cit.*, p. 128.

<sup>18</sup> Although the Israeli shekel represents the major currency in circulation, on average, the general price level in the West Bank is slightly higher than its Israeli counterpart. This is an outstanding phenomenon that deserves a separate and complete investigation. Clearly, the standard is such that the currency of the developed formation carries a much higher purchasing power when spent in the less developed formation, however, not so in this case. Some of the reasons cited behind this phenomenon are: the economic isolation of the West Bank from the neighboring Arab countries, the monetary and financial asphyxia suffered as a result of occupation, and the imposed high level of taxation. Harris, *op. cit.*, pp. 191–99.

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- <sup>19</sup> Awartani, op. cit., p. 145.
- <sup>20</sup> The years 1983–84, 1984–85, and 1985–86 are deflated using an arithmetic average of the general consumer price index for the respective years.
- <sup>21</sup> Sarah Graham-Brown, "The Economic Effects of Occupation," in Naseer Aruri, ed., *Occupation: Israel over Palestine* (London: Westview Press, 1986), pp. 259–70.
- <sup>22</sup> Van Arkadie B., op. cit., p. 130.
- <sup>23</sup> Ibrahim Mattar, "Settlements in the Occupied Territory," and Graham-Brown, op. cit., in Aruri, op. cit. Both sources cite crop defoliation, plantation removal, and at times the piecemeal removal of whole villages as standard practice by the Israeli authorities. The result is that over half of the total area of the West Bank has been confiscated, much of which is farming land.
- <sup>24</sup> Graham-Brown, op. cit.
- <sup>25</sup> Michael Burawoy, "Migrant Labour in South Africa and the United States," in Theo Nichols, ed., *Capital and Labour: A Marxist Primer* (London: Fontana, 1980), p. 141.
- <sup>26</sup> On the spectrum of international and regional relations, Israel occupies a particular political role that may, more often than not, dictate the course of its developmental processes. The discussion here is solely to the dynamics of its capital accumulation.
- <sup>27</sup> For a detailed account of the curtailments by sector, see George Abed in *The Palestinian Economy*, op. cit.
- <sup>28</sup> *The Statistical Abstract of Israel*, various years.
- <sup>29</sup> The United Nations agencies in the region; i.e., United Nations Relief and Work Agency (UNRWA), and the Economic and Social Commission for Western Asia (ESCWA), have repeatedly reported this high rate of unemployment, and the associated, worsening economic conditions arising from closure, *Al Quds Daily*, London, various issues in March 1993.
- <sup>30</sup> The Gaza strip differs substantially from the West Bank in that it has a huge population of Palestinian refugees.
- <sup>31</sup> It may be that once the measures forcing over half of the farmers off their land are exercised, the process of re-absorbing this labour force on remaining land becomes unfeasible.
- <sup>32</sup> Jarry, op. cit.
- <sup>33</sup> ILO, *Report to the Director General*, 1990, p. 47.
- <sup>34</sup> Under the recent agreement, Israel has reimbursed symbolic amounts of the total taxes paid. It also plans to keep a quarter of the taxes paid by commuting workers as of the date of the accord. op. cit., The Protocol on Economic relations.
- <sup>35</sup> *Report to the Director General*, op. cit., pp. 24–57.
- <sup>36</sup> Baruch Kimmerling, *The Zionist Economy*, p. 47; and Van Arkadie, op. cit., p. 98.
- <sup>37</sup> Alkatib, "Cuts in Wages of Labourers in Israel" issue 54, p. 31, Data from Israeli Annual Census Book, 1983.
- <sup>38</sup> Arie Bergmann, "The Economies of the Administered Areas 1974–75" (Jerusalem: Bank of Israel, Research Dept., 1976), p. 15.
- <sup>39</sup> The Middle East Economic Conference, Amman, Jordan, 27 October 1995. Trade with Jordan is still very small relative to other occidental regions.
- <sup>40</sup> *Report to the Director General*, op. cit., 1990, p. 47.

## Challenges of Agricultural Cooperatives and Food Security in Egypt

*Ahmed Mansour Ismail*

The Egyptian uprising of 25 January 2011, has restored the hope to the farmers that their economic and social situation would improve over the deterioration of the previous decades, particularly, the smallholders peasants who suffered the marginalization and impoverishment as a result of the misguided political decisions of the previous regimes without consideration for the vulnerable peasants. Although the 1960s brought significant change through agrarian reform; however, the reform did not provide the guarantees and safeguards to protect these gains from the encroachment in the future.

For that, the peasants initiatives have advanced toward establishing new social and political entities, in the form of independent unions, in order to enable them to improve their economic and social situation and protecting their interests. They seek an alternative to the current Central Union of Agricultural Cooperatives, which is no longer able to protect the peasant interest and improve rural living conditions. It also was one of the entities that failed to engage with the Egyptian uprising due to domination by businessmen who are affiliated with the previous regime.<sup>1</sup>

Since the establishment of the Independent Trade Union of Peasants following the 25 January uprising, a dispute arose with the Central Union of Agricultural Cooperatives. The independents demanded dissolution of the Central Union's governing board, holding them responsibility for the increased cost of agriculture inputs such fertilizer and seeds. The cost passed on to the citizens affected by increasing price of the vegetables and foodstuffs, in favor of the monopolists and black-market operatives.

### **Challenges of the Agricultural Cooperatives**

Cooperatives are among the entities most affected and distorted by the totalitarian and authoritarian regimes, such as the state-affiliated trade unions, losing their independent, voluntary and democratic character. The Gamal Abd al-Nasser regime in the 1960s was a prosperous period for agricultural cooperatives with presidential support and numbers of cooperatives increasing in all Egyptian villages.

With the support of smallholders peasants, established the Public Egyptian Institution of the Agricultural Cooperatives, contributed in developing the rural community, however, it has lost much of its independence and power in decision making. For instance, the Law No. 51 (1969), which provided for necessary financial credit for the peasants secured by the agricultural production, not the land value. It considered the money of the agricultural cooperatives as public funds, and all its administrative stuff, board and monitoring committees members, as public officials, as well as, all documents, records and seals of the cooperatives' general assembly to be official public instruments.

While the purpose of these processes was the protection of cooperative funds and fighting corruption, but, for the state's part, different administrative authorities undertook to manage the work of the cooperatives. Article 31 of Law No. 51 required the government to select the cooperative manager from a list of candidates defined by the competent administrative authority, and competent ministry. The government then decided who is responsible. It defined the terms of appointment, the functions and responsibilities of the cooperative managers, and the way to hold them accountable and to imposition sanctions (Articles 35, 37).<sup>2</sup>

The state used to control the functions and activities of the cooperatives, which led to a defect inside the cooperatives that the movement is still suffering from. Thus, the cooperatives have lost two main principles: (1) the democratic method of administration oversight, and (2) their independent character.

In the 1970s, the Egyptian regime changed its economic policy toward privatization, economic openness (*infitāh*), and issued Law No. 117 (1976), which ended the agriculture cooperatives by severely restricting their functions, establishing the Development and Agricultural Credit Bank (DACB) which overtook most of the cooperatives' functions. The law allowed—with dubious constitutionality—the branches of the DACB administratively to seize cooperatives after providing loans secured by the land, not by the production. Thus, in the same year, parliament adopted two acts, Laws No. 824 and 825, to dissolve the Central Union of Agricultural Cooperatives, cancelling the General Body of the Agricultural Cooperatives.<sup>3</sup>

These procedures corresponded with abolition of the committees dedicated to resolving disputes between the landlord and tenants. These practices indicate the deliberate policies by the ruling regime to reduce and jeopardize all gains obtained by the peasants. This appeared as a retaliation against the agrarian reform policies that were partially implemented in the 1960s.

Consequently, with state renounced the collaborative work, the agricultural cooperatives have lost most of its functions about reducing the value of the agricultural inputs which was about 5%, while the branches of the agricultural credit bank waived to provide the agricultural inputs after the government end its support to it and left it as trade to the private sector. So the cooperatives have lost other main principles beside the democracy and independence, the economic participation, and provide the education, training and acknowledgement, as well as, the concern with the society interests.

Also in 1981, by issuing the Law No. 122, the agricultural cooperatives remained as a shadow of their former selves, without real substance to serve the smallholder peasants. Law No. 122 continued in imposing more administrative authority control over the agricultural cooperatives, considering them as Ministry of Agricultural bodies, or subject to supervision of the governorate in which the cooperative is located. The legislation codified the policy of official appointments of the cooperatives' directors and their functions. Also, this act omitted the agricultural supplies to be mentioned in the functions of the cooperatives, and required a good level of literacy as a prerequisite for candidate for election to the board of the agricultural cooperative in the village.<sup>4</sup>

Article No. 43 of the Law No. 122 (1981) violated the cooperative independence by assigning governmental representatives to work in the cooperatives, granting them remunerations and incentives from the fund of the cooperative, identified in Article 21 as 10% of the cooperatives' income. This provided an opportunity for the corruption, contrary to the principles of the cooperatives administration not provide any privileges for the board members, in order to avoid the corruption, and electing board members by acclamation.

As a result of these practices and the marginalized the role of the cooperatives, the peasants, particularly the smallholders, become victims of the DACB's increasing interest rates to more than 17%. Meanwhile, the government ended the support for the production supplies and turned that function over to monopolists and traders.

In 1992, the government issued the notorious Law No. 96, to end the rental relationship between the

landlord and tenant, which affected the majority of the smallholder peasants, causing them to lose their land tenure. That led to their removal from agricultural cooperative membership, as they no longer held any land tenure (and, consequently, could not be eligible for agricultural loans). With the government's adoption of privatization and structure readjustment, the agricultural cooperatives become targeted, considered as part of the public sector and, thus, subject capture by the private sector and businessmen controlling the distribution of the agricultural inputs (e.g., feed, fertilizers, pesticides). The privatized market sold these inputs at high price, further burdening the smallholder peasants, and importing adulterated agricultural production supplies affected many crops. The private sector then replaced most of the existing cooperative leadership that had been in place for 30 years.<sup>5</sup>

Despite the Egyptian uprising on 25 January 2011, nothing has changed. Law No. 122 continues to govern 6,218 agricultural cooperatives operating since 1981. The Central Union of the Agricultural Cooperatives still works as an institution seeking investment and profits. Even with the Ministry of Agriculture's adoption of resolution No. 115 (2013) on the procedures of Central Union elections to its board members maintains the same top-down approach. The peasants still suffer economically and socially from the consequences of the economic "anti-reform" and readjustment policies, many of whom have become displaced and fugitives from sentences for failing to repay debts to the DACB.

### **Cooperatives + local governance = food security**

The Egyptian state lost its strategic plans for sustainable agricultural development after it turned its back on the peasants and ceased supporting agricultural supplies, supervising the marketing of their agricultural production, enforcing poor living conditions. These "anti-reform" measures also decreased the ability for agricultural production, transforming huge agricultural areas into urban and tourism projects, while Egypt has become a main importer of oil, cereal crops and feeds, livestock production.

The former agricultural cycle and crop structure no longer exist. Agricultural has shifted to strategic crops such as, cotton, sugarcane, lentils, soybeans. According to some reports the food gap in Egypt will increase from 25% to 30% by 2030, with the lack of strategic crops production that linked directly to the individual needs. This path promises to lead to regularly increasing food prices, particularly in the light of climate change issue, the hazards of water sharing with upstream states.<sup>6</sup>

On 16 October 2012, the UN celebrated with the World Food Day under title "Agricultural Cooperatives...the Key to Feeding the World," confirming that cooperatives remain one of the main factors to improve the food security, combat hunger and feed the more than 9 billion persons around the world by 2050. Supporting agricultural cooperatives, producers organizations and other rural organizations of smallholder farmers with limited resources remains an effective strategy to ensure food security and sovereignty. Gathering in their own organizations, smallholder farmers become able to access to the information and services, with possibility to marketing their productions in better way, also enabling the poor to lift themselves out of poverty.<sup>7</sup>

The Egyptian government visibly and actively participates regularly in the international forums related to the food security issues. However, at the same time, it does not pay the same attention for the internal actors and issues that caused this crisis. Meanwhile, the government relies on international cooperation to mitigate the consequences. In this context, FAO declared a new project to support the food security and nutrition to the women and youth in Egypt by increasing food production, education and capacity building funded by \$3 million from Italian government. The project will include establishing farmers, schools, pattern gardens typical gardens providing the opportunity for women and youth to manage

their food productions projects.<sup>8</sup> This project seeks to provide a model for comprehensive develop that can be scaled up.

The post-2011 State of Egypt now faces the need and opportunity to recover the social and economic functions of the cooperatives by adopting legislation to ensure the cooperatives' independence, providing greater participation in decision making of the local councils, as its effective entity in providing and organizing the basic needs for the rural community of producers.

### **Effective Cooperative Governance and Sustainability**

In December 2001, UN adopted its resolution recognizing that cooperatives in their various forms becoming a main factor and promote the fullest participation in the economic and social development.<sup>9</sup>

Also, the UN has recognized the important contribution and potential of all forms of cooperatives in the follow-up to the World Summit for Social Development, the Fourth World Conference on Women and the second United Nations Conference on Human Settlements (Habitat II), including their five-year reviews, the World Food Summit, the Second World Assembly on Ageing, the International Conference on Financing for Development, the World Summit on Sustainable Development and the 2005 World Summit.<sup>10</sup>

The independent cooperative represents a real example of citizen participation, which is one of the ingredients of good governance and reflects the meaningful decentralization. In MENA, civil society organizations have taken to promoting this experience. In occupied Palestine, for example, the Applied Research Institute—Jerusalem (ARIJ) has organized workshops to evaluate the good governance inside the cooperatives and enabling the Palestinian cooperatives to apply the rule of good governance to implement social capital principles.<sup>11</sup>

The agricultural and food cooperatives represent a significant portion of the global cooperative sector, with 30 % of the 300 largest cooperatives in the agriculture field. Agricultural cooperatives boast more than 1 billion members globally, a large proportion of whom are in the agriculture sector. Therefore, agricultural cooperatives are seen as key to reducing the poverty, and contribute to socio-economic development and, ultimately, food security.<sup>12</sup>

On the first Saturday of July 2014, the UN celebrated the International Day of Cooperative under the slogan: "Cooperative Enterprises Achieve Sustainable Development for All." This commemoration seeks to increase awareness about the cooperatives and their role in the context of the economic and social rights. This annual reminder<sup>13</sup> followed the International Co-operative Alliance (ICA) Global Conference & General Assembly 2013 hold in Cape Town, which focused on the sustainability of cooperatives and their ability to provide positive contributions to achieve the sustainability.<sup>14</sup> The conference also emphasized innovation as a measure to ensure the sustained success of cooperatives.<sup>15</sup>

### **Recommendations:**

The restoration of the cooperative movement in Egypt is urgent and timely through the innovation necessary to sustain cooperatives for their contribution not only to food security, but also to the development of participatory citizenship. In this spirit of repair, some objectives should be achieved to relieve and enhance the effective and influence role of the agricultural cooperatives and support their contributions to sustainable development and reducing poverty:

- Increase awareness of the peasants of the real functions and purposes of the agricultural cooperatives, through a the development of guidance in cooperation with civil society organizations related to the good governance inside the cooperatives;
- Restructuring the current Central Agricultural Cooperative Union, and using its profits to support the restitution of property for the small peasants who lost their land and/or access to the agricultural inputs;
- Reconsider and reform relevant laws and regulations to restore independence to cooperatives and end the state intervention in their function;
- Support and enhance security tenure of the smallholder peasants, providing them the protection from the violations of the governmental institutions and the domination of the private sector for the agricultural supplies.

#### Endnotes:

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- <sup>2</sup> محمد بسيون، التعاونيات أقصر الطرق لتفعيل المشاركة الشعبية وعلاج الاحتكار والفقر، *جريدة التعاون، الأهرام الرقمي*، 2010/10/9 على: <http://www.google.com.eg/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fahramdigi.eg%2Farticles.aspx%3Fserial%3D358731%26eid%3D667&ei=zktVvLn7MIWpOsLlgIgb&usg=AFQjCNFNmiBVuFRcs0KGj64b3hvvddHjzg&bvm=bv.86956481,d.ZWU>
- <sup>3</sup> Ibid.
- <sup>4</sup> Ibid.
- <sup>5</sup> Caroline Tingay, "Agrarian Transformation in Egypt," *Dissertationen Online der Freien Universität Berlin, Department of Political and Social Sciences*, doctoral thesis, 14 November 2006, at: [http://www.diss.fu-berlin.de/diss/receive/FUDISS\\_thesis\\_000000002364](http://www.diss.fu-berlin.de/diss/receive/FUDISS_thesis_000000002364).
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- <sup>7</sup> FAO, IFAD and World Food Program, *Agricultural Cooperatives: Paving the way for Food Security and Rural Development*, 2012 International Year of Cooperatives. 2012, at: <http://hlrn.org/img/documents/ap431e.pdf>.
- <sup>8</sup> Food and Agriculture Organization of the United Nations (FAO), *New Food Security and Nutrition Project for Egypt*, 18 June 2012, at: <http://www.fao.org/news/story/en/item/149010/icode/>.
- <sup>9</sup> General Assembly resolution No.56/114, *Cooperatives in Social Development*, A/RES/56/114, 19 December 2001, at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/56/114](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/56/114).
- <sup>10</sup> General Assembly resolution No.64/136, *Cooperatives in Social Development*, A/RES/64/136, 11 February 2010, at: <http://www.copac.coop/publications/un/a64r136e.pdf>.
- <sup>11</sup> دليل الحكم الرشيد للجمعيات التعاونية، معهد الأبحاث التطبيقية القدس (أريج)، وزارة العمل الفلسطينية، تشرين الأول 2012، طبعة أولى. على: [http://www.arij.org/files/arijadmin/Cooperatives\\_Good\\_Governance\\_Manual.pdf](http://www.arij.org/files/arijadmin/Cooperatives_Good_Governance_Manual.pdf)
- <sup>12</sup> Food and Agriculture Organization of the United Nations, *The United Nations Rome-based Agencies Committed to Supporting Agricultural Cooperatives*, 31 October 2011, at: <http://www.fao.org/gender/gender-home/gender-news/gender-newsdet/en/c/94506/>.
- <sup>13</sup> United Nations General Assembly proclaimed, in its resolution 47/90 of 16 December 1992.
- <sup>14</sup> محمد فاتح عبد الوهاب، الاحتفال باليوم العالمي للتعاونيات 2014، تحت شعار المشروعات التعاونية تحقق التنمية المستدامة للجميع، موقع الحوار المتمدن، 2014/7/7 على: <http://www.m.ahewar.org/s.asp?aid=422882&r=0&cid=0&u=&i=0&q=...>
- <sup>15</sup> ICA Global Conference & General Assembly, Cape Town, 1–5 November 2013, at: <http://ica.coop/en/events/ica-global-conference-general-assembly-2013>.





## Real Property Rights in Libya

*Mass`oud al-Karati*

Before emerging from Italian colonization to become an independent kingdom in 1951, Libya was part of the Ottoman Empire for four hundred years. Islamic Sharī'a regulated the economic, social and personal status relations between the individuals of community. In condominium with Ottoman rule, the elders of tribes and clans also exerted their influence over the relations between the individuals of the tribe itself, and its relation with other tribes. These prevailing administrative, religious and social values were reflected in the property regime, ensuring private ownership of agriculture land and the built-up areas along the coast, while also recognizing collective tenure rights to traditional grazing areas in exchange for the payment of tax.

During 1858–1861, the Ottoman Administration issued several laws to regulate land registration, culminating in the land-registration code of 1861, known as "Tabu Law"<sup>1</sup> and its regulations of 1867. These norms classified the land in Libyan land into five types and supported private land ownership, as well as local community tenure. Even during the Italian colonization, the colonial administration maintained the endowment properties under the "Islamic Principles Law" and the Ottoman legislation that regulated it. Most property registration took place during the Italian administration.<sup>2</sup>

After the independence, the Royal Constitution provided in its Article 31 that property is inviolable and the owner shall not be prevented from disposing of his property, except within the limits of the law; and no one shall be divested of his property, except in the cases necessitated by the public good in accordance with the provisions of the law and in return for fair compensation.<sup>3</sup>

Under King Idris I, independent Libya confiscated large farms in eastern Libya that Italians had seized during their occupation,<sup>4</sup> redistributed those properties to persons close to the ruling Sanusi Dynasty.<sup>5</sup> While, by decline the patterns of traditional pastoral, the tribal groups come into conflicts over the watered areas that suitable for cultivation throughout the year. After oil was discovered its outcome allocated for developing the state facilities, particularly in the coastal areas, and the number of migration for work in the coastal cities increased specifically in Tripoli and Benghazi, which lead to that the rental homes had become increasingly in urban areas. Additionally, a large of agrarian lands were produced the nutrition transformed to a residential areas for oil companies employments and the cost of land has been increased, many of farmer workers lost their jobs and moved to the urban areas to work in the port or in the oil companies.

By seizing the power in 1969 that brought Col. Muammar Qadhafi to the power, alleged to achieve social justice, end all forms of exploitation, end the disparities between the social classes by property redistribution. The new government confiscated Italian-owned farms and redistributed them in small plots to Libyans, while retaining some lands for state farming enterprises. The 1969 Constitutional Proclamation that replaced the 1951 Constitution declared that public property is the basis of development in society, and that private property was to be limited. Private property was to be protected and permitted in "non-exploitative" forms and functions. However, the text of the Constitutional Proclamation did not provide a definition for that term.<sup>6</sup>

Also, the Proclamation retained the laws and regulations of the previous regime that did not contradict the ideology of the new regime, and committed to fulfill the international obligations undertaken during the royal period. That Constitutional Proclamation was replaced by Qadhafi's *Green Book*, which instruments served as a permanent Constitution that remained in force for four decades (1969–2011).

By 1970, the Qadhafi regime adopted several radical regulations, consolidating the new regime. The most important of them relating to housing and land property included the following:<sup>7</sup>

- In 1970 Gadhafi issued Law No. 63, annulling sales of public land of more than 1,600m<sup>2</sup> for construction land, or 15 hectares of land for cultivation, reappropriating those properties within one year.
- In 1970, uncultivated land that was owned by tribes was declared state property under Law No. 142.
- In April 1973, Qadhafi declared the "Cultural Revolution" and terminated all laws issued during the previous monarchy, replacing them with laws compatible with Islamic Shari`a, and establishing the direct democracy system through the "People's Committees."
- In 1975, Qadhafi issued Law No. 88, addressing certain cases involving the sale of vacant lands owned by state. Article 1 provides "Without prejudice to the provisions of Law No. 63 for the year 1970 must be within one year of the effective date of this law (25 April 1971), the sale of land owned by the state will be dissolved." The Law's Article (2) provides for the nationalization all citizen-owned land, except for that used for private residence, including property purchased through the credit facilities previously granted in accordance with Law No. 116 of 1972 on urban development.
- In late 1975, Qadhafi published his *Green Book* as a critique indirect democracy as failing to seek the ideal of true representation. The *Green Book* recognized land tenure only for as a right to use land to meet only one's own needs.
- Law No. 38 (1977) dissolved any claims of adverse possession whatever date it began and whatever the duration of possession or acquisition of any property. The Law had retroactive affect by annulling the registration of such properties dating back to 7 October 1951.
- In 1977, tribal ownership of land and commercial farms was restricted to a limit of landed property only to meet individual family needs, consistent with the land's actual use. That lead to the further fragmentation of agriculture land along the coast, over-irrigation and falling water tables.
- In 1978, Law No.4 was passed to strength the effect of the second part of *Green Book*, it was the main legal instrument to apply his slogan about "The home for those who live in it." The put into legal effect the redistribution of all rental property, transforming tenants into owners of their homes through monthly mortgage payments to the government. That led to an uncompensated mass confiscation of private property and the elimination of tenure security under previous laws.
- In 1988, Qadhafi issued Law No. 11, which annulled the registration of all real property documents issued before the date of this law, and required owners to obtain new property documents under this law in order to be considered valid.

Several laws and decrees issued in the 1980s enhanced the Qadhafi regime's power through drastic measures such as the public burning of all old property records in 1986, and the establishment of a new "Socialist Real Estate Register" to formalize the results of earlier measures and force citizens once again to declare their real estate ownership within a set time period.

This series of measures and legislation lead to grave consequences of unjust confiscation of most Libyan properties. They did not redound to benefit the public interest. Moreover, it curtailed investments activities in real-estate sector by private actors as unlawful and prohibited. The consequences also created enduring social problems between Libyan citizens by confiscating property of some and

allocating it to others. These manifested also following the 17 February “revolution.” The absence of the state bodies enabled the spread of land grabbing and random construction across the state, generating many armed disputes that broken out over lands and real estate.

The practices of the Qadhafi regime in disposing of housing and land, as well as the pattern of public investment public services and infrastructure, exacerbated tribal conflicts and mass displacement. These public policies also sought to suppress tribal and ethnic identity, in order to foster Libyan Arab nationalism. Political favoritism and nepotism amounted to discrimination by providing or depriving public investment in infrastructure such as housing, schools, hospitals, and agricultural projects such that pitted tribes against each other.<sup>8</sup> Also, these practices contributed to the motivation of popular protests that exploded into armed uprising that would ultimately overthrow the regime in February 2011.

Following Qadhafi’s overthrow, tens of thousands of Libyans whose land had been expropriated during 1970’s and 1980’s began to calling for restitution. Meanwhile, many of the current occupants have lived on the concerned properties for decades and paid mortgages to the government during that time. Others had purchased properties from sellers who obtained use rights to the land from the Libyan government.<sup>9</sup> Unravelling the claims of original owners, secondary tenants and owners, as well as competing freehold tenure holders has become a tangled web of legal and extralegal countermeasures.

The National Transitional Council of Libya, formed following the 17 February “revolution,” adopted the “Interim Constitutional Declaration” for the transitional period, providing several articles to protect the property and guarantees for judicial control of administrative acts. However, the National Transitional Council did not commit itself to a position on restitution and did not urge the private evictions of the users of claimed properties.

In February 2012, a representative of the Land Ownership Committee announced plans to put forward a draft law that would return expropriated land and buildings to their former owners. The first phase of implementation would deal with the return of unused property to the original owners, while the second phase would involve relocating families who currently occupying the expropriated property before returning them to their original owners.<sup>10</sup>

On other hand, during 2011, the armed militant uprising targeted 70,000 persons and collectively displaced them from their homes.<sup>11</sup> The militants’ vengeful response sought to access their homes and property that were stolen, destroyed or occupied, alleging that the beneficiaries were supporters of the deposed Qadhafi regime.

Beyond the issue of the rights of IDPs to restitution of lost housing and land property, tenure security still remains a critical issue from many IDPs and other non-citizens in Libya, who remain facing arbitrary evictions from homes that they have live in for decades.<sup>12</sup> Refugees and noncitizens who rented homes from the state on the basis of work contracts are at risk of eviction due to the lack of local networks and the fact that such properties were frequently available for rental by the state because they had been confiscated in accordance with Law No. 4.<sup>13</sup>

The Palestinian and other refugees in Libya traditionally have been housed in accordance with a broader system of providing subsidized rental homes to foreign workers and these arrangements were revoked with the loss of work contracts. Palestinians and other noncitizens who were living in such housing

constitute the group most at risk of evictions from historic owners of properties rented out by the Qadhafi.<sup>14</sup>

Additional to the forced evictions committed by armed militants, several individuals have grabbed lands to which they have no rights, set up businesses in the absence of effective local government. However, such individual property claimants lack protection and face the prospect of being subject to a further wave of forced eviction and/or other forms of violence.

### Recommendations:

Under the current crisis of civil war and upheaval in Libya between the armed militants, and in light of the lack of real effective government to ensure the rule of law and enhance the concept of citizenship, Libyan institutions operating as government, including local authorities, should prioritize the following process:

- Carry out effective legal reform to address the property issues specifically the impacts of law No. 4 for the citizens and noncitizens;
- Expedite the adoption of a transitional justice law that ensures that the land and property issues are included in application of reparation without discrimination;
- Ensure the compatibility between the laws and legislation with the international obligations of Libyan state
- Protect both citizens and noncitizens from the arbitrary forced evictions, and consider them in the future housing assistance programs without discrimination.
- Apply the UN Guiding Principles on Internal Displacement and property restitution as minimum elements of official policy;
- Provide effective remedy to resolve land disputes between tribes.

### Endnotes:

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<sup>1</sup> This spelling reflects the standard Arabic pronunciation of the “tapu law.” See Jamal Talab al-Amlah and HIC-HLRN, “In the Long Shadow of Ottoman Land Administration,” above.

<sup>2</sup> Claudia Gazzini, “Italian Colonial Policy Towards Libyan Religious Endowments,” EUI Working Papers, Max Weber Program, European University Institute, 2010. at: [http://cadmus.eui.eu/bitstream/handle/1814/14141/MWP\\_2010\\_10.pdf?sequence=4](http://cadmus.eui.eu/bitstream/handle/1814/14141/MWP_2010_10.pdf?sequence=4)

<sup>3</sup> “Housing, Land and Property (HLP) Issues and Response to Displacement in Libya,” UNHCR Report 2012. at: <https://terra0nullius.files.wordpress.com/2013/02/unhcr-report-hlp-issues-and-displacement-in-libya-copy.pdf>

<sup>4</sup> For further details on Italian colonization and land property see, “Development of Tribal Lands and Settlements Project,” FAO Report, Vol. II, Rome 1969.at: <http://www.fao.org/docrep/field/009/89724e/89724e02.pdf>

<sup>5</sup> Newly independent Libya also expelled as dispossessed some 37,000 members of Libya’s Jewish community as a collective reaction to Israel’s ethnic cleansing and colonization of Palestine, which the Zionist Movement and Israel carried out in the name of people of Jewish faith everywhere. After Israel proclaimed statehood, Tripoli closed Jewish schools, forced Jews with relatives in Israel to register, and even placed the Jewish community’s administration under Muslim trusteeship. Jews could not vote, serve in public capacities, or purchase property. With the 1967 War, mobs ransacked much of Jewish communal property. The Libyan government then moved Libya Jews to protective custody in camps in preparation for deportation. Many Libyan Jews (30,972) then joined the Israeli colonization of Palestine. When Col. Qaddafi came to power in 1969, all Jewish property was confiscated and all debts to Jews cancelled. See History of the Jewish Community in Libya, cited in “1945 Anti-Jewish Riots in Tripolitania,” *Wikipedia*, at:

[http://en.wikipedia.org/wiki/1945\\_Anti-Jewish\\_Riots\\_in\\_Tripolitania#cite\\_ref-berkeley\\_14-0](http://en.wikipedia.org/wiki/1945_Anti-Jewish_Riots_in_Tripolitania#cite_ref-berkeley_14-0); “Jews in Islamic Countries: Libya,” at: <http://www.jewishvirtuallibrary.org/jsource/anti-semitism/libyajews.html>—HLRN.

<sup>6</sup> “Property Rights and Resources Governance: Libya,” USAID Country Profile, Jun 2013. at: [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Libya\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Libya_Profile.pdf)

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<sup>7</sup> UNHCR, op. cit., p. 21–22.

<sup>8</sup> For example, two cases involve the Tawergha and Nafusa tribes. Ibid., pp. 66–75.

<sup>9</sup> USAID, op. cit., p. 8.

<sup>10</sup> Ibid.

<sup>11</sup> As of June 2012. “Scores of displaced Libyans afraid to go back home,” *IRIN* (09 May 2012), at: <http://www.irinnews.org/report/95389/libya-thousands-still-afraid-to-return-home>.

<sup>12</sup> “Housing, Land and Property (HLP) Issues and Response to Displacement in Libya,” UNHCR, op. cit.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.



## Agrarian Reform and Its Undoing

*Hasanain Kishk*

In order to understand the dynamic and consequences of Egypt's land reform and anti-reform, we need to establish a set of terms and typology for addressing the various actors, including their relations of production and to each other.

When we refer to "agrarian reform" in the Egyptian context, we mean the social policy and economic model espoused and formulated during the Gamal `Abd al-Nasr in the 1950s. Nasr's approach consisted of legislation on four aspects of land administration: (1) agricultural land ownership (freehold tenure), (2) the relationship between landlord and tenant, (3) trade-offs associated with the agricultural inputs and outputs, and (4) the status of agricultural workers. These aspects correspond to Law No. 178 (1952), Law No. 317 (1956), Law No. 137 (1961) and Law No. 50 (1969), respectively. This legislation changed the power relations in the countryside to the benefit of sectors of the poor peasants and small-holder farmers, as well as agricultural workers (the producers themselves), and the transfer of economic, social and political power from big landlords to the "rich peasants" (owners of land plots 20 to 50 *feddans* [8.2–21ha]), which later would be considered the beneficiaries of large agricultural capitalism.

Meanwhile, by "anti-reform," we mean the legislation amending the balance of power in the countryside, such as Law No. 67 (1975) and Law No. 176 (1976) and Law No. 143 on Desert Land (1981), during Anwar Sadat's presidency. Several amendments to these laws and presidential decisions during Husni Mubarak's rule continued the anti-reform, taking a decisive turn as of 1987 in the context of the liberalization of production requirements and crop input prices. The final blow came with Law No. 96 (1992).<sup>1</sup>

The "direct agricultural producers" are those who work for a wage, or for family interests. These include several subcategories:

1. The "landless agricultural workers" who possess only their labor, selling their services in the labor market for payment in cash or in kind, or both, whether permanent or temporary work, or as itinerant labor (in the *tarhila system*).<sup>2</sup>

2. "Poor peasants" are those who hold less than two *feddans* (<.84ha), but lack the capital and means of work, and are forced to sell their labor in certain seasons of agricultural work, because of the inadequacy of their holdings to sustain their livelihood and family subsistence.<sup>3</sup>

3. The "small holder farmers" (SHF) are those peasants who make a living from a combination of work and property. Thus, the SHF works by himself and members of his family—part time, or full time—on their plots that range between two and five *feddans* (.84≤2.1ha). They also have ownership of the other means of production, as well as some capital. The SHF equate with the petty rural bourgeoisie.<sup>4</sup>

By "agricultural capitalism," we refer to the practice of holding more than five *feddans* (>2.1ha). This does not necessarily require owning the land (freehold tenure), but it is necessary for those possessors for the land to own the capital to invest in agriculture. Those holders do not work by themselves, but



hire waged workers and dedicate themselves to manage their farms.<sup>5</sup> This category is divided into two kinds of capitalist farmers, the middle-size ones and the big ones (rich peasants).

### **Organizing Agricultural-land Ownership**

In the reform process, organizing agricultural land tenure meant setting a maximum limit on land ownership and redistributing the surplus to the small farmers. This process also included prohibiting the ownership of agricultural land by foreigners and abolishing national endowment (*waqf*) lands, as well as limiting the fragmentation of land to less than five *feddans*. The reforms also established the inadmissibility of agricultural tenure under five *feddans*.

The cap on ownership of agricultural land began with two hundred acres for the individual and 400 for a family in the Law No. 178 (1952). With Law No. 127 (1961), the maximum shrank to 100 *feddans* per capita, and finally to 50 *feddans* per capita, and 100 *feddans* per family by the time of Law No. 50 (1969). The surplus over this cap was subject to a kind of forced sale to the state, whereby the state paid a price equal to ten times of real estate rents in the form of bonds payable in the long term, at an interest rate of 4% annually.

The state then distributed the extra area, plus all the property confiscated of the descendants of Muhammad `Ali Pasha (November 1953), and distributed it to the small farmers who did not own land. Through this deal, small holders would pay the price of the land through premiums over a period of 40 years; they committed to pay the full price at the beginning of the application of the first law or reform. This price was reduced by half under Law No. 128 (1961), and finally the farmers could afford only a quarter of the price, also exempting them from paying any interest of the instalments due. The public treasury was to cover the difference, according to Law No. 138 (1964). As a result of this redistribution, the category of land holders (owners and tenants) crystallized under the agrarian reform laws, including 322,000 persons, and covered a planting area of about 929,000 *feddans* under either ownership or lease.<sup>6</sup>

The three agrarian-reform statutes (Law No. 178 of 1952, Law No. 127 of 1961 and Law No. 50 of 1969) resulted in various changes, such as economic and political liquidation of the large landowners and middle-size landowners, as they also represented the political support to the feudal relations of production. Those laws also led to consolidation and penetration of capitalist relations of production in agriculture, where the differentiation among peasants, between capitalists and workers created a larger market that included capital goods for agriculture, as well as goods for consumption.

By 1 November 1985, the land area held by farmers totaled about 714,208 *feddans* (299,967ha), which benefited 336,469 households, with an average of 2.1 *feddans* (.882ha) per family. The other changes brought about by the application of these laws included: (1) an increased share of the poor and small-holder peasants of the agricultural land (less than 5 *feddans*/2.1ha), and (2) stability in the relative weight of their number (about 94%). It was 35.4% before the first law, then 46.5% after the law was passed, then rose to 52% after the second law in 1961, then to 57.1% in 1965.

At the same time, the reform laws changed the concentration of land property owned by the middle-size and big landlords, where the major shareholders (over 20 acres) owned 34% of the land after the first law (1952), then the percentage dropped to 28.8%, after the law of 1961. Then they became 26.2%, while they represented 1.4% of the total number of owners, and 1.2%, and 1.2% in the next three years, respectively.<sup>7</sup>

In the wake of the first law of agrarian reform (1952), middle-level and rich peasants bought 107,000 *feddans* (44,940ha), which is the area sold by large landowners in accordance with the law. The law gave them the right to sell land that exceeded the maximum. Those farmers also bought 249,000 *feddans* (104,580ha) from big landowners. They were allowed to keep them legally, pending any new legislated reduction of the maximum land property owned.<sup>8</sup>

With the first law of agrarian reform, major landowners began an extensive process of concealing their ownership of large tracts of agricultural land, benefitting from the stipulation in the law that excluded the state appropriating any lands already sold. In less than a year, those landowners “sold” about 145,000 *feddans* (60,900ha); i.e., a quarter of the area that was subject to appropriation. They also counterfeited contracts that allowed them to exclude tracts of land from seizure on the pretext that they already were sold.

The criteria for “family,” as mentioned in the law (i.e. the nuclear family, which includes husband, wife and children), allowed the extended family (more than two generations), to own more than a thousand *feddans* (420ha) in the context of one family and one bond (عصبية), such as the family Abaza in Sharqiyya,<sup>9</sup> and the Fiqi family in Manufiya.<sup>10</sup> So, the whole land seized under the law of 1952 was about 372,000 *feddans* (156,240ha), which was half of the area that was scheduled to be seized.<sup>11</sup>

A historian indicated once noted that he was very sad for the tragedies that the Committee for Liquidating Feudalism caused the “innocent” large landowners. However, through various means of manipulation one of these “innocent” proprietors was able to retain 3,455 leases, 180 promissory notes, 640 contracts of concession of agricultural land, 840 contracts of customary sale, and 60 signed blank contracts. It also mentioned that another one had 300 acres, while leasing seven manors of 1,200 acres.<sup>12</sup>

Agricultural capitalism began to dominate the Egyptian countryside since the end of the 1960s, asserting its economic, social and political weight. This began a series of changes in the fundamental framework of agriculture, which we emerged in the context of anti-reform.

### **Anti-reform**

With Anwar Sadat’s “Corrective Revolution” (officially launched as the “Corrective Movement”) in May 1971, the state abolished the state guardianship over the lands that the agrarian reform imposed on the large landowners. Lifting the state guardianship favored the heirs of the old agricultural capitalist class. The process was begun after the 1967 defeat (the “setback,” of *al-Naksa*), where the heirs recouped their plots after evicting peasants who held them, whether as tenants or new post-land reform owners. This led to an exclusion of a number of small holders outside the tenure structure, and consequently increased the concentration of land in the hands of the beneficiaries of agricultural capitalism.<sup>13</sup> Thus, 66% of 123,000 *feddans* (51,660ha) that had been placed under sequestration returned to the heirs of the large-scale land owners.

By October 1971, President Sadat issued a decree to compensate the former feudal lords for land that was confiscated under Law No. 178 (1952). The value of this compensation was 70 times the arable land tax, in addition to the market value of the facilities, parks, etc. developed on them.<sup>14</sup> The total value of compensation reached about L.E. 300 million.<sup>15</sup>

Then the government issued Law No. 69 (1974), formally removing state guardianship. That enabled the heirs of large landowners to begin working to restore their families' former land holdings.

In turn, Law No. 143 on Desert Land passed through parliament in 1981, raising the permissible maximum of individual landed property to 3,000 *feddans* (1,260ha), setting family holdings also to 3,000 *feddans*, and ten thousand *feddans* (4,200ha) for companies.<sup>16</sup> This meant an implicit abolition of the maximum limit on agricultural land property ownership developed under the agrarian reform laws (50 *feddans* for individuals, and 100 *feddans* for family). After this, the Supreme Constitutional Court issued its ruling by repealing Law No. 104 (1964). This ruling annulled the principle of state acquisition—and redistribution—of private property and reinstated the legitimacy of the large-scale land-owning class.<sup>17</sup>

### **Recasting the Landlord/Tenant Relationship**

The domination and submission that characterize the classic relationship between landlord and tenant in the countryside was a priority target of Egypt's land-reform law in 1952. In a way, that legislation covers two types of lease: rent for cash and rent by contribution (tribute) in kind. Rent for cash was calculated at seven times the property tax prevailing at the time the law was passed (which is a tax on income from land ownership). In this case, the tenure was in the name of the renter (producer) as a member of a cooperative with which the farmer deals directly. In the case of rent by sharecropping (بالمزارعة), or so-called "partnership by shares," the law identified obligations of both landlord and tenant, and how to distribute the expense of their agricultural production.

In the case of sharecropping, land tenure does not happen to be in the name of the tenant, who also cannot deal directly with the agricultural cooperative, but only through the owner. That relationship puts the farmer in a weaker position. In all cases, the lease must be a contract in writing, depositing a copy with the cooperative. The contract should not expire upon the end of lease's duration, nor with the death of the landlord or the tenant. Upon the death of the latter, it would transfer to the heirs, provided that some of them were still practicing the agricultural craft.

In 1967, the law introduced "dispute resolution committees" that consisted of the head of the elected cooperative board, the agricultural engineer who is the executive manager of the cooperative, the cashier (الصراف) of the village, and one of the members of the Socialist Union (only political organization at that time). Despite the simplicity of this system, and although it was financially costly for the farmer, particularly the small holders usually found themselves confronting the judge and jury at the same time.<sup>18</sup> (See **Challenges of Agricultural Cooperatives and Food Security in Egypt** in this volume.)

Now, it is clear that the "historical impact" of the land-reform law was represented in preventing farmers' eviction, protecting the right of inheritance of rented lands, determining rent values, upholding written contracts and providing all the other legal guarantees.<sup>19</sup> No doubt the agrarian reform impacted farmers' incomes positively, due to reduction of the rent value., where the increase in income reached almost L.E. 20 million annually, according to the most conservative estimates, and L.E. 40 million, according to estimates by the Ministry of Agriculture.<sup>20</sup>

The relationship began to shift, however, in the mid-1970s. By 1975, some agrarian reform issues were reconsidered, whereas, on 23 June 1975, the People's Assembly approved Law No. 67 (1975). This legislation allowed the transfer of cash rent to sharecropping, eliminated the "dispute resolution committees," remanding disputes to the ordinary courts, and affirmed the right of the landowner to evict a tenant in the event of delay in the payment of rent for more than two months. The law affected

four million peasants who were renting three million *feddans* (1,260,000ha), or 60% of the agricultural land, rental value of which was not to exceed seven times the applicable tax. The changes in 1975 entailed raising the rental value by 20–25%. Therefore, Law No. 67 represents the first important regulatory step toward lifting restrictions on the agricultural-capitalist class, the new dominant force in the village.<sup>21</sup>

In 1992, parliament passed another, even more far-reaching measure, Law No. 96 (1992), which overthrew what was left of the positive aspects of land reform. This one act formally increased rental values from seven times the applicable tax on agricultural arable land to 22 times during the five transitional years of implementing the law (in force as of November 1996). In early October 1997, a threshold period has passed, totally “liberalizing” the rental relationship. The rent increased from L.E. 200 to 800 during the transitional period, then rose to L.E. 2,500 after that period. By 2009, rents reached L.E. 6,000 in some villages. Some sections of the poor and small farmers, as tenants on agricultural land, were forced to give up their land tenure and become wage workers, whether in agriculture or other kinds of work.

### **Organizing Exchange Values: Agricultural Inputs and Outputs**

The agrarian-reform law had allowed for the use and distribution of land through membership in the Agrarian Reform Association as a cooperative. At the same time, it provided for credit associations in the cooperative organizations, which also covering almost all agricultural tenure arrangements also outside the scope of the Agrarian Reform Association. The Associations provided their members with production inputs (e.g., seeds, fertilizer, pesticides, mechanization, and low-interest financing) and marketed their crops. This role would protect beneficiaries of land reform from losing the plots they obtained.

However, the law lacked the means of protecting the tenants who were not members in the villages in which agrarian reform applied, leaving them prey to loan sharks. Where the agricultural cooperative credit bank was asking for collateral in the form of real estate for granting the loan, it was rare to find a landlord to give such a grantee to the bank in behalf of the tenant. In 1957, the government implemented the agricultural cooperative credit system, which became generalized in 1961. Accordingly, the Associations provided agricultural loans against tenure collateral (as an owner or tenant). By 1962, all the loans that the bank was providing were going to growers through the cooperatives. Later, only 38% of the loans reach them through the cooperative.

The cooperative represented "a government store" for farmers, where it was providing them with the prerequisites of production. However, sometimes it was a source of problems (over the timely supply of inputs, delays in the payment of mandatory supplied crop values and the problems settling accounts). So it was not surprising that members of agricultural cooperatives did not feel anxiety when it was decided in 1976 to replace cooperatives with “village banks” responsible for organizing the supply of agricultural products, organizing supplies and settling the accounts of farmers.<sup>22</sup>

The Development and Agricultural Credit Bank then raised the interest rates on agricultural loans. Production requirements witnessed a significant increase in prices after the liberation of their value and cancelling rescinding subsidies. This undermined the role of cooperatives, and the small-holder farmer and the poor (impoverished) peasant started to suffer from the sharp rise in production costs, along with the relative stagnation in most crop prices.<sup>23</sup>

## **Reorganizing the Status of Agricultural Workers**

The agrarian reform law provided for the minister of agriculture to set up a committee headed by a senior ministry staff person six minister-selected members (three representing owners, and three representing agricultural workers). They determined the wage of the agricultural laborer in agricultural areas each year. The identification of a minimum wage for agricultural workers, and wages in general, led to a rise in agricultural workers share in total agricultural income', from 20% in 1950 to about 38% in 1961.<sup>24</sup>

The law also permitted agricultural workers to form unions, in order to articulate and defend their interests. However, only 50 farmers unions formed in that period, and some soon faded. In 1954, 36 Vocational Agricultural Workers Unions (VAWUs) operated and their membership did not exceed three thousand. Agricultural authority officials dominated these entities, including the VAWUs. After the Trade Unions Law No. 2 (1964), the membership in VAWUs increased, but only as just numbers on record. The number of union committees sprang up to 4,200 members, while the agricultural contractors and their assistants played a pivotal role in managing and filling the leadership of these unions. It was natural then that this experiment ended up as a common organization under the command of management and contractors, while the agricultural workers existed only outside the union.<sup>25</sup>

No syndicate or trade union commissions in the villages survived that time, whether in theory or in fact. All that is left of their headquarters is deserted in some towns and main villages, bearing banners that read: "union of agricultural workers." Their role has been confined to signing or approving the official documents to verify that someone is an agricultural worker, such as ID documents and/or passport applications.<sup>26</sup>

## **Depriving Poor and Small-holder Farmers of Secure Tenure**

The number of agricultural capitalists decreased between two recent agricultural inventories (from 10.0% to 9.6% of holders), while the area they held increased (from 51.1% to 52.8%). Agricultural censuses show also a kind of monopoly practiced by this group, possessing the lion's share of agricultural equipment and land planted with vegetables, fruits and aromatic plants (which is capital-intensive agriculture), as well holding the bulk of loans, cattle, apiary, poultry farms, and so on. Importantly also, they monopolize the political sphere.

Poor peasants and small-holder farmers have continued to lose their land, whether rented or owned, and increased in number, while capitalists decrease in number, and gained more land area. This trend deprives peasants, agricultural workers and young people and their families in rural areas of their share of livelihood from their production. At stake are their human rights related to the tenure of agricultural land, decent work, food, health, education and other rights enshrined in international conventions and supported by United Nations specialized implementing bodies, such as the UN Food and Agriculture Organization (FAO) and the International Labor Organization (ILO).

These agencies pay more attention to the concerns related to land rights, as adopted in conventions, or declarations and recommendations. At the World Conference on Agrarian Reform and Rural Development (WCARRD), convened by FAO in 1979, the Declaration of Principles and Plan of Action, which is referred to as "The Peasant's Charter" was adopted.<sup>27</sup> These norms calls for the reorganization of land tenure, and calls for the imposition of limits on the ownership of land and reorganization of land acquisition and distribution to farmers, small tenants and those who do not have land. It also calls for reform of the land-rent system.<sup>28</sup>

## Anti-reform in Light of International Conventions

The violations committed by the authorities and big capitalist landowners- manifest in two main themes, among others: the discrimination against women wage-workers in agriculture, and depriving the poor and small farmers of secure tenure (owner or tenant), and at the same time concentrating land acquisition in the hand of a few agricultural capitalists, including other assets (agricultural machinery, livestock, and apiaries, etc.).

### 1. Gender wage discrimination in agriculture

Law 178 of 1952, specifically the Article No. 38 included a clear discrimination against women concerning the wage value, where it's identified according to very old value by millime 180.<sup>29</sup> While women and children get 100 millime. [The results of many studies indicate that discrimination in pay, as when men's wages increased from 4.1 to 4.7 pounds, women's wages of about 3 pounds dropped to 2.9 pounds on average for the business itself.<sup>30</sup> The average wage of rural women, in agriculture and non-agriculture, was 49% of the average male wage.<sup>31</sup> This discrimination in pay, for the same work, is a violation of the Universal Declaration of Human Rights (Article 23, paragraph 2), and the International Covenant of Economic, Social, and Cultural Rights (Article 11, No. 2), and also a lot of laws and regulations issued by the International Labor Organization (ILO).<sup>32</sup>

Studies made on the risks to rural women working in agriculture, whether paid or unpaid manifest their suffering in the absence of all forms of legislative protection guaranteed by national laws or international covenants.<sup>33</sup>

For example, the Egyptian state has not ratified the ILO Convention No. 141 of 1975, on the right of agricultural workers, both male and female to establish their freely determined and independent trade union organizations. This leads to a violation of workers' right to establish their civic entities, away from the formal workers unions that are controlled by the state and its bureaucracy.<sup>34</sup>

Some of the tenants who were evicted from their lands have expressed themselves in their trials, coping with the consequences of the law. Families have sold what they held of their cattle, while women sold their simple jewelry for cash, which is what other families of tenants typically have done in order to pay for the high rent value. They were not aware whether that they would be able to continue to lease the land. Those who have suffered most from the high costs associated with the liberalization of agriculture are children, especially girls, who would be enrolled in a school, but whose families now rely on their work, in order to meet their subsistence needs.<sup>35</sup>

Also, some of the poor peasant men have suffered from a sense of shame because they are sitting at home, "like women," unable to cover the expenses of their families, especially when women are forced to sell their jewelry to do so. According to some of the wives of the tenants who lost land, they have seen the dispersion of the family afterward: "land was our home, gathering my sons with me." The impoverishment resulting from the Law No. 96 (1992) is morally differentiated from other forms of impoverishment, causing some tenants to remark "the government raising prices is one thing, but to sever our livelihood is quite another matter," while another concludes, "this means, my home country has betrayed me."<sup>36</sup>

## Conclusion

In the words of the Federation of Egyptian Industries 1952 bulletin, the three original agrarian-reform laws were weak and gradual, and come as "a savior and a guarantee against revolutionary solutions." Agriculture liberalization policy, in the context of the general liberalization economic policy of Egypt, now deprives large sections of the poor peasants and small-holder farmers from their land holdings. This persists through multiple mechanisms, including "liberalizing" prices of all agricultural inputs, liberalizing the credit market and, through the rise of consumer goods and services prices, liberalizing agricultural

land rents, as well as serial legislation that enabled heirs of big landowning families to strip the farmers and producers of the agrarian reform and the needed protections it provided.

As Counsellor Tāriq al-Bishri has mentioned, Law No. 178 of 9 September 1952 and its application for years cannot be but a quiet reform. The rational and prudent people at the command of agrarian reform in 1950, particularly the judicial supreme bodies, specialized in agrarian reform actually belonged to the large landowners or their families.<sup>37</sup> In sum, it was a reform from above, and bureaucratic, in which the officials of the supreme judicial bodies specialized in matters of property colluded not only with the big landlord class, but also with some of the July Officers Authority. That Authority established a strict dictatorship, and confiscated not only the properties of middle-size and big owners, but also the rights and freedoms won by the democratic movement in that time. These interventions contributed effectively in reinforcing the policy that successive governments set in place against the agrarian reform since the mid-1970s.

Some writers say that this reversal of Egypt's land reform was a "counter-revolution in the countryside,"<sup>38</sup> but this expression cannot strictly apply. As the reform policy grew out of a framework of the capitalist relations of production, it actually carried with it the seeds of its own undoing.

#### Endnotes:

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<sup>1</sup> "Amending Some Provisions of the Decree as per Law 178 (1952) concerning Agrarian Reform," *Official Gazette* (28 June 1992).

<sup>2</sup> Hasanain Kishk, "Ashkal al-`Aml al-Zira`i fi Qura Masriyya" ["Types of Work in Egyptian Villages"], in M. `Awda, *Mustaqbal al-Qariya al-Masriyya [The Future of the Egyptian Village]*, Vol. 2 (Cairo: National Center for Criminological and Social Studies, 1999), pp. 229–342.

<sup>3</sup> Muhammad Abu Mandūr, "Ittijahāt `Alaqāt al-Intāj fi al-Zirā`a al-Masriyya: Dirāsa ba`dh Jawānib al-Taghyīr wa `Alāqāthā bi al-Fuqarā` al-Hi`āzīn al-Zirā`īn" ["Directions in the Relations of Production in Egyptian Agriculture: A Study of Some Aspects of the Change and Their Relationship to the Poor Tenured Peasants"], *Masr al-Mu`āsara* No. 383 (1981), No. 383, pp. 87–148, 95–107.

<sup>4</sup> Salāh al-`Amrūsi, "Mulāhidhat Mawjazzah hawl al-Mas`alah al-Falahiyya fi Mandhūr al-Ishtirākīyyah al-`Ilmiyya," ["Brief Observations on the Peasant Question from the Perspective of Scientific Socialism"], in Ibrahim Wa`kharūn, *al-Mas`alah al-Filahīyyah wa al-Zira`iyyah fi Masr [The Peasant and Agrarian Question in Egypt]* (Cairo: Arab Studies Center, 1992), 23–24.

<sup>5</sup> Ibid.

<sup>6</sup> See Muhammad Duwaidar, *Al-Iqtisād al-Masri bayn al-Takhalluf wa al-Tatwīr [The Egyptian Economy between Backwardness and Development]* (Cairo: Dar al-Gami`at al-Masriyya, 1978), pp. 328, 329.

<sup>7</sup> Mahmūd `Abd ul-Fadīl, *Al-Tashkīlat al-Ijtima`iyyah wa al-Takwīnīyyah al-Tabaqiyyah fi al-Watan al-`Arabī: Dirasah Tahlīliyya li-Aham al-Tatwīray al-Ittijahīyyih khīlāl al-Fatrah 1952–1970 [Social Formations and Class Structures in the Arab world: An Analytical Study of the Most Important Developments and Trends during 1945–1985]* (Beirut: Center for Arab Unity Studies, 1997), pp. 85, 86; and *Economic and Social Transformations in the Egyptian Countryside, 1952–1970: A Study in the Evolution of the Agricultural Issue in Egypt* (Cairo: General Book, 1978), pp. 98, 110; Muhammad Madhat Mustafa, "Al-Islah al-Zira`i fi Masr: Bayn al-Nadharīyyah wa al-Tatbīq" ["Agrarian Reform in Egypt between Theory and Practice"], *National Social Magazine* (1989); Nicholas Hopkins, *Agrarian Transformation in Egypt* (Cairo: American University Press, 1987); `Adil Ghunaim, *Al-Namudhaj al-Masri li Ra`smaliyyah al-Dawla al-Tabi`a (1974–1982) [Egyptian Model of State Capitalism (1974–1982)]*, (Cairo: Dar al-Mustaqbal al-`Arabī, 1986), pp. 38–53; and Duwaidar, op. cit., 341–45.

<sup>8</sup> `Abdul Fadīl, 1978, pp. 46–47

<sup>9</sup> `Abd ul-Fadīl, 1992, p. 63.

<sup>10</sup> Ibid.

<sup>11</sup> Fathī Abd ul-Fattah Fathi, *Al-Qariyah al-Masriyya al-Mu`asarah bayn al-Islah wa al-Thawra (1952–1970) [Contemporary Egyptian Village between Reform and Revolution (1952–1970)]* (Cairo: Dār al-Thaqāfa al-Gadīda, 1975), p. 28.

<sup>12</sup> For more details about 20 cases of large landowners, see: Mahmud Matwalli, *Masā`at al-`Asr fi Tarikh Masr, Al-Qissah al-Haqiqiyyah li al-Lajnah al-`Uliya li Tasfiyyat al-Iqta` [The Tragedy of the Times in the History of Egypt, the Real Story of the Higher Committee for the Liquidation of Feudalism]* (Cairo: Dār Wahdān Printing and Publishing, 1976), p. 36.

- <sup>13</sup> Ghunaim, op. cit., p. 378.
- <sup>14</sup> Zuhdī Shāmi, “Al-Iqtisadi al-Siyāsi lil-Zirā’ah” [“Political Economy of the Egyptian Agriculture”], in `Ariyān Nasīf, ed. *Fī Ba`th `an Badīl li-Mashakil al-Zira`ah wa al-Falahīn fī Masr* [Seeking an Alternative to the Problems of Agriculture and Farmers in Egypt] (Cairo, Arab Research Center, 2008), p. 38.
- <sup>15</sup> Ghunaim, op. cit., p. 378.
- <sup>16</sup> Ibid.
- <sup>17</sup> Ibid.
- <sup>18</sup> Duwaidar, op. cit., pp 329–331.
- <sup>19</sup> `Abd ul-Fadīl, 1992, pp. 62–63
- <sup>20</sup> Ibid. pp. 98–110. This big discrepancy between the two estimates can be attributed to the difference in the average of rent value from Lower Egypt to Upper Egypt before 1952, while also the former estimate did not include the increase in income of farmers who share the crop yield, who had improved their situation with the reform so as to share equally with the landlords cost and revenue of production.
- <sup>21</sup> Duwaidar, op. cit., pp. 331–332.
- <sup>22</sup> Ahmad Hasan, “Al-Harakah al-T`awunīyyah al-Zira`īyya fī Masr: Al-Nisha’ al-Awalī wa Dururīyat al-Mustaqbil” [“Agricultural Cooperative Movement in Egypt: the First Creation and the Necessities of the Future”] in *Al-Mas’ala al-Falahīyyah wa al-Zira`īyyah fī Masr* [Agricultural and Peasants Question in Egypt] (Cairo: Arab Research Center, 1992), pp. 153–55.
- <sup>23</sup> Hasanain Kishk, *Ifqār al-Falahīn: Āliyat wa Subul al-Muwājihah* [The Impoverishment of the Peasantry: Mechanisms and Ways of Confrontation] Cairo: Dar Mīrīt, Cairo, 2004, pp. 143-145; al-Shamī, pp. 42–44.
- <sup>24</sup> `Abd ul-Fadīl (1978), pp. 98, 110.
- <sup>25</sup> Duwaidar, pp. 362–63.
- <sup>26</sup> Kishk (1996), op. cit., p. 113.
- <sup>27</sup> “The Peasants’ Charter” (The Declaration of Principles and Programme of Action of the World Conference on Agrarian Reform and Rural Development), at: <http://www.fao.org/docrep/u8719e/u8719e00.htm>.
- <sup>28</sup> See Maximiliano Cox, Paul Munro-Faure, P. Mathieu, A. Herrera, D. Palmer and P. Groppo, “FAO in agrarian reform,” at: <http://www.fao.org/docrep/006/i0415t/i0415t04.htm>. See also “Land Rights,” Module 18, in International Human Rights Internship Program and Asian Forum for Human Rights and Development, *Circle of Rights*, at: <https://www.huridocs.org/resource/circle-of-rights/>.
- <sup>29</sup> The Egyptian pound [جنيه مصري] (*ginaih Maşri*) is divided into 100 piasters, or *qirsh* [قرش] (pl. *qurush*/), or 1,000 *millim* [مليم] (French: *millime*). For more details on the worth of the EGP, please see: [http://en.wikipedia.org/wiki/Egyptian\\_pound](http://en.wikipedia.org/wiki/Egyptian_pound).
- <sup>30</sup> Abu Mandūr, *Trends in the Relations of Production in Agriculture in Egypt. A Study of Some Aspects of the Change and the Status of Poor Agricultural Holders*. Masr al-Muasira, Cairo, 1981, p. 196.
- <sup>31</sup> Zaitoun, 1998, p. 35.
- <sup>32</sup> Zainab Khair, *Women Overlooked. A Study on the Implications of the Lack of Legal Protection for Workers in Pure Agriculture*. Cairo: the Foundation of Women Legal Aid Center, 2004, pp. 75–76.
- <sup>33</sup> Keshk, Murtada, and Khair, *Legislative Requirements for Protection of Women Working in Agriculture: a Field Study*, through the Project of Institutional Support for NGOs to Implement the Recommendations of the Conference on Women (Beijing). Health and Environmental Development Association, Cairo, 2003-2004.
- <sup>34</sup> Ibid. pp. 38-39
- <sup>35</sup> Testimonies cited are taken from on a study conducted at the end of 1978 and reported in Reem Saad, *A Moral Order Reversed? Agricultural Land Changes Hands Again* (Cairo: American University, Social Research Center, 2001).
- <sup>36</sup> Ibid.
- <sup>37</sup> `Abd ul-Fattāh, op. cit., pp. 14–16.
- <sup>38</sup> Ray Bush, *Land Reform and Counter- Revolution*, in Ray Bush, ed., *Counter-Revolution in Egypt’s Countryside* (London, New York: Zed Books 2002), pp 3–31.



## **3. Gender**



## **Exclusion of Women from Land and Housing: The Case of Inheritance**

*Saïda Garach*

In Tunisia, and the Middle East/North Africa (MENA) region generally, excluding women from the benefits of property, including land and housing, is one of the most common forms of gender discrimination. It is rooted in religion, politics, culture and ideology, and reflects the depth of patriarchal institutionalization within society. The role of women in the maintenance and development of all types of land and property is often overlooked, and they are excluded from the calculation of household production of wealth or ownership. The enjoyment of ownership rights through the inheritance system is one of the main forms of gender exclusion and violates the rights of women and principles of nondiscrimination.

Addressing the issue of equality in inheritance is not without several difficulties, as it puts into question the relationships and the general framework of our societies; it questions the foundations of wealth distribution within our communities in the context of gender, and the role women play in economic life. Land, housing and property ownership are a source of material wealth, independence and security, which are critical elements to achieving human dignity, and correlated to other rights and principles such as employment, food security and social protection.

In many regions of the world, and in particular in MENA, women are the most vulnerable to rights violations as the state and other actors do not engage in projects that adopt equality as the foundation of citizenship. The state and authorities, at all levels, do not use the law as a mechanism to protect rights, or democracy as an instrument to manage public affairs and promote participation. The current religious interpretations of policy and law, and sometimes extremism, often reject equality and, to an extent, defend inequality with vigor. Taking into account these limitations and challenges, raising the issue of inheritance equality cannot be done in isolation from other issues, and we must ask what are the entry points and strategies that can be adopted to demand equality in inheritance policy? It is critical that we continue to demand equality in inheritance as a response to the real needs of women and the break the wall of discrimination. In doing so, we must mobilize politicians to harmonize national legislation with international obligations and commitments.

### **Foundations of the Discriminatory System of Inheritance in Tunisia: Sex and Religion**

Discrimination related to inheritance takes place on two levels: the first is through the patriarchal society and male hierarchy; the second is through the differentiation between Muslim and non-Muslim.

The issue of inheritance cannot be addressed without taking into account the preservation of discrimination over time. Inequality and discrimination has been preserved through generations, through the transmission of words and institutional terminology to discuss ancestry and origin, with a focus on men as the “founder” of the family. Property, thus, is granted and inherited following a male hierarchy.

Following the end of colonial rule, Tunisia’s new government undertook a large national building program that sought to develop a modern state. Within this process, the newly formed government

issued the Code of Personal Status (CPS) on 13 August 1956, which was a step toward addressing gender inequality in family matters, and to show “Islamic innovation” in policy and governance.<sup>1</sup> The CPS introduced policy reforms for regulating marriage, divorce, child custody and, to a small extent, inheritance.

In many ways this legislation was a landmark in progressive interpretation and policy for gender equality within the MENA/Islamic countries. This law included a ban on polygamy, created a judicial framework for divorce, and allowed marriage only by mutual consent. It also provided stronger protections for mothers and children, including legal adoption, joint custody of children in case of divorce, and judicial protections for children born out of wedlock. Although the CPS takes a secular approach to law, and Shari`a (Islamic law) is generally not one of the main sources for Tunisian law, the inheritance regulations within the CPS uses principles rooted in Islamic jurisprudence (Maliki School) that entitles men to double the share of women. This principle on inheritance is where the CPS failed to meet its progressive notions, as it does not fully protect women.

The discrimination in inheritance policy contradicts constitutional principles and international commitments to human rights. Since the declaration of independence in 1956, the Tunisian state has chosen to emphasize a commitment to the achievement of human rights. This is shown in the Tunisian Constitution, which includes the duty to defend and promote international human rights principles, and to integrate these concepts into the national and local legislative systems.

Tunisia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1968, and the International Convention on the Elimination of all Forms of Discrimination against Women (CEDaW) in 1985. Both of these treaties create the international framework for gender equality, which Tunisia has committed to, yet fails to realize in its dealings with inheritance. Article 16 of CEDaW specifically calls for equality in marriage and family relations, with subparagraph (h) stating: “The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”<sup>2</sup> In 2014 Tunisia officially lifted all reservations to the CEDaW it held on articles 9, 15, 16 and 29 in regards to equality in marriage and family matters, as well as international accountability and justiciability.<sup>3</sup> Following this action, the government should work to create corresponding and coherent policy.

In this vein, the recent Constitution adopted in January 2014 explicitly states that “all citizens, male and female alike, have equal rights and duties, and are equal before the law without any discrimination,” among other progressive commitments.<sup>4</sup> However, the first article of the Constitution states that “Islam is [Tunisia’s] religion... This article cannot be amended,” thus it can be argued that the Islamic jurisprudence and interpretation of inheritance, which give men double the share of women, is something that “cannot be amended.” However, as a “civil state” based on the “supremacy of law,” as stated in Article 2, there is a case to have a real discussion and policy changes, and a rereading of traditional Islamic jurisprudence. While there are many strong provisions in the new Constitution for women, these principles must be translated into laws before we can see any real gender equality, a task made more difficult with the resurgence of Islamic conservatism and, in some cases, extremism throughout the country.

Tunisians generally are subjected to an inheritance system based on Islamic text. However, this presents a problem, as mixed-sect marriages are increasing in Tunisia, with problems experienced mostly for non-Muslim women married to Muslim men. The Tunisian legal framework is largely silent on this issue, as it is not explicitly addressed in the CPS. However, the courts have used a restrictive interpretation that

does not allow non-Muslim women to inherit from their Muslim husbands. Article 88, which provides for the impediment of inheritance rights, states that homicide is “one of the impediments” (in Arabic, *min al-mawani*). The court has found that this article is not limiting, and that Shari’a law should be used to fill the gaps, or rather to find other impediments in the policy, including those who are not Muslim.<sup>5</sup> However, in 2009, a decision of the Supreme Court of Appeals found that a difference in religion does not support the denial of inheritance under the constitutional provision that allows for the freedom of worship.<sup>6</sup> This ruling, along with the provisions of the new constitution, should be the basis for change in the legal framework for inheritance for both women and non-Muslims.

On 17 April 2014, Tunisia notified the United Nations (UN) of officially having withdrawn all of its specific reservations to CEDaW.<sup>7</sup> These reservations had enabled Tunisia to opt out of certain provisions, including on women’s rights within the family, even though the country had ratified the treaty. Tunisia started this process in 2011, but only in recent days formally notified the UN. Tunisia is the first country in the region to remove all specific reservations to the treaty.

However, despite the lingering gender imbalances across the nation, many Tunisian families are seeking to bypass the legal texts that disfavor women, and place inheritance (including land and housing) as a “gift” within their will. This is done to preserve the rights of women and protect them from the inequality of the current system, specifically related to property inheritance, which can result in poverty and increased social and economic violence. However, these mentalities have not found practice in many rural areas, and as the law protects and unequal system, many women still suffer.

#### **Female Vulnerability and Marginalization:**

The economic situation in Tunisia is comparably better than its regional neighbors, with approximately 80% of the population designated as “middle class,” and a poverty rate of 3.8%.<sup>8</sup> The 2013, the *Human Development Report* ranked Tunisia number 46 out of 148 countries in gender equality. While women have an arguably better status in Tunisia compared to other countries, they still suffer economic and social discrimination, and general inequality. Women’s participation in the labor sector has hovered around 25% for the past ten years, as opposed to 70% for men. Additionally, in Tunisia, 26.7% of parliamentary seats are held by women, and 29.9% of adult women have reached a secondary or higher level of education, compared to 44.4% of men.<sup>9</sup>

Rural areas tend to have different qualities from urban areas, and Tunisia is no exception. The incidence of female-headed households in rural areas is rather high, with some estimates at 26%. This is due to increased male migration.

The feminization of poverty and impoverishment of women is ever-present at the global and regional levels, and reflects the relationship between gender and inequality, as well as the related economic and social consequences. The poor economic situation and opportunities for women constitutes risks to physical and social violence. It is critical to work toward greater economic independence for women in relation to housing, land ownership and access to education and decent work, which are critical components to protection from economic and social rights violations.

#### **Conclusion**

There is no doubt that the current work taking place in Tunisia is important, and can either better protect women, or widen gender inequalities. The current system which promotes privatization, demobilization and the protection of the wealthy. While also damaging the environment and promoting

unsustainable practice, the prevailing development model undercuts and often exploits vulnerable groups, including women. This model is also characterized by the proliferation of dictatorships and governance that does not recognize citizenship, equality and democracy, but is based on the repressive actions.

Tunisia has made many progressive strides in the region, and was the country that sparked the infamous “Arab Spring”; however, a long way is left to go before attaining equality for all citizens. The claim of equality in inheritance can only be put in the context of equality, citizenship and respect for law and justice, and giving full consideration to human rights obligations.

## Endnotes:

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  - <sup>2</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.
  - <sup>3</sup> Human Rights Watch, “Tunisia: Landmark Action on Women’s Rights,” 1 May 2014, available at: <http://www.hrw.org/news/2014/04/30/tunisia-landmark-action-women-s-rights>
  - <sup>4</sup> *Constitution of the Tunisian Republic*, 26 January 2014, unofficial transitional by the Jasmine Foundation at: [http://www.jasmine-foundation.org/doc/unofficial\\_english\\_translation\\_of\\_tunisian\\_constitution\\_final\\_ed.pdf](http://www.jasmine-foundation.org/doc/unofficial_english_translation_of_tunisian_constitution_final_ed.pdf)
  - <sup>5</sup> For information on this case, see: M. Voorhoeve, “Judges in a Web of Normative Orders: Judicial Practices at the Court of First Instance in Tunis in the Field of Divorce Law,” *University of Amsterdam* (2011), at: <http://dare.uva.nl/document/2/100509>
  - <sup>6</sup> “Tunisia”, *Women’s Rights in the Middle East and North Africa: Progress Amid Resistance*, ed. Sanfa Kelly and Jula Breslin, (Freedom House: 2010), at: [https://freedomhouse.org/sites/default/files/inline\\_images/Tunisia.pdf](https://freedomhouse.org/sites/default/files/inline_images/Tunisia.pdf)
  - <sup>7</sup> “Tunisia: Withdrawal of the Declaration with regard to Article 15(4) and of the Reservations to Articles 9(2), 16 (C), (D), (F), (G), (H) And 29(1) Made upon Ratification,” 23 April 2014, at: <https://treaties.un.org/doc/Publication/CN/2014/CN.220.2014-Eng.pdf>.
  - <sup>8</sup> *Supra note 6*
  - <sup>9</sup> See: UNDP, “Tunisia: Explanatory note on 2013 HDR Composite Indices”, *Human Development Report*, (2013).

## Women's Collective Land Rights: Laws, Customs and Violations in the Kingdom of Morocco

*Raja' al-Kassab*

Land ownership structures vary in Morocco among "private" and "public" state property, private property, army lands and collective tenure. Collective land accounts for about one-third of the arable land in Morocco, including land used for pastoralism, and is the livelihood source of many communities. Although this land is under collective ownership, it has been subject to looting and theft with the influx of colonial forces in the early 20<sup>th</sup> Century, which seized the finest agricultural land and removed peasants. To facilitate the regulation of collective land, authorities issued a set of decrees, the most important was on 19 April 1919.

The system of ownership and management of these lands functions to the exclusion of women from its use, based on antiquated norms aimed at maintaining land within the tribe. However, the agency of grassroots women's movements is actively changing national policies on women's rights to collective lands.

### Types of Property in Morocco

Morocco has a pluralistic legal system that is a mix of French civil law, Moroccan decrees, Islamic law and local customary law. As the country presently does not have a comprehensive land policy, this amalgamation of legal structures also affects land policy. This mixed land policy is primarily due to Moroccan structural transformation of property and land through the passage of time due to political, economic and social factors, and influenced by the different legal, religious and customary frameworks.

In Morocco, privately owned land accounts for 28% of the territory, which is subject to exclusive possession, use and transfer, and is often owned among family members. Meanwhile, 42% of the land is collectively owned and regulated through ancestral groups such as tribes or clans with familial, social and religious bonds.<sup>1</sup> This land is characterized by the group's rights to the land, rather than the individual's.

Collective land is often managed by a group, consisting of the heads of the tribe or family and/or community authorities assigned to this task. The usufruct rights to the land are distributed among the community. It should be noted that collective land is different from common property in that the latter is considered private property that is commonly shared among several individuals and, therefore, is subject to divisions and right of pre-emption (first refusal). Collective land is not regulated under the same framework and subject to the same rights. While collective land can be individualized and is heritable, transfer must remain within the community/is inalienable.<sup>2</sup>

Army [jaish, or *guich*] land is "private" state land that was gifted to some tribal leaders by the government in exchange for their involvement in the military, prior to the establishment of the French protectorate in 1912. These lands are managed similarly to collective lands, in that they are inalienable and the use rights are organized by the community. However, in this case, the state is the formal owner.<sup>3</sup> These lands are located primarily on the outskirts of major cities such as Rabat, Fez and

Marrakesh, and are inhabitants tenure on them is insecure, as the government likely turn to these lands to cope with urbanization.

State lands are divided into “public” and “private” state land. Public state lands are those that cannot be “possessed” because it is for general public use or public interests. In the case that it is unable to meet public needs, the can be converted to a private domain of the state under the Prime Minister’s proposal to the Ministry of Equipment and Transportation. These lands are considered public domain of the state under the Ministry of Equipment, as this is the body that is charged with maintenance and upkeep, but it can be found also in the public domain, in specific municipalities or local prefectures and regions.

The state also holds land within the private domain, and includes about 400,000 hectares of agricultural land, land acquired through expropriation and land used for government functions.<sup>4</sup> The property management is not linked to public ownership, and is not subject to the rules relating to the public domain, but the legal system is composed of several rules governing how to acquire and manage their affairs. Essentially, what emerges is private property with public financial disclosure.

### **Exclusion of Women as Beneficiaries**

Regulations for collective land ownership were first established with a decree (*dhāhir*) on 27 April 1919, originally intended to further the French colonizing mission.<sup>5</sup> In this decree, the collective lands are those owned collectively by a group or tribe, and the terms for ownership of land and the right to permanent use of land were dictated to be overseen by the head of the family/tribe, and did not specify whether this was to be male or female. The interpretation was made in the Ministerial Regulation No. 2977 issued on November 13, 1957 which indicated that the family heads or heads of the tribe are men who have been married for at least six months or widows that have at least one male son.<sup>6</sup>

Inheritance procedures also follow male lineage, as a “protection” of land. Following an old Amazigh custom, if the family unit representative dies, the assets (and land) are distributed among the heirs, except for women who typically are married to someone outside of the tribe. This tradition is still applied with the support of the Ministry of Interior and the mandate of the ethnic groups, despite the lack of a statutory basis or regulation preventing Moroccan women from having the same land rights as men.

Presently, as regulations on the sale of collective land have been liberalized, more and more unmarried and widowed women find themselves destitute and homeless, as their status has given them no rights to hold (or sell) the land or benefit from compensation.<sup>7</sup> In 2004, Morocco worked to reform the Family Code (or Personal Status Code). This code enshrined advancements for women’s rights in marriage (divorce, polygamy, etc.) and child custody. However, this introduced no real changes to the inheritance law.<sup>8</sup>

This narrow interpretation prevents thousands of women, despite their social status, to access this resource, which is in violation of the Constitution, which enshrines Article 19 providing that “The man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character.”<sup>9</sup> The Personal Status Code also contradicts the international human rights treaties, including on women’s rights, that Morocco has ratified.

Many female activists have decided to break the wall of silence and struggle for an end Morocco’s unequal land rights. This move surged after the government allocated thousands of hectares to real



estate investors at low prices, which decreased the area of collective lands that low-income families used. Many of these families were forced to move to shantytowns, without affordable alternatives. If the purpose of that allocation was to provide social and economic housing for low-income families, the investors instead allocated these lands for projects that served the high-income population, touristic projects, or built luxurious accommodation unrelated to solving the housing crisis or ending the situation of inadequate housing.

### **Soulaliyate Movement**

Emerging in 2007, the Soulaliyates [سلاليات] are a grassroots movement of women living on collective lands advocating equal rights. Many of the Soulaliyate women are “illiterate, poor and economically dependent on male members of families, despite their own substantial contributions to land productivity and the lack of recognition of their rights to collective lands.”<sup>10</sup> As noted, the highest concentration of available lands and natural resources in Morocco are collective lands, and these are women that have always worked the lands, but have no rights to own or benefit from them.

Since 2009, the Soulaliyates have lobbied successfully to government to issue ministerial decrees that enforced greater equality between men and women on issues of collective land. The 2012, a decree from the Ministry of Interior specifically stated that women and men should have equal rights to benefit from incomes made from collective lands, as well as reaffirming their rights to sell or inherit the lands.<sup>11</sup> This decree underlines commitment and coherence to the Convention on the Elimination of Discrimination against Women (CEDaW), specifically Article 2, which requires States “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”<sup>12</sup>

Part of the decree required all local authorities to follow the law, rather than custom or tradition, when dealing with matters of land inheritance. The traditional practice entitles the male child to two-thirds, and a female child is entitled to one-third. The Ministry of Interior also has created a web portal ([www.terrescollectives.ma/](http://www.terrescollectives.ma/)) to share information, including legal documents, statistics, and other materials regarding collective lands in Morocco.

Although the government has issued this ruling, enforcement has been inconsistent. Some gains have been achieved, however. In March 2013, and after six years of struggle, Soulaliyate women of the tribe Kesbat Mehdiya, in Kenitra (northern Morocco) became landowners. In this case, the tribe sold collective land to developers, and the women were compensated with plots of land. The 128 hectares (ha) of land will be shared equally among 867 female beneficiaries, and each plot’s beneficiary determined through a random draw.<sup>13</sup> There is still a long way to go, but the Soulaliyate movement is slowly moving toward greater equality for women to access and benefit from collective lands.

### **Conclusion**

The collective land in Morocco has great social and economic importance. Although the collective land is a large area, its role in the national economy is limited. This is due to several diverse reasons, including land utilization, distribution among rights-holders, and its management. The land guardian is completely dominant in managing the interests of these lands, and the decision of this mandate is not subject to appeal. These factors have led to large-scale grabbing of collective lands and thus, damaging the environment and displacing large groups of poor citizens, especially women.

However, with the new government regulations on collective lands, greater ministerial and judicial strength emboldens the grassroots women's groups who are fighting for their rights. The framework for change is solely emerging, and it is up to the government, including local authorities, and civil society to push for full enforcement and adherence to the equal access policy decided in 2012.

## Endnotes:

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  - <sup>10</sup> Soulaliyate organization profile, *Mapping South-South Cooperation Mechanisms and Solutions in the Arab States*, at: [http://southsouthworld.org/en/socialfactory-profile?task=page.display&view=page&page\\_id=49&user\\_id=163](http://southsouthworld.org/en/socialfactory-profile?task=page.display&view=page&page_id=49&user_id=163)
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## **4. Right to the City**



## The Arab World and Problems of Urban Growth: Toward a Regional Charter for the Right to the City

Baher Shawky

The process of urban growth in the Arab region<sup>1</sup> does not form any irregularity or exception to the overall urbanization phenomenon around the world, which has made up of a bewildering development of human settlements, particularly commemorated in 2008. That year, reportedly half the world's population, about 3.3 billion people, inhabited cities in this tremendous density for the first time in history.<sup>2</sup>

All cities have witnessed a growth of 1.83% from 1990 through 2000, either from small, medium or large towns in both the Global South and the Global North. This means that the urban population density in the world will include about five billion people by 2030 and about 6.4 billion people by 2050.

Every day, about 193,107 people newly join the residents of urban areas in the world; i.e., more than two persons almost every second. In absolute numbers, the urban growth in the developing world is ten times greater than in the developed world, where the former grew by an average of 2.5% annually during the 1990s. Meanwhile, the average annual growth in the developed world did not exceed 0.3% during the same period. In this context, UN-HABITAT analyses indicate that 17% of the cities in the developing world have witnessed an accelerated growth by 4% or more, while 16% of them have witnessed a growth rate ranging between 2% and 4% per annum. In contrast, about half of the cities in the developed world witnessed slow of urban growth, less than 1% per annum. This is while a significant percentage, about 40% of the world cities, saw a negative growth rates, and suffered a loss of population during the 1990s.<sup>3</sup>

<b>New Cities Emerging Cities and Population Since 1990</b>								
	<b>New Small Cities</b>		<b>Middle New Cities</b>		<b>Big New Cities</b>		<b>Total</b>	
	Number	Population density	Number	Population density	Number	Population density	Number	Population density
<b>Africa</b>	44	6,335,094	1	523,265	0	0	45	6,858,359
<b>Latin America, Caribbean</b>	171	27,138,867	6	3,930,127	2	3,008,885	179	34,077,879
<b>Asia (- India &amp; China)</b>	295	608,258,58	125	86,595,611	50	65,491,865	470	212,913,334
<b>China</b>	78	26,331,991	119	82,966,103	49	246	226	173,783,542
<b>India</b>	145	21,119,546	1	520,301	1	1,006,417	147	22,646,264
<b>Total</b>	<b>510</b>	<b>94,299,819</b>	<b>132</b>	<b>91,049,003</b>	<b>52</b>	<b>68,500,750</b>	<b>694</b>	<b>253,849,572</b>

**Source: Global Urban Observatory, UN-HABITAT 2008**

Despite the historic background of the urbanization phenomenon, its frequency has spectacularly doubled since the 1950s. As since 1950, dozens of major cities have seen growth rates of over ten times, including Chandigarh, in India, Kuwait City, in Kuwait, and the city of Tuxtla Gutiérrez, in Mexico. While some other cities have seen about twenty-fold growth during the same period, including the city of Brasilia, in Brazil, the city of Abidjan, in the Ivory Coast, and the city of Dubai, in the United Arab

Emirates. These changes have coincided with shifts in economic activities and employment structures from the agricultural to the industrial sectors, in addition to the growing economies of developing countries.<sup>4</sup>

This was reflected, of course, in the reality of Arab societies. As all of the Arab countries with the exception of some (i.e., Egypt, Mauritania, Yemen, Somalia), have a clear urban character, taking into account that the same trend is dominated by the evolutionary path of human settlements in the rest of the Arab societies. The Arab Region is projected to see its urban population more than double, increasing by 251 million between 2010 and 2050. By 2050, almost three quarters of the Arab Region will be urban.<sup>5</sup>

#### Demographic Trends or the Trend of the Urbanization in a Number of Arab States<sup>6</sup>

States	Population			Annual growth rate (%)		Urban (% of total)	
	Total (millions)			1990–	2010–	1990	2010
	1990	2010	2030	1995	2015		
<b>Algeria</b>	25.3	35.4	44.7	2.2	1.5	52.1	<b>66.5</b>
<b>Bahrain</b>	0.5	0.8	1.1	3.2	1.8	88.1	<b>88.6</b>
<b>Djibouti</b>	0.6	0.9	1.2	2.1	1.6	75.7	<b>76.2</b>
<b>Egypt</b>	57.8	84.5	110.9	2.0	1.7	43.5	<b>43.4</b>
<b>Iraq</b>	18.1	31.5	48.9	3.0	2.6	69.7	<b>66.2</b>
<b>Jordan</b>	3.3	6.5	8.6	5.6	1.4	72.2	<b>78.5</b>
<b>Kuwait</b>	2.1	3.1	4.3	4.3	2.0	98.0	<b>98.4</b>
<b>Lebanon</b>	3.0	4.3	4.9	3.2	0.8	83.1	<b>87.2</b>
<b>Libya</b>	4.4	6.5	8.5	2.0	1.8	75.7	<b>77.9</b>
<b>Mauritania</b>	2.0	3.4	4.8	2.7	2.1	39.7	<b>41.4</b>
<b>Morocco</b>	24.8	32.4	39.3	1.7	1.2	48.4	<b>58.2</b>
<b>Oman</b>	1.8	2.9	4.0	3.3	1.9	66.1	<b>73.0</b>
<b>Palestine (OPT only)</b>	2.2	4.4	7.3	3.9	2.9	67.9	<b>74.1</b>
<b>Qatar</b>	0.5	1.5	2.0	2.4	1.6	92.2	<b>95.8</b>
<b>Saudi Arabia</b>	16.3	26.2	36.5	2.3	1.9	76.6	<b>82.1</b>
<b>Somalia</b>	<b>6.6</b>	<b>9.4</b>	<b>15.7</b>	<b>0.2</b>	<b>2.7</b>	<b>29.7</b>	<b>37.5</b>
<b>Sudan</b>	27.1	43.2	61.0	2.6	2.0	26.6	<b>40.1</b>
<b>Syria</b>	12.7	22.5	30.6	2.8	1.7	48.9	<b>55.7</b>
<b>Tunisia</b>	8.2	10.4	12.1	1.7	1.0	58.0	<b>67.3</b>
<b>United Arab Emirates</b>	1.9	4.7	6.6	5.3	2.0	79.1	<b>84.1</b>
<b>Yemen</b>	12.3	24.3	39.4	4.6	2.7	20.9	<b>31.8</b>

#### Harmonious Urban Growth between Cities and Divided Cities

No doubt, the velocity of urban growth has left behind many dilemmas and structural distortions in the structure of Arab cities. Where the “current urban growth and rural-urban shifts in developing countries occur in a context of far greater absolute population growth, at much lower income level, in a context of weaker institutional and financial capacity, with considerably fewer opportunities for expansion abroad or beyond domestic frontiers.”<sup>7</sup> This was reflected in a significant increase in urban poverty, and ethnic and racial conflicts, as well as and homelessness, environmental degradation and marginalization of the poor, which is often manifest in the form of social exclusion and very low standards of living that cannot be tolerated. This, in turn, has contributed to the increasing of social unrest and urban violence.

Three parallel patterns have dominated the process urban growth in the Arab region: (1) the rapid growth of urban settlements, (2) the distorted or complicated growth of urban settlements and (3) social and spatial displacement.

### **First: Rapid Urban Settlement Growth**

Even with the exception of the distinguishing cases of Arab cities, which is witnessed a form of cancerous expansion over the two or three last decades (e.g., Dubai or Kuwait), the acceleration remains an essential character that dominates the urban growth. This shortened the process of Western urbanization, which spanned more than three centuries, in a period not exceeding fifty years.

In spite of the many different engines of this accelerated urban growth in the Arab region, the hinge of this growth is the excessive administrative centralization and unbalanced distribution of resources and services. What makes the capitals and major cities attract the citizens who seek jobs and a decent life, as an equivalent of social advancement, is represented in just the moving from the countryside to the city, or from the peripheries to the center. This situation is not limited to the Persian Gulf states, which are primarily urban states, but is common to the North Africa region, which is dominated by a phenomenon known as "urban core," represented in large concentration of people and investments in the largest city in every state, mostly in capitals. For example, in 1990, more than 10% of the urban population density in all 54 African countries concentrated in one major city. According to the available statistics, more than half of the urban population in Africa lives in big cities, where population density ranges between one and five million people, compared with 26% in Latin America/Caribbean, and about 38% in Asia.<sup>8</sup>

Also, the natural disasters (e.g., drought-famine) and ethnic conflicts have an important role in urban expansion in several Arab countries, where, for example, protracted civil conflict has increased the population density in the city of Khartoum, Sudan, from 2.3 million in 1990 to 3.9 million people in 2000.

### **Second: Distorted or Complicated Urban Settlement Growth**

In this pattern, urban growth has coincided with the absence of necessary economic stability to sustain it as well as to maintain the organic link between urbanization and structural poverty, as the close link between the phenomena of urbanization and the emergence of slums. Slum areas in North Africa, for example, grew at a rate of 4.53% in 1990–2000, while the average urban growth was 4.58% during the same period.

Contrary to the estimates of UN-HABITAT that categorize urban growth in the region according to a City Prosperity Index,<sup>9</sup> informal and excessive growth dominated the Arab world. This growth is characterized with rapidly increasing population and an economy that depends largely on the informal sector, widespread of poverty, propagation of informal settlements, serious health and environmental problems, and extreme social polarization. This is reflected, for example, in the cancerous expansion of informal settlements across the region as a whole. The number of informal areas in Egypt, according to government census, is 1,034 settlements, mostly forming belts of poverty around the capital and major cities. These settlements are, in most cases, centers of violence and organized crime. According to the Information and Decision Support Centers in governorates, these informal settlements include around 11,561 million residents, which is nearly 17% of the whole population. Despite the disparity between the kinds of housing available in informal settlements—which vary from traditional buildings of bricks and cement to huts built with tin, wood, and cardboard—they are all similar in their lack of services and infrastructure such as clean water and sewage, and persistent governmental negligence.

### Residents of Poor Districts in Arab Countries, 2005<sup>10</sup>

Country	Urban poor (Ks)	Urban poor (%)
Egypt	5.405	17.1
Iraq	9.692	52.8
Jordan	719	15.8
Lebanon	1.757	53.1
Morocco	2.422	13.1
Oman	1.461	
Saudi Arabia	4.07	18
Somalia	2.838	73.5
Sudan	13.914	94.2
Syria	982	10.5
Yemen		67.2

In Morocco, the available figures, until 2003, indicate the dominance of the phenomenon of slum dwellers on urban centers with the presence of about 900 thousand families, or nearly five million people; i.e., more than 30% of the total urban population living in slums.<sup>11</sup>

These are merely examples of interlaced and distorted patterns of urban growth that characterize the majority of the urban centers in the region; from Jordan (e.g., Jnāḥ neighborhood in Zarqa City) to Syria (Rukn al-Din neighborhood and the new regulatory region of the capital Damascus - Aleppo), and even the Gulf countries, as is the case in Saudi Arabia (al-Faisaliyah district of the capital, Riyadh), Kuwait (Salmiya and Subah al-Salim neighborhood in the capital of Kuwait).<sup>12</sup>

These slums reflect the contradictions of growth in an underdeveloped capitalist system. Thus, although the actual beginnings of these areas accommodate historic rural migration in pursuit of jobs, the last three decades have seen a qualitative change in the migration and settlement patterns in the slums. For instance, real estate speculation and the incredible increase of construction and housing costs have generated a new wave of migration among the lower middle class from the center of the capitals to the peripheries, where they sacrificed their right to basic services and facilities in pursuit for a dwelling within the scope of affordability. This, of course, has exacerbated the social and cultural contradictions and distortions in those areas. Despite many attempts to address this phenomenon by the governments in these countries, the development schemes faced successive setbacks as a result of a conflict among development concepts and the oppressive intervention in many cases to expel and take advantage of the high market value of the areas where they reside. This usually occurs without providing suitable alternatives to those people, which has transformed the plans of development into a policy for homelessness.

### Third: Social and Spatial Displacement

In parallel with what mentioned above, the urban growth in the MENA region accompanied also social marginalization and displacement of broad social groups. Starting from indigenous peoples (Amazigh in the Maghreb, Nubians in Egypt and Sudan, the Shiites and Bidūn [stateless people] in the Gulf countries) and taking into account also refugees and asylum seekers who now constitute an important segment of the urban population. Added to these segments is the expatriate labor at all levels, which contributes a growing share of the GDP of the Arab cities without enjoying any rights in managing or identify development priorities, although the majority of those employees spend successive decades in those cities. Spatial displacement is not confined only to those groups, whereas Arab "urbanization" has become synonymous with the increasing impoverishment and marginalization of certain categories of citizens, which is evident when reviewing the map of income distribution and poverty in the Arab region.

### Map of Poverty in the Arab States

As a result of the scarcity of public statistics and censuses in most of the Arab countries, as well as a lack of operational objectivity, we are left with only estimates of the extent of poverty in seven Arab countries. Thus, the number of people suffer severe poverty (earning less than a dollar per person/day) amount to about 7.1 million people, or about 4.2% of the total citizens of the seven countries. The total



number of the poor (at less than two dollars per person/day) amounted to about 51.1 million people, or about 30% of the total population. Despite the magnitude of these estimates, it undercounts the severity and extent of poverty in the whole Arab region, especially when taking into account the unavailability of data in many countries that suffer from the failure of economic structures and the prevalence of civil wars and conflicts, such as Sudan, Iraq and Somalia. Indicators suggest the progressive deterioration of social conditions and living standards for the vast majority of the population in communities made to live below the poverty line. For instance, in Iraq, before the economic blockade, invasion and infighting, the 1993 poverty rate had reached nearly 72.1% in urban areas, and 81.8% in rural areas. Then, several estimates count the total Arab population living below the poverty as more than 100 million people.<sup>13</sup>

The Distribution of Income in the Arab Countries											
State	Year of survey	Gini index	Income share							Poverty headcount	
			lowest 10%	lowest 20%	second 20%	third 20%	fourth 20%	highest 20%	highest 10%	% at \$1/day (PPP)	% at \$2/day (PPP)
Egypt	/1999 2000	34.4	3.7 %	8.6 %	12.1 %	15.4 %	20.4 %	43.6 %	29.5 %	3.1 %	43.9 %
Algeria	1995	35.3	2.8 %	7 %	11.6 %	16.1 %	22.7 %	42.6 %	26.8 %	2 %	15.1 %
Jordan	/2002 2003	38.8	2.7 %	6.7 %	10.8 %	14.9 %	21.3 %	46.3 %	30.6 %	2 %	7 %
Mauritania	2000	39	2.5 %	6.2 %	10.6 %	15.2 %	22.3 %	45.7 %	29.5 %	25.9 %	63.1 %
Morocco	/1998 1999	39.5	2.6 %	6.5 %	10.6 %	14.8 %	21.3 %	46.6 %	30.9 %	2 %	14.3 %
Tunisia	2000	39.8	2.3 %	6 %	10.3 %	14.8 %	21.7 %	47.3 %	31.5 %	2 %	6.6 %
Yemen	1998	33.4	3 %	7.4 %	12.2 %	16.7 %	22.5 %	41.2 %	25.9 %	15.7 %	45.2 %

Source; World Bank, *World Development Indicators 2007*, pp. 60–62, 66–68.

As for the Gulf/oil states, despite developments made in their status on the Human Development Index, Libya, Oman and Saudi Arabia elevated in the last report to the category of "high human development countries" after it was confined to only four countries are Kuwait, Qatar, UAE and Bahrain. It is naive to imagine this development as equivalent restoring the legendary "Garden of Eden" in its presumed original setting. Despite the total absence of any data regarding the distribution of income or the size and depth of poverty in these communities, whether in national or international reports, many significant indicators and transactions contribute to the unveiling of the "untold story" or the reality of poverty in the communities of "black gold." Evidence in this context is not limited to tensions and social unrest in Gulf capitals on which the authorities usually blame external *agents provocateurs* and expatriate workers, rather the material development figures are significant.

First, the relative Saudi openness or "glasnost," which come after a 2002 visit of then newly crowned Saudi Arabian King Abdullah bin Abdul Aziz to slums in the Saudi capital, Riyadh. There he made his famous statements "hearing is not like to seeing" and "responsibility compels us to get out of the offices" and "the problem of poverty will not be solved haphazardly."

This was followed by the establishment of the "Committee to combat poverty" in what was considered as a formal recognition of the deterioration of social and living conditions for increasing segments of

Saudi society. In spite of the scarcity of the studies issued by that Committee, some studies estimate that the size of poverty reaches 30% of the total Saudi population, or the equivalent of 4.8 million people. Regardless of the validity or their compatibility with government data that estimates the number of the poor by about 1.5 million people, or nearly 9% of the total population, the irony is that Saudi poverty is no longer relative, or a special kind, where people think they are poor, but only in income. The high rates of unemployment—the overall rate of unemployment, according to official estimates, is nearly 9.8% of the total labor force—plus the weakness of government salaries and rising inflation, all have caused a deterioration of social and living conditions for many categories of Saudi citizens.

Important evidence in this regard is represented in the documentary prepared by a Saudi media director called Tarad al-Asmari under the title “My Salary is a Thousand of Riyals,” which tells the suffering of a Saudi man who works as a security guard in one of the commercial buildings in Jeddah, and his monthly salary is SR 1,200, while he sustains a family of seven persons. Also significant is the study prepared by Dr. Rashid al-Baz, the scholar of Social Service at the University of Imam Muhammad bin Saud Islamic University in Riyadh, which was published in 2005 under the title, “*A Study of Poverty in the Kingdom.*” It sets the poverty line in Saudi Arabia at SR 1,600 per person per month, while defines the extreme poverty line at SR 1,200, without factoring the cost of housing.

What we mentioned about Saudi Arabia is also applicable on most of Gulf countries. For example, based on data released by the Ministry of Development in Bahrain, people who live under the poverty line in that monarchy is nearly 12% of the total citizens of Bahrain, where the number of households that receive monthly aid of the Executive Committee for the Disbursement of Subsidy are about 9,928 families out of 83,000 families in Bahrain. Other Gulf countries also have witnessed a steady increase in the number of families whose livelihoods depends on regular subsidies from the local *Zakat* (Islamic charity) funds.

In Qatar, for instance, 3,335 persons receive assistance from the Organization of the *Zakat* Fund, while the *Zakat* Fund in Kuwait sustains 200 Kuwaiti families. In spite of the relatively small numbers mentioned, the small population sizes for the Gulf states and the sensitivity of the phenomenon itself heighten the implications and significance of the reality of poverty in the Gulf societies. This is not mentioning the absence of classification criteria adopted by these funds for the distribution of *zakat* and social benefits, which indicates an exclusion of many of the outstanding group, based on nationality and citizenship criteria.

We mean here not the poor expatriates, but groups come in the forefront of the category of “*Bidūn*” (stateless people) who are scattered along the eastern coast of the Gulf countries in tragic situations. They lack the most basic human rights, ranging from nationality/citizenship to the rights to health care, education and decent work, and finally endure displacement and migration. The exclusion of this big group, which is estimated by 350,000 persons before 1990, results from the policies of pressure and displacement. In Kuwait, their number has been shrinking to about 93,000, while, in the United Arab Emirates, the *Bidūn* range between 10 and 30 thousand people. However, the population has been reduced statistically, if not in the actual size of poverty in Gulf societies.

### **Expatriates, or Wealth Producers, between Deprivation and Marginalization**

The human rights and living conditions of expatriate workers is considered a main characteristic of the process of Arab urbanization, especially in the Gulf where expatriates’ percentage in economic activities

compared to national workers is quite high. According to available estimates for 2007 from the Gulf Cooperation Council (GCC), foreign labor force varied between 12 and 14 million person, representing nearly 38.5% of the total 34 million population of the Gulf. Estimates from the Arab Labor Organization report that the size of expatriate foreign workers in the Gulf varies between 16 and 18 million workers. Asians form around 72% of the total labor force, Arabs vary between 5% and 9%, while national labor amounts to 5–8%. There are expectations that the number of foreign workers will increase to 30 million during the coming 10 years.<sup>14</sup>

Foreign employment rate to the total national employment differs from a Gulf country to another. In the UAE, the most one employs foreign labor, foreign workers and their families account for about 80% of the total population, while Saudi Arabia is the largest market for foreign workers in the Gulf region, hosts nearly seven million foreign workers and their families, make up about 30% of the total population. In Kuwait 1.475 million people, or 63% of the population, while in Qatar there are 420 thousand inhabitants, equivalent to 72% of the total population, and in Oman 630 thousand people make up 26% of the population, while Bahrain has 280 thousand people, representing nearly 26% of the population, though many estimates indicate that expats have reached nearly half of the population in Bahrain.<sup>16</sup>

**Matrix of Mobility on Arab Countries<sup>15</sup>**

State	IDPs	Refugees, asylum seekers, exported	Refugees, asylum seekers hosted	Output immigrants	Hosted immigrants	Total population	Total moves	Mobility Index
Bahrain	0	82	18	7.278	295.461	742.562	302.839	<b>%41</b>
Egypt	0	9.307	104.468	1.429.174	74.897	73.671.661	1.617.846	<b>%2</b>
Iraq	2.256.000	2.200.000	46.586	348.110	1.393	28.810.000	4.852.089	<b>%17</b>
Jordan	N/A	2.378	519.486	182.739	423.775	5.600.000	1.128.378	<b>%20</b>
Kuwait	N/A	742	575	126.181	1.667.472	2.457.257	1.794.970	<b>%73</b>
Lebanon	-248.000 800.000	100.000	22.743	121.261	253.505	4.000.000	-745.509 1.297.509	- <b>%19</b> <b>%32</b>
Oman	0	47	14	1.094	627.571	2.577.000	1.155	<b>%4</b>
POT	-24.500 115.000	753.000	0	267.620	0	3.888.292	- 1.045.120 1.135.620	- <b>%27</b> <b>%29</b>
Qatar	N/A	58	81	571	636.705	838.065	637.415	<b>%76</b>
SA	N/A	671	311.050	11.439	6.120.320	23.678.849	6.443.480	<b>%27</b>
Syria	305.000	12.337	707.422	194.114	554.575	19.040.000	1.773.448	<b>%9</b>
UAE	N/A	277	206	1.930	3.211.664	4.018.314	3.214.077	<b>%80</b>
Yamen	<b>35.000</b>	<b>1.723</b>	<b>96.653</b>	<b>432.922</b>	<b>196.086</b>	<b>21.600.000</b>	<b>-727.379</b> <b>727.384</b>	<b>%3</b>

Despite the fact that such employment, according to several analysts, represents the “builders of the Gulf countries” and the actual producers of wealth, and although the vast majority of them spend decades in these states/cities, they do not have any rights or little participation in the management and distribution of resources and services. This is addition to what they expose to of oppression and extortion as a result of the system of *kafil* (sponsor). Further, they are often vulnerable to deportation and collective punishment in the case of any political tensions among the ruling authorities of their

countries. As happened after the second Gulf crisis (2003), both Saudi Arabia and Kuwait collectively expelled more than 1.2 million resident workers, including 25,000 Sudanese 400,000 Jordanians and 850,000 Yemenis.<sup>17</sup>

Urban growth deformities in the Arab world are not limited to social dislocation in the sense of absolute isolation from managing and distribution of resources in the meager share of public spending on services and facilities. It has reached the extent of spatial dislocation. The last years have witnessed a growth in forced evictions and expropriation of property of whole groups of the population, expelling them from the centers of capitals and major cities as a result of speculations and real estate investment. Despite the violations and losses from these incidents, it is nothing compared to what governments are about to do from collective deportation of the poor, using urban planning as the pretext. The Solidere project in Beirut and the 2050 Greater Cairo Plan are examples of what dispossession and displacement are happen in the name of development and urbanization.

### **From Urban Growth to the Right to the City**

The pressure of rapid growth and growing economic and social disparities, as well as the environmental deterioration in the Arab region, form tremendous challenges for good governance and the development process. However, at the same time, these conditions provide opportunities for reviewing urban planning and management approaches to the development of local assets and focusing on social justice, leading to the achievement of harmonious urban development. The Right to the City is a new concept and methodology emanating from civil society. Advocates are not only calling for new rights, to include (the right to transportation, land, leisure and energy, etc.), but also demanding participatory democracy and a comprehensive approach connecting participation in decision making and policy making with fair distribution of resources and services (economic and social human rights).

Despite the debate in dealing with the “right to the city,” whether as a political approach or a human right-based approach, both share a common denominator. The characterization of the city is a subject of marketing on the regional and global levels, as seeds of energy in the global power grid.<sup>18</sup> Economic globalization has led to subjugating national economic and social needs to global competition, whereby the urban condition is seen as fulfilling a hegemonic global vision in the form of “world-class cities.” Hence, the urban strategies of many governments has diverted creating an enabling environment for human settlement development toward competition at attracting capital at the expense of human rights considerations, environmental requirements and standards of sustainable development.

Defending the right to the city has become a struggle against exploitation and the growing capitalist marginalization exemplified in the “global city,” or rather against the crisis of capital accumulation that, since the beginning of the 1970s, had taken a clear urban character as described by the geography professor David Harvey. Urbanization expanded when the global bourgeoisie started to invest a large section of the capitalist surplus in real estate assets, rather than employing this surplus in the expanded reproduction process. This was reflected in the increase inflationary pressure on real estate prices and regular explosion into expanded financial crises. This has contributed in varying degrees to reducing the cyclical financial crises. While the world witnessed 56 financial crises in the period 1945–70, it saw 378 financial crises in the past four decades alone. This has become more critical as the total value of the global economy increased to more than 50 trillion dollars (it is expected according to the average 3% annual rate that the value will double to reach 100 trillion dollars by the end of the next 25 years), which will lead to a doubling of land speculation and real estate assets.

Facing these challenges/distortions, the "right to the city" represents and contextualizes a new methodology capable of confronting government planning and forced social engineering approaches and their negative consequences of eviction of communities/spatial displacement that are being widely implemented under the influence of neoliberal policies. These dynamics lead to the establishment of conflicting "ghettos," or divided cities, instead of harmonious cities. This right-to-the-city methodology or approach found its normative importance in the definition of the city as a place to live applying human rights—a "human rights habitat." The essence of the right to the city is represented in the presence of the role of each individual in the construction and management of the city for all its inhabitants.<sup>19</sup>

The importance of the "right to the city" lies also in its collective character that aims to operationalize the obligations and practical standards that need to be adopted by civil society, local administrations, central governments and international organizations alike, in order for all people to live with dignity and enjoy all their human rights to adequate housing and the commons, including, in particular, in the cities. Its approach of participatory democracy grants the right of citizenship to all residents in the city, whether they are permanent residents or transitory. This principle is based on the recognition of their basic human rights regardless of social, economic, civil or tenure status. Accordingly, the right to the city becomes the tool guiding urban operations to get the best out of economic development, public administration, structural planning, human rights, as well as to strengthen the claim of rights and the struggle that culminates in the application of human rights in the city.<sup>20</sup>

## Endnotes:

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- <sup>1</sup> The references to the "Arab region," "Arab countries" and "Arab world" encompass those contiguous territorial states making up the League of Arab States, including also historic Palestine and Western Sahara—Ed.
  - <sup>2</sup> As estimated in United Nations Population Fund (UNFP), *State of World Population 2007* (New York: UNFP, 2007), at: [http://www.unfpa.org/sites/default/files/pub-pdf/695\\_filename\\_sowp2007\\_eng.pdf](http://www.unfpa.org/sites/default/files/pub-pdf/695_filename_sowp2007_eng.pdf).
  - <sup>3</sup> *State of the World's Cities 2008/2009, Harmonious Cities*, UN-HABITAT, p. 11, at: <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2562&AspxAutoDetectCookieSupport=1>.
  - <sup>4</sup> Ibid, p. 15.
  - <sup>5</sup> Barry Mirkin, "Population Levels, Trends and Policies in the Arab Region: Challenges and Opportunities," *Arab Human Development Report*, Research Paper Series (New York: UNDP, 2010), p. 16, at: <http://www.arab-hdr.org/publications/other/ahdrps/paper01-en.pdf>.
  - <sup>6</sup> UNDP, *The Real Wealth of Nations: Pathways to Human Developments*, Human Development Report 2010 (New York: UNDP, 2010), pp. 191–88, at: [http://hdr.undp.org/sites/default/files/reports/270/hdr\\_2010\\_en\\_complete\\_reprint.pdf](http://hdr.undp.org/sites/default/files/reports/270/hdr_2010_en_complete_reprint.pdf).
  - <sup>7</sup> Report of the Executive Director of the United Nations Center for Human Settlements on the review and appraisal of progress made in the implementation of the Habitat Agenda, at: [http://www.un.org/ga/istanbul+5/A\\_S25\\_3\\_English.PDF](http://www.un.org/ga/istanbul+5/A_S25_3_English.PDF). [Ed.]
  - <sup>8</sup> *State of the World's Cities, 2008/2009: Harmonious Cities* (Nairobi: UN-HABITAT, 2008), pp. 103–12.
  - <sup>9</sup> UN-Habitat, *State of the World's Cities, 2012/2013: Prosperity of Cities* (Nairobi: UN-Habitat, 2012), at: <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3387>. The UN HABITAT report of the 25<sup>th</sup> special session of the General Assembly in 2001, characterizes many cities with fast growth, but with environmental problems and a fall in the ability to deal with these problems. These cities feature steady population growth and an elderly population, particularly in most of east Asia, Latin America and the Middle East/North Africa.
  - <sup>10</sup> Ibid, pp248
  - <sup>11</sup> Raja` al-Kassab, "al-`Ashwa'iyat bi al-Maghrib...aw Intihak al-Haq fi al-Sakan" ["In Morocco, Informal Settlements or Violation to the Right to Housing"], paper presented at the 3<sup>rd</sup> round of Land Forum in MENA.
  - <sup>12</sup> Muhamed Mahmoud Yousif, "al-`ashwa'iyat al-Tajriba al-`Arabiyya wa al-`Alamiyya" ["Under the Crisis of Housing"] [Arabic], at: [http://www.cpas-egypt.com/pdf/Mohamed\\_Yossef/Research\\_Other/PDF/006.pdf](http://www.cpas-egypt.com/pdf/Mohamed_Yossef/Research_Other/PDF/006.pdf).
  - <sup>13</sup> According to estimates by the Arab Society for Economic Research, "The number of Arab citizens living below the poverty line are more than 103 million people."

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<sup>14</sup> *Strategic Economic Directions* (Cairo: al-Ahram Strategic and Political Studies Center, 2008), p. 178.

<sup>15</sup> Ibid. p 23.

<sup>16</sup> Ibid.

<sup>17</sup> Joseph Schechla, "Arab Cities under Wars, Conflicts and Challenges Facing Social Solidarity and Implementation of Human Rights," paper commissioned by ESCWA, at:

<http://www.hlrn.org/img/documents/Arab%20Cities%20Final%20en%20300308.pdf>.

<sup>18</sup> Report of the executive director of the UN Habitat 6-8 June 2001, pp 8-9

<sup>19</sup> The World Charter for the Right to the City, at:

<http://www.hlrn.org/img/documents/World+Charter+Right+to+City+May+05.pdf> .

<sup>20</sup> Ibid.

# Toward Comprehensive Interventions in Informal Settlements in Cairo

*Ahmed Sedky*

Informal settlements, or slums, are one of the biggest challenges across the Third World, and during times of upheavals and political turmoil these challenges increase. In the case of Egypt, we have witnessed relentless increase and expansion of informal settlements that complicate the legal aspects of the problem, as well as strategic planning in the country, as the government views them as encroachments and violations. The struggle between those striving for their basic human right to adequate housing and those charged with drafting the national development plans reflects official negligence of the real issues of informal settlements, while criminalizing those who inhabit these areas.

A different paradigm of thought and practice is needed in all sectors, from planners to politicians, sociologists and even the media. A more-comprehensive and socially oriented development approach to informal areas is essential at all levels, from diagnosing the causes and consequences, to drafting and implementing development strategies. The major challenge is more than ideological, and embodies also complex problems and dilemmas related to the availability and distribution of resources, and demands reform of technical and public-service roles of practitioners (architects, engineers, urban planners, etc.) responsible for guiding the national planning process and development strategies. It is necessary also to exchange experiences and build capabilities on the “informal” (popular and social production) side of the equation to better enable inhabitants to engage effectively in the processes and to improve contextual understanding and critical evaluation among all parties. Proactive, popular initiatives still must be encouraged and supported as an alternative to the currently unbalanced official interventions, whereas social production of housing generates far more housing solutions than the official interventions and the formal market combined.<sup>1</sup>

## **The Problem**

Informal settlements are urban expressions of social, economic, cultural, governance and political deficiencies. The common problem of the poor residents in informal areas is a lack of access to good quality, often expensive planning and design services, due to limited resources. These services are often only available for formal, investment bodies that can afford them, a dilemma of socio-cultural, economic, political and technical dimensions.

Another common problem in informal settlements are interventions that lack a comprehensive perspective, whether due to conflict or lack of coordination among stakeholders. This is either due to an unbalanced matrix of responsibility, with, for example, the domination of one party over the other, and funding imposed on projects with conditions that are unrelated to the priorities or needs of the community in question. Creating a development link with local communities, in order to meet their actual needs, as well as provide them with culturally appropriate interventions is a challenge that has not been effectively met.

This paper explores the socio-cultural, economic, political and technical dimensions of informal settlements in relation to the primary stakeholders: the government, as the responsible authorities and official planners; “society,” or the larger community within the formal planned areas that neighbor

informal areas; the technical communities and bodies such as NGOs, practitioners and planners, sociologists and anthropologists involved in or consulted by the government for the development and upgrading of informal settlements; the international community involved in capacity building, as well as funding; and local communities that include the community based entities/societies and individuals living within informal areas. The cases discussed are taken from Cairo, Egypt, but are relevant to other areas that face serious political complications, economic deterioration and crippling poverty.

### **Socio-Cultural Dimension**

In the Greater Cairo Region (GCR), informal settlements appeared as early as the 1940s in 'Izbit al-Hagana, in eastern Cairo, to accommodate the families of those coming from outside Cairo to serve in the military forces. Most of the inexpensive housing in Cairo is distributed in close proximity to the neighborhoods that were developed in the late 19<sup>th</sup> and early 20<sup>th</sup> Centuries to house Cairo's wealthy elite. These poor neighborhoods emerged for those serving the wealthy communities. By the mid-20<sup>th</sup> Century, in the warehouse district of Imbaba, the government developed housing blocks for laborers during the reign of King Faruq (1936–52). This development reflects the common governmental approach to housing that continued until the Gamal `Abd al-Nasser period in 1950s and 1960s.

However, this model was not sufficient to answer the ever-growing need for housing in a growing city with a large influx of rural migrants who sought refuge in informal areas. The government, however, ignored the growing demands for affordable housing and the settlements continued to grow and expand. The government perceived these areas as a burden and a center for criminals, while the informal community saw the government as a threat that might take away their only means of housing and shelter.

However, the other social groups in the city also have many negative perceptions of informal areas. The environmental and physical concerns are the least prominent, but these cramped and overcrowded areas are generally perceived as environmental and health hazards, as well as a burden on the traffic system and other urban infrastructure. The most negative perspective of society at large is that these areas could be a potential source of social upheavals, thanks to the common portrayal in the media and soap operas, which contribute to the popular culture of social segregation afflicting the informal areas.

The international community has regarded informal-area residents as a key beneficiary for development programs and funding in recent years. However, with the current political sensitivity within the government and informal communities, these agencies often act in coordination with the professional society and the government, rather than in direct coordination with affected communities, contributing to the complexity of the problem.

Local communities have developed various perspectives toward their own community. Older informal settlements, while still behind in general living conditions and standards (infrastructure, etc.), have found some sort of balance. These communities have a relatively well-defined social system that contributes to more-efficient informal governance and management of the community. Such a system is based on local cultural institutions and regional customary rules (*'urf*, in Arabic), such as the role of the community leader and his authoritative commands, as well as the religious and social customs carried along from the rural or other origins. These structures create a strong sense of community, enabling these areas to be relatively more integrated, and perceived as public/traditional quarters, as opposed to new informal areas. They also are living examples of the integration of rural and urban features of GCR.



On the other hand, new informal settlements and transitory communities located in more-unsettled zones, including so-called “unsafe areas,”<sup>2</sup> are some of the poorest communities, living in deplorable housing configurations, shacks and tin houses. Members of these areas are not only segregated from the overall larger city community, but also from their nearby older informal settlements. These areas represent a critical humanitarian situation that demands for socio-cultural rehabilitation to be a core component to any urban upgrading.

### **Economic Dimension**

As mentioned previously, the government funded most of the housing demands during the 1950s and 1960s. However, the 1970s witnessed a shift in the economic paradigm in Egypt, from socialism to capitalism, or better known as the “open door” (*infitāh*) economy under President Anwar al-Sadat. Then spearheaded by President Husni Mubarak in the 1980s, the privatization of the remaining public sector entities took place in the following decades, further establishing a neoliberalism economic system with concern for profit over social protection. The government failed to answer the ever-growing demands for housing, especially in informal communities. The government-provided housing stock for residents of informal areas was very limited, compared to the economic housing schemes provided for new graduates and youth and other upper-class housing stock. Low-income housing stock was provided by the government for predominantly political reasons, which will be illustrated below, but since the Sadat-era this practice has ended and individual contractors have taken over completely. These contracts focused on investment returns (for the private interests), compromising quality and urban conditions due to poor regulations, oversight and government negligence.

The huge economic gap in Cairo maintains the development and proliferation of informal settlements. The fragile economy and lack of urban-taxation system, such as a city council tax, or some sort of social responsibility tax to upgrade existing informal settlements, have left limited public funds to be used toward upgrades and improvements of informal areas. This has left technical and funding support for community upgrades to individual investors and the international community. It was not until recently, after the 25 January 2011 uprisings, that Egypt started to see some social funds raised from the local planning groups—with a political, rather than social or technical motivation—to improve and study informal areas.

Since the Earth Summit in 1992 global awareness has grown about the need for greater sustainable development. Many First World countries, as well as other international organizations and funds, such as the International Monetary Fund (IMF), UN Habitat, and national and regional aid organizations, designated technical consultation and financial aid to social and urban development. However, this aid was subjected to political considerations of extraterritorial interests and local elites that determined the extent and type of developments permitted, which is also true in Egypt.

The local community plays a varied economic role in more-successful, well-established or older informal settlements. Some of those community members might have the ability to invest in more-affordable housing units or even work as contractors and laborers to build their homes themselves and the community. In these older informal areas, residents vary in social standards, education level and income, and they are not only zones that accommodate impoverished rural migrants. The growth of informal settlements is a response to the demand for adequate and affordable housing. Residents of these areas demand a definition different from that introduced in the previous section; they want to be perceived as those seeking housing stock away from the government’s umbrella.

The others living in unsafe areas are more economically and socially segregated, and are the common recipients of government and international community interventions and financial aid. Unlike the older settlements that are more integrated in the urban economy and society, this group consists of casual workers, or those with very small incomes. This community, which suffers from a more-degraded environment and segregation/stigmatization, might prioritize financial gain to any other consideration. This group likely will not be able to contribute to, or invest in enhancing their environment due to their very limited finances. They might even compromise their chances for better housing by selling the units provided by the governorate and return back to a below-standard housing situation. Thus, they compromise their chances for better amenities and living conditions due to severe and chronic poverty.

### **Political Dimension**

Except for pre-election periods, the government has largely turned its back on informal communities for decades. Before elections, potential members of parliament and local representatives make election promises that they usually never fulfill. The politicians normally focus on short-term gains that end when they are appointed. During the Mubarak era (1981–2011) the government implemented only one public-housing scheme and community upgrade in *Zinhum*, financed by the Egyptian Red Crescent and led by First Lady Suzān Thābit Mubārak.<sup>3</sup> The people of *Zinhum* represented a large voting segment for Ahmad Fathy Sorour, head of the Egyptian Parliament for more than three decades and one of the close allies to the Mubarak government. Some housing schemes in other areas were provided by the Cairo Governorate after the 25<sup>th</sup> January uprising to confront the growing anger and protestation over the social and economic conditions in Egypt. The informal communities benefitting from these schemes were in Manshiyat Nasr (east Cairo), which also represented potential voters that were targeted by those competing in the parliamentary and presidential elections.

Moreover, the government and its security forces use informal areas and take advantage of the crippling poverty to create bands of thugs. These grounds were used often during election periods against Mubarak's opponents, a tradition still in use until today. This adds to the negative perspective of these areas contributing more to their segregation.

Government security forces are also suspicious of any interventions from local CSOs and NGOs, as well as from the international community, evident through the scandal of foreign aid sources in 2012. However, some international groups were initiated in order to strengthen political relations between the granting country and the recipient, which can be used as a tool of political pressure in some cases. For example, the United States government exercises some influence on Egypt through the annual grant it gives to the government and the military. Furthermore, the international community might focus more on fulfilling their organizations' agenda or the funder's "theme" decided in North America, Europe or within UN organizations, rather than the actual needs of those living in informal communities.

Except for some cases from Latin America, informal communities are politically vulnerable in Third World countries, and especially in the MENA region, due to the centralized, undemocratic political model. In Egypt, vulnerable communities are not prioritized or even properly recognized by the current and previous regimes, and the local community interests are not considered. The unnecessary extermination of the swine stock kept by the Christian Copts a few years ago, in response to the "Swine Flu" outbreak,<sup>4</sup> reflects the extent of how politically incapable and vulnerable informal communities are. It also reflects the government's brutal policies and unawareness, or rather insensitivity, of the economic values and needs of the informal communities.

Due to the government's negligence, the international community remains the predominant supporters for informal communities. Some community-based organizations (CBOs) or nongovernmental organizations (NGOs) from informal communities, as well as professional societies that have more capacity in development and grant proposals, tailor their applications to fit the priorities of the granting source and given theme, rather than the actual environmental or social problems and needs of the community in question. Taking into consideration the very restrictive government rules for NGOs and development grants, local communities or other local entities might turn into "grant hunters," minimizing the efficiency of their interventions (social or physical), as priority is given to budgetary reports and other tasks.

### **Technical Dimension**

For a long time, the government was the only actor that provided technical support for informal communities. In recent years, this has been resumed, as mentioned above in the Zinhum example and recently in al-Nahdha, for those facing hardships and compulsory eviction from unsafe areas such as al-Duwiqa, where the community suffered a rockslide, causing many deaths, injuries and the destruction of homes.<sup>5</sup> However, regardless of the long experience of the government providing this type of housing for communities, it is obvious that the problem was not only in the limited number of units available of this type of housing, public housing, or in its provision mechanism, but also in the design of units. The architectural design and material qualities were questionable. This is best illustrated in the amount of appropriations made both externally, as can be witnessed through relandscaping and additions, and internally. Furthermore, the government provides only a single housing design: blocks. Recently we have started to see the expandable family courtyard house, but mostly in very remote settlements.

The design—or lack thereof—shows the insensitivity to the socio-cultural and economic needs of the community. There is a great need to adopt Post Occupancy Evaluation (POE) analysis to turn the previous experiences into a gold mine of knowledge and to guide future supply of housing. In fact, there is some quality research undertaken by some government and international community centers, but it has not yet been implemented or integrated with the currently applied practices. This might be due to the absence of an overall framework for drafting a strategy for this kind of development in the current and even previous political atmosphere, which never prioritized rights in general, and especially those of informal communities. Moreover, Environmental Impact Assessments (EIA) are almost absent from the given schemes and government's interventions. The government acts rather in a reactionist posture, similar to most Third World countries, and without the inclusion of the local community.

The professional community (syndicates, professional associations, technical NGOs, etc.) are closely monitored by the government and often coordinate with the government to apply for support from the international community. Even the interventions provided by the nongovernment technical community can be criticized for not being responsive enough. Any individual from the technical community, a planner or an architect, might have different priorities and qualities that do not meet the pressing demands or needs of the informal community. For example, within the informal community, architectural aesthetics might come at the bottom of the list, if compared with some physical considerations for urban design or functionality and cultural aspects. Professionals should be able to give up the conventional, typical academic approach to design that might fit any other formal settlement or an average integrated (recognized) community.

On a more profound level, the government, technical community and the international community have not fully considered or applied unconventional construction methods and building technologies as

potential technical alternatives. One such example is the use of foam concrete, which would reduce significantly the price of building housing units. This lack of explored alternatives could be due to the corrupt system during the Mubarak era that prioritized the profits of certain companies/cartels that manufacture steel and cement. Those figures played a leading role in the Egyptian economy and politics, and were commissioned by the government for major housing schemes.

On the other hand, the international community has invested in research with informal communities and the technical community. However, the outcomes are still in the form of reports and recommendations to the government rather than action, due to the sensitive and precarious nature of the international community in Egypt. However, thanks to the international community, many effective planning techniques that increase the efficiency of development schemes were introduced, mainly to the government and technical community, and to a small extent some informal community leaders and CBOs through participatory approaches and capacity building.

The main beneficiary, the informal community, is still not empowered. Informal communities are still denied their right to monitor and question the efficiency or reason behind development schemes. It was only in recent years that the local communities were invited to participate in planning and development discussions that were undertaken by the international community and technical bodies.

## **Conclusion**

Informal settlements are a complex urban phenomenon, and the above is an attempt to adopt a comprehensive perspective. Different dimensions are used to explore the influences and impacts of each aspect from the most-important stakeholders to grasp an overall view of such a challenging phenomenon. Each of the above dimensions never impacts on any case alone. Therefore, it is obvious that the above dimensions and the impact of different stakeholders are very integrated, with cross relations, and cannot be studied separately from each other. The various dimensions and inputs of the stakeholders also should be explored as a whole, as they represent an overall system of urban environmental phenomena. This can be an open framework that incorporates the above inputs and any immersing factors based on our exploration, experience and cumulative knowledge for better understanding and decision making for more-effective interventions.

On the other hand, the role of the informal community must be augmented. Such a group demands greater participation and empowerment via knowledge and political support. These groups are aware of their needs and must be an essential component of any community intervention. The question is how can this be achieved for such groups with their limited education and humble economic resources. This can be realized through spreading awareness and enabling community leaders to assist in spreading and promoting information on all issues, from environment to housing rights. It is also important to enhance the role of the professional group (planners, architects, social workers etc.). Instead of being just commissioned by the government or the international community to implement certain noncontextual, imported or imposed plans, the professional society should explore more vigorously the actual needs of informal communities and be made more aware of their contextual considerations. They should think outside the box and be more creative in their proposed interventions, as some innovative civil society organizations have begun to do.

Inspired by the cooperative social initiative (*gam'iya*) characterizing informal communities, cooperative entities emerge when a certain group collects money to benefit a certain individual or a family. This joint effort should be used in development practices, as a way to share and document knowledge and

experiences in community-led development, and can be expanded to include professionals/technical experts as well. This entity could act as a responsive body of consultants and capacity building/training, as well as represent any informal community undergoing urban and community development, in order to assist in advocating its rights, provide technical support and coordinate with other stakeholders.

Unconventional solutions and interventions are a must when the usual ones already have proved inefficient. In fact, the conventional planning methods and urban development have not slowed down the expansion of informal settlements, nor enabled them to be integrated into the wider community and urban system. A people/community-based framework that functions as an eclectic pool of knowledge on the social and cultural dimensions of a community is essential for the community and urban-development initiatives. These initiatives should be led primarily by community leaders and community members, institutions and organizations, with assistance from national consultants/experts. In essence, building the habitat better requires greater attention to, and respect for the social relations of production.

#### Endnotes:

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- <sup>1</sup> See "Social Production of Habitat," HIC-HLRN website, at: <http://www.hic-mena.org/spage.php?id=pg==#.VPsveWfwvVI>; Rino Torres, *La producción social de vivienda en México: su importancia nacional y su impacto en la economía de los hogares pobres* (México, D.F.: HIC-AL, HIC, CHM, UAM-X, CONAFOVI, CONACYT, 2006), at: [http://www.hic-al.org/documento.cfm?id\\_documento=1329](http://www.hic-al.org/documento.cfm?id_documento=1329).
  - <sup>2</sup> According to the Informal Settlement Development Facility (ISDF) in Egypt, categories of "unsafe areas" fall into four grades; the first grade is grounds for removal. The grades are as follows: Grade (1), Life threatening areas which include houses built in life threatening locations such as under sliding geological formations, in flood zones, or exposed to railways accidents; Grade (2), Areas of Unsuitable Shelter Conditions which include shelters made of make-shift materials, ruined and structurally unstable buildings, and houses on sites unsuitable for habitation, e.g. dump sites; Grade (3), Health risks Areas which include houses that lack access to clean drinking water or improved sanitation, those exposed to industrial pollution, and those under high voltage cables; and Grade (4), Areas of Unstable Tenure which include houses developed on state land or on the territory of Endowments (*Awqaf*). For more information on the ISDF, see: <http://www.isdf.gov.eg/>.
  - <sup>3</sup> For more information, see: "The Development of Zeinhom Squatter Areas," *Egyptian Red Crescent*, at: <http://www.rcegypt.org.eg/ModulesEn.aspx?moduleNo=9&SID=32>.
  - <sup>4</sup> "Clashes Erupt over Egypt Pig Cull," *BBC News* (3 May 2009), at: [http://news.bbc.co.uk/2/hi/middle\\_east/8031490.stm](http://news.bbc.co.uk/2/hi/middle_east/8031490.stm).
  - <sup>5</sup> Amnesty International, *'We are not dirt': Forced evictions in Egypt's informal settlements* (London: Amnesty International, 2011), at: <https://www.amnesty.org/.../mde120012011en.pdf>.



## **Informal Self-determination: Batn al-Baqara, Cairo**

*Habitat International Coalition – Housing and Land Rights Network*

Batn al-Baqara is an informal settlement corresponding to all of the standard elements qualifying it as a “slum.”<sup>1</sup> Overcrowded and squalid, Batn al-Baqara is located on the outskirts of historic Old Cairo. The Informal Settlements Development Fund (ISDF) has scheduled this community as a level-one “unsafe area,” which means that it has been deemed uninhabitable.<sup>2</sup> However, this designation is not unique to this community and presents a larger systemic issue at a national level. In 2012, the ISDF conducted a study that found 372 unsafe areas, including 207,233 housing units in Egypt. In Batn al-Baqara other hazardous elements are due, rather, to public neglect, such as lack of access to safe water, lack of infrastructure for sewage and sanitation, and a lack of consistent and safe access to electricity.

The official classification as a level-one unsafe area requires that the community be removed. The Egyptian authorities (GOPP, ISDF) officially count only 22 households out of the hundreds of families living there. However, data collected between HLRN and local partner Ruzza Society for Development (RSD) has estimated the population living to be 7,740 persons. The official undercounting and lack of recognition has blocked services to these citizens through municipal budgets, utilities and political representation. The households, by definition, are under consistent threat of forced removal.

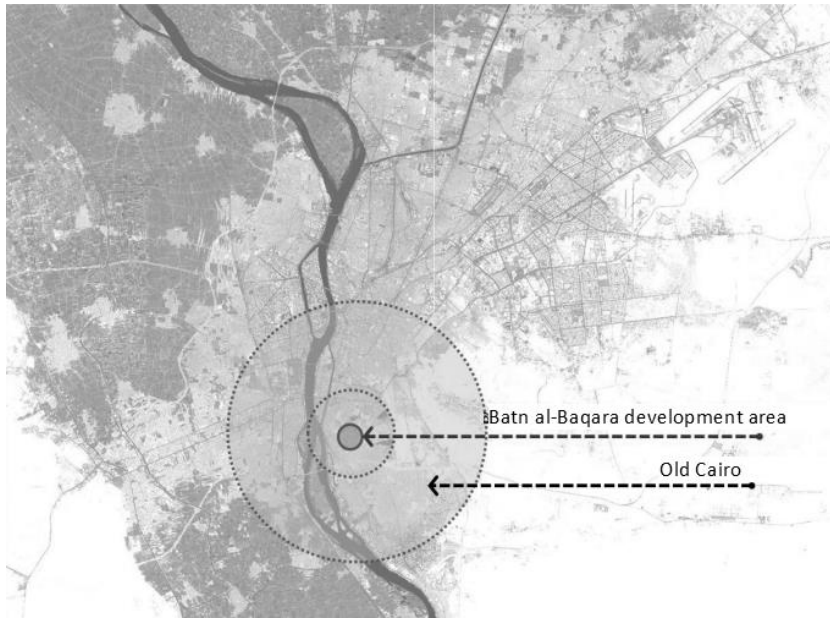
### **Why the Government Must Change its Policies in Batn al-Baqara**

The effort between HLRN and RSD to collect useful development-related data on this community surveyed 403 households and 1,476 persons. Results on the demographic makeup of informal areas shed light on the issues of gender within the community, which is not reflected in most available literature or policy.

In a survey, both female and male-headed households identified four major development needs for the community: (1) improved sanitation; (2) creation of health clinics; (3) creation of schools; and (4) rebuilding the area. Additionally, our studies reveal that core physical infrastructure improvements have to be made, while addressing the need to ensure secure tenure and other elements of the human right to housing. Egypt’s obligation to meet these needs falls under international human rights legal instruments, which are constitutionally applicable throughout the state: Article 78 of the 2014 Constitution recognizes housing as a core right, stating that “The state guarantees citizens the right to decent, safe and healthy housing, in a way that preserves human dignity and achieves social justice.” Except for its inherent discrimination on the basis of citizenship, this provision aligns with Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that:

The States Parties to the present Covenant recognize the right of *everyone* to an adequate standard of living for himself/[herself] and his/[her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The **States Parties will take appropriate steps to ensure the realization of this right**, recognizing to this effect the essential importance of international cooperation based on free consent [emphasis and brackets added].

The surveys revealed that some 45 households in Batn al-Baqara have obtained formal housing rights through the Cairo Governorate formally recognizing their use rights (*intifa'*) to their housing, which indicates that tenure security can be obtained given the requisite political will of the government.



Additionally, the selective rate of formal tenure creates a sort of social hierarchy that has the potential to lead to internal conflicts.

What is clear from Batn al-Baqara is that the community has fallen out of the scope of previous government efforts to improve living conditions in slums. The dilapidated and dangerous living conditions, as well as the lack of water, sanitation and electricity, constitute direct violations to the human right to adequate housing.<sup>3</sup> As an “unrecognized”

community, these citizens also face regular threats of forced eviction and displacement without free, prior and informed consent (FPIC) and consideration to their rights, including reparations<sup>4</sup> in the case of such gross violations.<sup>5</sup>

For this community, a lack of secure tenure and official recognition has resulted in falling behind national averages in many social indicators, creating further vulnerabilities and widening inequalities. Article 13 of ICESCR guarantees that education is a human right for all, specifically stating, para. 2(a), that primary education shall be compulsory and available free to all. Batn al-Baqara has no schools, making the pursuit of a basic education difficult for most families. The children that do attend school must travel to the neighborhood of Zahra', which is approximately 4km walking distance, as no affordable means of transportation is available. The lack of local educational facilities to serve this community is evident in the research. Data show that 33% of the community lacks any education, and 34% have dropped out of school. What is most discouraging is the illiteracy rate in this community, estimated at 52.8%. This is a shocking difference from the already-high national average of 24.9%.<sup>6</sup> Education is critical, as this is a young community with an average age of 23.8 years, and a significant proportion under the age of 18. Although statistics show that Egypt has had an increase in primary school attendance, this community is still falling behind.

The community has no medical facilities or clinics. This lack of available health care impedes realization of the human right to health, as outlined in article 12 of ICESCR and General Comment No. 14 issued by the Committee on Economic Social and Cultural Rights (CESCR); this right is also deeply affected by the lack of water and sanitation infrastructure.

According to CAPMAS statistics,<sup>7</sup> in 2011 the average annual salary for families in Egypt's urban areas was LE 30,205, roughly LE 2,517 monthly. However, the average monthly salary for Batn al-Baqara residents was found to be LE 653.69, with women averaging only LE 506.12 monthly.<sup>8</sup> This limited income is stretched further for many families in order to compensate the lack of public services. This



stark difference will widen for future generations that lack access to education, as that impedes access to decent work and realization of the human right to an adequate standard of living (an essential element of human dignity).

Without sewage systems, many households either pay approximately LE200 monthly for twice-monthly septic tank [*transh*] evacuations. Those families that cannot afford this high cost must find another alternative, as the government does not offer public waste management. Regardless, the lack of sanitation facilities poses a grave threat to the human right to health (Article 12, ICESCR), while also stretching very limited household financial resources required for other necessities.

Gender equality and nondiscrimination are over-riding principles for states to implement their obligation to respect, protect and fulfill human rights. In addition to supporting gender equality under article 3 of the ICESCR, Egypt's obligation to support human rights realization for women is also enshrined in Convention on the Elimination of All Forms of Discrimination against Women (CEDaW). Of importance is article 14(2)(h), which obliges states parties to ensure that women enjoy adequate living conditions, particularly in relation to housing sanitation, electricity and water supply, transport and communications. These are rights that the community as a whole does not enjoy, but women are often disproportionately affected.

In Batn al-Baqara, 14.1% of the households are female headed, which proportion is slightly above the estimated national average of 13.4%.<sup>9</sup> With Batn al-Baqara's nearly equal male-female population ratio (49% women, 51% men), it is imperative that women's issues be given special focus, especially as societal structures often result in disproportionate economic and social harm to women. In this community, it is evident that women endure a disproportionately higher deprivation of education, literacy and income, among other quality-of-life indicators, as compared to men.

### **What Action Does Batn al-Baqara Need?**

1. The present policies that the ISDF pursues are damaging to the populations of informal areas, and lack clear criteria for community classification and, thus, stigmatization. This lack of transparency in decision-making norms and processes creates an environment of distrust within civil society. In addition to violating the human rights mentioned above, the lack of community consultation, involvement in decision-making processes, and lack of legal redress or assistance in the noted problems violates obligations under the International Covenant for Civil and Political Rights (ICCPR), including the human rights to information (Article 19), participation in public affairs (Article 25) and access to justice (Articles 2.3 and 14).

A lack of secure tenure should not be used as a pretext for forced evictions, or to withhold basic services and needs of community households. This multiple violation breaches state obligations to uphold the social function of property. However, that provision enshrined the Egyptian Constitution since 1952, was discarded in the final drafting of the new 2014 Egyptian Constitution. Corresponding to constitutional tradition, Article 802 of Egyptian Civil Code states "property is not an absolute right and/or limitless, it has a social function." Moreover, the CESCR's General Comment No. 4 interprets the state's corresponding treaty obligation calls for states parties to "take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups."<sup>10</sup>

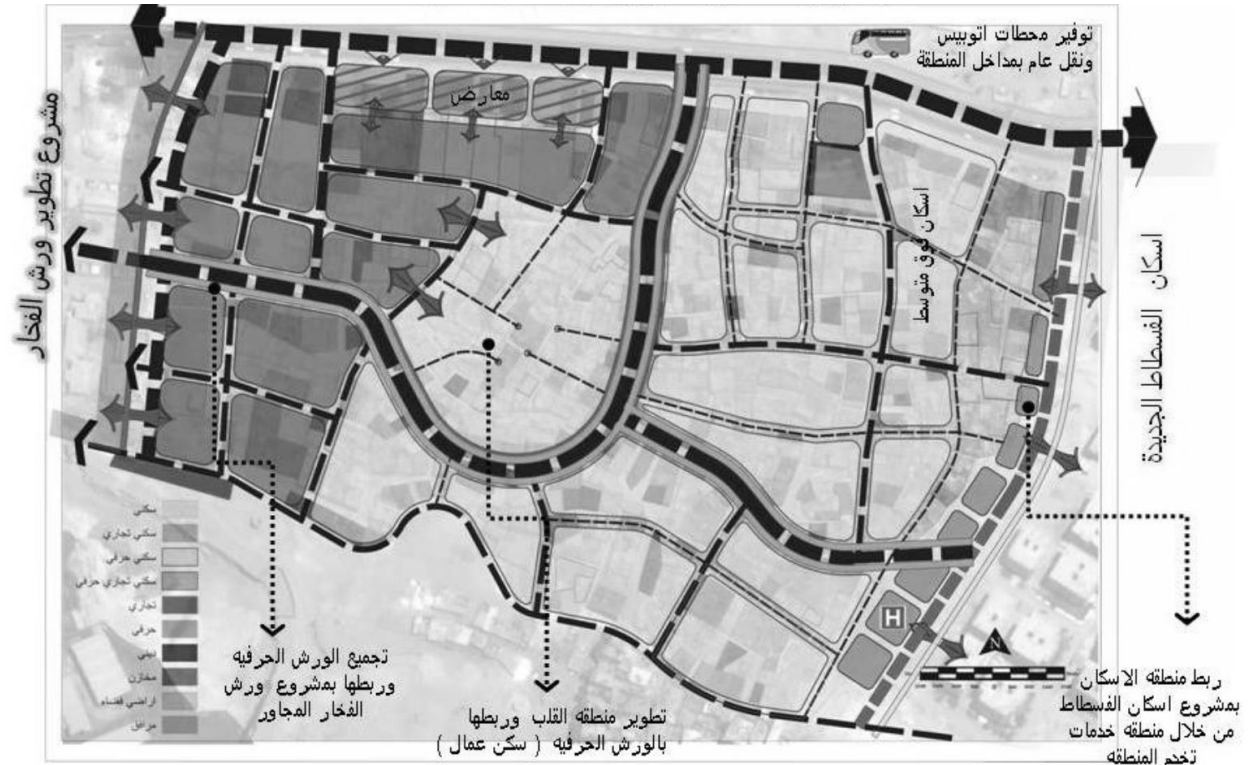
2. For this community, it is critical that the Government of Egypt recognize and fulfill its international human rights obligations, particularly as they apply at local, regional and national levels of administration. This research should be considered as a resource and utilized as census-like data. These data fill an administrative gap. It raises further questions as to whether Batn al-Baqara residents had access to the physical and social infrastructure that is their legal entitlement, and so desperately needed. The elements of the human right to adequate housing call for the construction of medical facilities, education service, water and sanitation infrastructure, electricity and security, as well as the corresponding process rights cited above.

3. It is imperative that families receive secure tenure recognition from the government to protect them against forced eviction. In the event of relocation, state parties 1, and to ensure that, in the case of relocation, they are ensured free, prior and informed consent, appropriate compensation, resettlement and rehabilitation.<sup>11</sup>

4. Informed consent and consultation should extend to government solutions and interventions. Any solutions to this community's needs must be done in direct consultation with the inhabitants of Batn al-Baqara. The persons of this community worked together with HLRN and RSD to draft two alternative development plans.

- The first plan includes a limited intervention through the provision of basic facilities and services, as well as attention to the buildings that require urgent maintenance. Also the creation of bus stations to allow laborers to access their place of work.
- The second plan would entail a greater dialogue between the public owner of the land and the current residents, which would entail the owner to make improvements with the direct support and assistance of the community and in cooperation with the governor. These improvements would also create housing development to benefit the residents as well as the commercials interests of the land owner.<sup>12</sup>

#### Development Scenario 2



The community is willing and actively engaged in planning processes, and the government's adoption of such methods would create a participatory model for future interventions, which hundreds of other communities across the country also need. As the country undergoes transition, caring for those populations and communities that are most vulnerable will guarantee greater internal progress and stability, as well as the state's government implementing important international commitments and human rights obligations.

## Endnotes:

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- <sup>1</sup> For the purposes of this article, a "slum" refers to a contiguous human settlement where the inhabitants are characterized as having inadequate housing and basic services. A slum is often not recognized and addressed by the public authorities as an integral or equal part of the city, and includes any combination of the following elements:
- Insecure residential status;
  - Inadequate access to safe water;
  - Inadequate access to sanitation and other infrastructure;
  - Poor structural quality of housing.
- UN HABITAT, "Defining Slums and Secure Tenure," Expert Group Meeting, Nairobi, November 2002.
- <sup>2</sup> These areas are those that ISDF classifies as life threatening due to their location (a) under sliding geological formations, (b) in flood areas and/or (c) under threat of railway accidents.
- <sup>3</sup> For more information on the primary housing rights violations in Egypt see the 2013 civil society submission to the Committee on Economic, Social and Cultural Rights, found here: [http://tbinternet.ohchr.org/Treaties/CESCR/Shared Documents/EGY/INT\\_CESCR\\_NGO\\_EGY\\_15308\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CESCR/Shared Documents/EGY/INT_CESCR_NGO_EGY_15308_E.pdf)
- <sup>4</sup> As defined in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 21 March 2006.
- <sup>5</sup> As determined by UN Commission on Human Rights resolution 1993/77, which "Affirms that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing" (para. 1).
- <sup>6</sup> Central Agency for Public Mobilization and Statistics, 2012, found at <http://www.capmas.gov.eg/database.aspx>.
- <sup>7</sup> From the Central Agency for Public Mobilization and Statistics, reported in "Egyptian family's average annual income is LE25,000, agency reports," *Egypt Independent* (28 November 2012), at: <http://www.egyptindependent.com/news/egyptian-family-s-average-annual-income-le25000-agency-reports>
- <sup>8</sup> The household survey revealed that an estimated 42% of women are homemakers without independent income.
- <sup>9</sup> ICF International, *Demographic and Health Surveys*, 2008, at: <http://www.indexmundi.com/facts/egypt/female-headed-households>.
- <sup>10</sup> General Comment No. 4, "The right to adequate housing," 13 December 1991, para. 8(a).
- <sup>11</sup> *Supra*, note 4.
- <sup>12</sup> More details are available upon request from [hic-mena@hic-mena.org](mailto:hic-mena@hic-mena.org).



## The Right to the City: Cairo\*

Joseph Schechla

Cairo is located on the banks and islands of the Nile River in the north of Egypt and is one of the most visited cities in human history. Visitors and residents alike say that, in Cairo, you can find anything one want, and everything you don't want. For better or worse, various versions of this Egyptian capital have played host also to Greek, Persian, Roman, Arab, Turkish, French and English occupiers, among others, over the centuries. Under normal conditions, throngs of tourists also invade daily, mixing with its resident population, estimated at between 15,750,000 and 22 million, including some 150,000, refugees and asylum seekers from Arab and Sub-Saharan African countries.<sup>1</sup>

It has been said that "Cairo is a big informal city with strips—just strips—of formality," as in the broad expanse of the Greater Cairo Region some 42–62% of households are living in informal settlements.<sup>2</sup> The planning, environmental and social challenges of Cairo have generated interest from many stakeholders, including academia, planners, NGOs and international development agencies. However, as Cairo continues to struggle through various crises (housing, energy, economic, etc.), what Cairo "needs" is not fully understood, but constantly debated. The global call for the "right to the city" has resounded with civil society in Cairo as a platform for tangible and lasting improvement to the quality of life in the metropolis they call home. This paper seeks to put into context the challenging conditions of Cairo and potential for this nascent movement to recreate a city where rights of *all* inhabitants will be fully realized.

### Poverty

Though reliable data are hard to come by, trends indicate that the availability, accessibility, affordability and quality of public services in Egypt are deteriorating as a result of the legacy of deregulation, privatization and shrinking government expenditure. Egypt's economic crisis and public policy deficit have exacerbated existing patterns of poverty and inequality.

At the country level, Egypt's poverty rate has increased from 25.2% in 2010/11, to reach 26.3% in 2012–13, according to Government of Egypt (GoE) reports.<sup>3</sup> Other sources estimate that over 40% of the population lives below the poverty line (less than \$2 a day), yet 2% of the population controls 98% of the economy, demonstrating the distribution of resources in the country.<sup>4</sup> The greatest proportion of poverty is found in the rural areas; however, urban populations are generally more vulnerable to food-security fluctuations, where agricultural subsistence is low.

### Production and Consumption of Housing

The acute lack of affordable housing in Cairo stems from a variety of factors, including unbridled population growth, rural-to-urban migration and inadequate investment in the sector. With the adoption of economic liberalization policies and reduction of social spending in the state budget as a consequence, Egypt's investment in the housing sector dropped significantly over the past two decades.

Housing construction has been a major priority of state-sponsored development plans since the 1980s; however, most housing in Egypt is self-built (60–70%).<sup>5</sup> The official count of informal settlements (*ashwa'iyāt*) current stands at 1,221, housing approximately 20 million people, or one-quarter of the

country's population.<sup>6</sup> Cairo is host to at least 76 such *ashwa'iyāt*, which is generally understood to qualify a residential area as a "slum." While the five habitual criteria defining a "slum" address material and tenure conditions,<sup>7</sup> the absence of local government is also a common feature.

In Cairo, the majority of housing construction is carried out informally, without official plans or permits. Enforcement of housing standards is lax, leading to much corruption and impunity in the sector, despite the adoption of the Unified Building Law No. 119 (2008). At the same time, the majority of impoverished households live with insecure tenure, which leaves them ultimately vulnerable to forced eviction, demolition and dispossession under various public-purpose and private-sector projects.

To mitigate urban expansion, especially on precious agricultural land, GoE has spent between LE 60bn and LE 500bn (€6.6bn–€55bn) on the New Cities programme between 1977 and 2010. Reportedly, GoE spent LE 16 billion (€1.7bn) on low-income housing between 2005 and 2012.<sup>8</sup> However, these measurable inputs are not evaluated by any index that monitors enjoyment of the right to adequate housing, or gauges these interventions against a national standard for adequate housing.

Mortgage financing has not been a popular option for Egyptian home buyers. Among the biggest deterrents to mortgage finance in Egypt is the costly and cumbersome property-registration process, as well as the lack of sufficient legal infrastructure to enforce contracts. Other impediments include restrictions on extending bank credit to the housing sector, lack of valuation information, lack of credit risk information and complex regulations.

In an effort to match the needs of the housing market, many policies and projects, such as the National Housing Project (NHP), have not benefitted the most vulnerable and have maintained an imbalance in the distribution of public investment and services.<sup>9</sup> To deal with the proliferating slum phenomenon, the state has initiated many development plans that have proved to be futile, and often have violated the rights of the residents in these areas, including under the NHP. As in most major cities in the developing world, social production of habitat remains the dominant form of housing construction, far outstripping the public and formal private sector combined in producing housing solutions.

### **Housing Rights and Displacement**

Much effort to address the human right to adequate housing in Egypt, including government initiatives, focuses on the informal settlements, which are built as an alternative to the formal options available. While in dealing with informal areas, the government has been implementing large slum-clearance schemes, resettling over 41,000 families over the last decade and a half. Government planners rehoused two thirds of them in the city's outskirts, far from their original places of residence, with little, if any, proper consultation, and where numerous incidents of unfair compensation and/or the absence of legal tenure are reported.<sup>10</sup>

Violations of the human rights to adequate housing, water and sanitation and other social rights are evident in the living conditions of Greater Cairo. Some of these squalid living conditions are sometimes legalized through an urban governance framework that is labyrinthine, ambiguous and lacks transparency and accountability to the public. For example, many legislative clauses authorize the executive to make exceptions, such as Law 10 "Expropriation for Public Purpose" (1990), which empowers Cabinet ministers to declare a project as serving the "public good" and, thus, to expropriate private property without the right for owners to appeal, and authorizing forced eviction. However, the

new 2014 Egyptian Constitution criminalizes “all forms and types of arbitrary forced displacement of citizens” without a statute of limitations (Article 63).

Eviction and resettlement have taken many forms. In such cases, a common practice is to cut off residents’ electricity, water and sanitation to force residents to leave their homes, and it is also common that the housing units promised as compensation are not adequate in services and facilities, or lack legal tenure, leaving residents at risk of eviction, even in new settlements.<sup>11</sup>

### **Developing Cairo**

The general development vision prevailing in Cairo before and after the political changes in central government follows a persistently top-down approach. The futuristic “Cairo 2050” Plan, issued in 2010, aims to model Cairo after other cities of the world with an urban-renewal scheme that threatens to evict untold thousands of households, especially low-income and informal neighborhoods. The plan, revised as “Egypt 2052” (again repackaged as “Strategic Plan for Egypt 2050”) replicates this development strategy nationwide. Portions of these plans are targeting impoverished and marginalized areas of the city for the construction of hotels, shopping centers, increased green space in the city center, etc., and will deliver a disproportionate benefit for the wealthy minority of the city.<sup>12</sup> The funders of the master plan are the General Organization for Physical Planning (GOPP) of the Egyptian Ministry of Housing and Urban Development, UN-Habitat and UNDP, with GOPP and UN-Habitat as implementing partners.<sup>13</sup>

As a complement to urban renewal of Cairo, and a precursor to the Cairo 2050/Egypt 2052/SPE 2050 Plans, the Informal Settlements Development Fund (ISDF) was established in 2008. Within its broader urban-renewal mandate, this executive-branch agency has directed its primary focus on the removal and resettlement of communities in “unsafe areas.” These are areas deemed to be uninhabitable, primarily those classified as life threatening due to their location (a) under sliding geological formations, (b) in flood areas and/or (c) under threat of railway accidents. In 2012 the ISDF conducted a study that found 372 unsafe areas, including 207,233 housing units in Egypt. More than a quarter of these are in the GCR. Most or all are slated for removal.<sup>14</sup>

### **Privatizing Cairo**

Important to the process—and challenges—of realizing the right to the city in Cairo is the economic development model assumed by the previous regime, interim governments and under current policy. The experience of the wave of privatization in Egypt began when the government formally agreed with the World Bank, in May 1991, to a corrective structural program of the Egyptian economy. However, the impetus to give the private sector its current importance and influential role actually began in 1975 with the opening (*infitāh*) of the economy in the era of the late President Anwar al-Sadat (1970–81), which actually widened the income gap in Egypt.<sup>15</sup>

The combination of measures and developments under the structural readjustment plans of the World Bank reduced the two historical roles of the state: development and social welfare. This “retrenchment of the state” has coincided with divesting and disenfranchising local and regional administrations along with the absence of local government of cities, towns and neighborhoods.

Without effective regulation, moves toward privatizing the water sector risk placing further obstacles to the very poor in accessing safe water and sanitation. Although water production formally remains state-owned, a draft water law bill proposed in 2010 paves the way for private investment in the sector.<sup>16</sup> As noted by the UN Special Rapporteur on the human right to water and sanitation, Egypt does not have a

functioning regulatory framework for the water sector. In this context, privatization likely would increase prices, as experienced elsewhere, further impeding equal access to increasingly scarce water.<sup>17</sup>

### **Governing Cairo**

Cairo forms part of a national governance system comprised of five layers of administration; however, none operates as “government” in the participatory sense. The topmost tier of subnational administration is the governorate (*muḥāfaẓah*) of which Greater Cairo comprises three: Cairo Governorate, Qalyubia Governorate and Giza Governorate. A governorate is administered by a governor, who is appointed by the president of Egypt and serves at his discretion.

For administrative purposes, the country’s 27 governorates are subdivided into four layers: The region, or *markaz* consists of a capital city, other cities if they exist, and villages. Today, Egypt has 167 rural *marākiz*. Below the *markaz* is the city, or *madīnah*. Each governorate contains at least one city. Some *marākiz* are subdivided into village (*qariya*) units.

A city is made up of constituent neighborhood (*hay*) units, and is the smallest local unit in urban communities. However, districts differ from one governorate to another in size, population and political and economic circumstances. In addition, districts used to be further divided into the subdistrict neighborhood (*shaykha*), which were considered of a better size for efficient delivery of certain services.

Traditionally, Greater Cairo’s governorates contained a total of 40 neighborhoods. Cairo Governorate had 30; Giza Governorate had eight and the City of Shubra al-Khayma (Qalyubia) had two. In addition, some areas of Giza and Qalyubia were classified as rural, which were divided into *marākiz*, with five in Giza and four in Qalyubia. Until 2008, Greater Cairo included all of Cairo Governorate, plus urban parts of Giza and Qalyubia Governorates. However, in May 2008, a presidential decree established the new governorates of Sixth of October and Helwan, carved out of Giza and Cairo Governorates, respectively. Now, GCR technically comprises all or part of five distinct governorates.

### *The Role of Local Authorities*

While 70% of the world’s city dwellers have elected mayors, administrative units in Cairo are staffed and run by appointees and bureaucrats named by the executive branch of the central government. The appointed governor is the key figure in the administrative system, while presidents of urban neighborhoods (*ahyā’*) divide responsibilities and authority under him.<sup>18</sup> Most governors since 1952 have been high-ranking noncommissioned military officers, instituting a security-centered approach to interior governance.

In 1979, President Sadat revoked most of the governing powers of local councils. Thereafter, local elected officials no longer have authority to question appointed civil servants, demand information from them, or call for a vote of no confidence. In the practice of local administration are occasional other actors, whose roles are more-or-less informal.

The Minister of Local Development sometimes is called upon to mediate and resolve conflicts between ministries, governorates, councils and civil servants. The High Committee of Local Administration should meet at least once a year to solve coordination problems, but so far *never* has met.<sup>19</sup> Under the previous regime, members of People’s Assembly or Shura Council would intervene and exercise patronage as “super mayors” in particular situations. However, such extension of central government influence at the local level has no statutory basis.



With the 2011 uprising and the dismantling of the National Democratic Party (NDP), 97.7% of NDP partisans occupied the elected—if ineffective—local councils, and the local councils as such, have become decommissioned until new elections take place. This dismantling of the formal structures has left a void of local governance, while neighborhoods rely on technocrats and other civil servants to deliver services. In many neighborhoods and smaller subunits, local autonomy has been exercised through “popular committees” that have sprung up during January–February 2011. These social formations are of differing quality and character, ranging from religiously rigid and patriarchal to innovative, progressive and inclusive. They constitute some measure of popular will, and promise to have effect on the future shape of local governance as the legislative authorities are restored in the People’s Assembly elections under the new Constitution.

### *Local Budgeting*

Municipalities are dependent on the central government to provide 80–92% of financial allocations.<sup>20</sup> The percentage of the state budget going to municipalities stagnates around 11–12%, a significantly low proportion compared to the global 20–30% average for emerging economies.<sup>21</sup> This state budget allotment accounts for about 92% of all resources available for local administration. Local communities have no authority to legislate or levy taxes and fees through their elected councils to support services or local development.

Local self-determination is not an operational principle of internal statecraft, including resource allocation, thus eroding the effectiveness of local government and retarding the development of urban citizenship. Poor funding and lack of autonomy have rendered local administration to become extensions of the central authority, limited to the management of economic and social services, practicing autonomy from the central government only in minor issues.<sup>22</sup> A survey for the Council of Ministers by the Information and Decision Support Center in 2005 found that 52% of respondents actually were unaware of the existence of their local councils.<sup>23</sup>

Essential to determining service delivery and related budgets in a district is proportional representation in the relevant decision-making bodies. However, with the undercounting the inhabitants of informal settlements, they are likely not to be “recognized” and, thus, excluded from self-representation, as well as budget allocations.

### *“Governing” Informal Areas*

Representation and participation in development and other decisions at the community level are even more elusive for GCR slums, and even the existence of the form of local administration is contingent upon official recognition. The probability of an informal area being included in the Household Income, Expenditure and Consumption Survey is proportional to its size in the latest census. Central Agency for Public Mobilization and Statistics (CAPMAS) data are also the basis for the only existing Greater Cairo survey of informal, low-income areas. That survey selects the areas from the CAPMAS Master List of Greater Cairo “Slums,” with already severely undercounted slum populations. The informal areas with relatively small populations are grouped with other nearby informal areas to form larger primary sampling units. The 2006 census produced lower-than-actual urban poverty-incidence rates, because it missed newly formed slum areas and because slum populations are growing as much as six times the rate of other, planned sections of the capital.<sup>24</sup> Undercounting slum populations means that inhabitants will have a much lower probability of inclusion in household surveys, which supply the basis for poverty line studies. In some instances, a slum may be undercounted in the Master List at 1/15<sup>th</sup> its actual

population.<sup>25</sup> Such undercounting affects political and budgetary decisions about the provision of services and self-representation mechanisms.

### *Legislating Local Governance*

The newest Constitution (Arts. 175–83) establishes that local councils will be comprised of directly elected members, *as well as* executive-branch appointees, and provides no guidance to legislators on modalities of determining heads of local councils or governorates, either by election or executive appointment. These details are deferred to future lawmakers.<sup>26</sup>

The 2014 Constitution also establishes that “Local units shall have independent financial budgets” and that their resources “shall include, in addition to the resources allocated to them by the state, taxes and duties of a local nature, whether primary or auxiliary,” following the same rules and procedures as the central government for the collection of public funds (Art. 178). Also notable is the prospect of citizen election of governors and heads of other local administrative units (Art. 179). However, this remains optional and ambiguous, leaving open the modalities and criteria by which such public figures may be “appointed or elected.”

### **Envisioning the Right to the City in Cairo**

The composite of administrative institutions and cultures in Cairo have created a yet-unresolved deficit in local government conducive to the exercise of the right to the city. However, at the time of this writing, Cairo remains the center of much contestation over the public sphere. It is a time of great uncertainty, contradictory developments, social and political polarization and legal ambiguity. The uprisings of the so-called “Arab spring” have unleashed a set of collective claims and expectations that have no precedent, nor have they yet found their realization. That is all to say that Greater Cairo is not static. While old patriarchies and interest groups are reasserting themselves, so, too, are Cairo’s people—and their cohorts across the region—daring to imagine that another world is possible.

Such an achievement will not come without tremendous work of both material and conceptual nature. As with any complex task, it is essential to get our theory right. While, for Cairo, the right to the city is very much a theoretical concept, and that is precisely why it is timely and important.

In this unsettled dynamic, it nonetheless possible to identify some of the developments, actors and opportunities that might bring that theory closer to reality. The good news is found in conditions within a variety of local *ahya'*, international development actors, civil society and national government institutions.

### *Neighborhoods*

Collapsed MENA regimes gave rise to unforeseen spaces, social formations and rare chances for broad participation in public life at the local level. While the efforts of the transitional period from 2011 to the present have concentrated on reconstituting the functions, leadership and institutions of central government, the greatest prospect for change of behavior—and of mind—prevail at the local and neighborhood level. In the meantime, the absence of formal, homogenizing structures promises to enable new social formations to emerge with aspirations aligned with claims to a right to the city. Some of these new formations actually have begun to incorporate the concepts and language of the right to the city in their local organizing.

The biggest challenge—and the greatest potential for transformation—remains in poor communities without experience at civil participation, but that are receptive to acquiring the needed capacity to maintain solidarity, understand changing systems, make human rights practical and benefit from the new policy and legal contexts. They still struggle to make demands heard amid ongoing political processes, decisions and plans that affect them directly.

Many neighborhood leagues and popular committees have received recognition of their local communities as well as support to assume influential official roles during this transition period. In the process, communities are developing a taste of/for direct representative and self-expression that previously was not possible. Some of these entities have emerged out of political considerations, some transformed into local “People’s Committees for the Defense of the Revolution,” and developed civic service-style activities (e.g., street cleaning, fundraising for the development of public facilities, etc.).

Some of these popular committees have taken part in training proffered by human rights organizations of civil society with which they have found common cause. The purpose of these partnerships has been to structure the articulation of urban-development ambitions in the language and methodology of human rights, in particular the criteria of state obligations under human rights treaties that the state of Egypt has ratified.

Other developments have seen the participation of neighborhood leagues in Maspero Triangle (central Cairo) in alternative planning to preserve and develop their *hay* under threat of forced eviction and depopulation at the behest of shadowy private developers and real-estate investors. In the rural areas of North Giza, farmers and public interest organizations have worked together to challenge a World Bank-financed power plant for the damage it has caused to local environment and livelihoods. The grassroots authors of these struggles have articulated their positions and alternative proposals as rights claimed against the interests and self-appointed privileges of others who aim to further impoverish and displace them.

### *International Development Actors*

Many of the international agencies, from international finance institutions (IFIs) to UN specialized organizations, evade the indispensable normative framework of human rights, even though they may be UN Charter-based bodies or comprised of UN Charter- and treaty-bound members.

However, at least one example is promising toward developing a right to the city culture in Egypt, although it is found in a pilot project in the al-Minya Governorate. The “Human security through inclusive socio-economic development in Upper Egypt” project is a multiagency project involving all of UN Women, the UN Industrial Development Organization (UNIDO), UN-Habitat, the International Organization for Migration (IOM) and the International Labour Organisation (ILO). Starting in 2013, the project supports citizen participation in “social forums” to arrive at a regional-development plan for a cluster of villages through dialogue among women, youth, employers, workers, technicians and government officials.

The relevance of this project presupposes upstream impact and sustainability by providing an unprecedented indigenous example of citizen engagement in public life and a model for the Ministry of Local Development and the Ministry of Planning to develop a vision that distinguishes between “local administration” and “local government,” in the participatory representational sense. The lessons

learned from this experiment, if managed properly, could go far toward developing a right to the city model in Egypt that could be up-scaled and supported by both policy and practice.

### *Civil Society*

While the respective development and human rights communities have long operated without synergy or common criteria, that false dichotomy especially has afflicted civil society organizations (CSOs) in the Arab world, including Egypt. The special circumstances in the region feature a tradition of human rights programs that have focused predominantly on civil and political rights, as well as denouncing and defending against torture and related abuses of power.<sup>27</sup> The inextricably linked fields of economic, social and cultural rights, in general, and the culture of human rights related to housing and human settlements development have remained relatively underdeveloped until the turn of the 21<sup>st</sup> Century.

The emergence of the Egyptian Center for Housing Rights, the Land Center for Human Rights in Cairo, and the partnership of those and numerous other organizations with the Habitat International Coalition – Housing and Land Rights Network have seen the emergence of concepts developed globally and applied locally. This programmatic development has involved the application of concepts including and constituent with the right to the city. The notions of social production of habitat, social function of property and the right to the city all have gained considerable traction in the discourse of Cairo-based human rights CSOs since 2000.

The first collective Egyptian civil society parallel report to CESCR's initial review of Egypt came in the year 2000. That resulted in a model of collaboration and advocacy of ESCR, resulting in three compatible parallel reports produced by 11 Cairo-based organizations.<sup>28</sup> With CESCR's combined second and third periodical reviews in 2013, the total number of cooperating organizations was 58.<sup>29</sup>

One of the most significant and articulate examples of the use of the right to the city in CSO discourse and advocacy has come in the context of the 2013 deliberations toward the new Egyptian Constitution. This convergence of organizations cooperated in the preparation of a formal submission to the constitution's drafters. Their manifesto, "A Constitutional Approach to Urban Egypt," localizes the principles of the right to the city as a guidance note for future legislative efforts to improve living conditions, urban development and governance in Egypt through the transition.

The localization of the relevant concepts begins with the title, which translates from the Arabic literally as "Constitution of the Built Environment." It incorporates the Arabic term "*al-`umrān*" (the built environment) to convey a more inclusive concept, embracing also human settlements beyond the city. The collective document also explains the meaning of the Right to the Built Environment (*haq al-`umrān*), which is based on principles of social justice and human rights, and access to public space, utilities and services (the full text of the *Urban Constitution* is printed as a separate article within this volume).

Clearly this CSO initiative and articulation of the right to the city, human rights in the city, even more broadly as the human rights habitat, speaks to the state context that the city-region inhabits. However, this exercise also follows in the tradition of city-based human rights charters, while taking a page from the World Charter on the Right to the City and indigenizes its tenets.

### *Government Institutions*

Finally, the institutions of government in Egypt have not yet manifested general support for the right to the city or its principles, even in the most recent Constitution or the appointment of local administrators. The Ministry of Planning (MoP) remains aloof to lessons of other countries with experience in implementing the right to the city, fearing the potential contagion of federalism.<sup>30</sup>

At the time of this writing, it is far too early to predict the legislative outcomes of a parliament that has not yet been elected, particularly as local government so far has occupied such a low priority in the current transition across the region. However, one bright light has begun to shine in the firmament of central government institutions with the creation of a new Ministry of Urban Renewal and Informal Settlements. This new executive body has assumed the functions of the former Informal Settlement Development Facility (ISDF) and holds a broader mandate to develop policy across the state's jurisdiction. Encouraging has been both the choice of minister and her mode of operation.

Madam Leila Iskander, the new minister, is a champion of the people's right to a basic, dignified livelihood with an award-winning background in development. After a cabinet reshuffle following `Abd ul-Fattāh al-Sisi's ascension to the presidency—and her outspoken opposition to Egypt's use of polluting coal as former Minister of Environment—she now takes her right-based approach to the field of human settlements. Her integrated and nondiscriminatory view of Cairo is encouraging. She has eschewed suggestions of a contradiction between urban renewal and informal settlements, noting that “Cairo is two-thirds informal neighborhoods. So if we're going to talk about the formal part of the city or the informal part, it's one city.”<sup>31</sup>

In her four month in office, Minister Iskander has met with civil society organization to listen to alternatives to the policies of the past 30 years, including discussions that have invoked the right to the city. Moreover, she has visited the slums and collected the views of inhabitants to inform innovative approaches. While the new minister has her detractors, particularly at the level of old-guard governorates, her presence has augured change from urban business as usual.

### **Conclusion**

The current transition in Cairo and the prospect for applying the right to the city are inextricably linked to the city's context within the state, the constitutional set-up and the many contentions that surround and pervade it. Given foregoing patterns and deeply entrenched practices, the political culture that the 2011 uprising sought to replace has not retreated into history. History has its continuity in Cairo.

The most encouraging initiatives are those that come from the popular level and civil society. While statist efforts to reconstitute central institutions, as well as important security and counterinsurgency concerns, dominate the political priorities, changes in visions and behaviors are more likely to come from the neighborhoods. With articulate and globally connected civil society's contributions to the popular discourse, the principles and perspectives of the right to the city movement instruct that vision, with the added benefit of success stories and practical examples from other regions.

While fissures of hope from the central authorities to transform Cairo into a human rights habitat are few and far between, the formula for change appears to require an admixture of local initiative and the practical solidarity of inter-regional and international solidarity. Beyond the short-term strategies of crisis management in the security state, the logic of the right to the city is an indispensable ingredient to bringing durable civility, the full exercise of citizenship and social justice to a city seemingly out of order.

## Endnotes:

- \* This is an abridged version of a longer and more-detailed study on the Right to the City in Cairo; the full version can be downloaded at: <http://hic-mena.org/news.php?id=pmltaw=#.VPndrixrjss>.
- <sup>1</sup> See UNHCR, "2015 UNCHR Country Operations Profile – Egypt," at <http://www.unhcr.org/pages/49e486356.html>
- <sup>2</sup> Quoted Naglaa Arafa in: "Cairo: Sheltering the Urban Poor," *Tomorrow's Crises Today: The Humanitarian Impact of Urbanization*, (IRIN and UN-HABITAT. 2007), at: <http://www.irinnews.org/pdf/in-depth/tomorrowscrisestoday-chapter8.pdf>
- <sup>3</sup> Central Agency for Public Mobilization and Statistics (CAPMAS). *2011 Household Income and Expenditure and Consumption Survey (HIECS)*, 2011
- <sup>4</sup> UNDP, *Challenges to Human Security in the Arab Countries* (New York: UNDP, 2009)
- <sup>5</sup> Gesellschaft für Technische Zusammenarbeit (GTZ), *Cairo's Informal Areas: Between Urban Challenges and Hidden Potentials*, (2009) at: [http://egypt-urban.pdp-gtz.de1.cc/wp-content/uploads/2010/03/Cairos-Informal-Areas-Between-Urban-Challenges-and-Hidden-Potential-2009\\_EN.pdf](http://egypt-urban.pdp-gtz.de1.cc/wp-content/uploads/2010/03/Cairos-Informal-Areas-Between-Urban-Challenges-and-Hidden-Potential-2009_EN.pdf)
- <sup>6</sup> *Supra note*, 4
- <sup>7</sup> UN-Habitat defines a slum household as a group of individuals living under the same roof in an urban area who lack one or more of the following: 1. Durable housing of a permanent nature that protects against extreme climate conditions; 2. Sufficient living space which means not more than three people sharing the same room; 3. Easy access to safe water in sufficient amounts at an affordable price; 4. Access to adequate sanitation in the form of a private or public toilet shared by a reasonable number of people; 5. Security of tenure that prevents forced evictions.
- <sup>8</sup> New Urban Communities Authority (NUCA) website, at: <http://www.urban-comm.gov.eg/achivments.asp>.
- <sup>9</sup> Yahya Shawkat, "Impact of World Bank policy and programs on the built environment in Egypt," (Bank Information Center: November 2012), at: <http://ejpr.org/sites/default/files/pressreleases/pdf/wbegypt-en.pdf>
- <sup>10</sup> Yahya Shawkat, *al-'Ādāla al-Ijtimā'iyawa al-'Umrān, Kharītat Misr*, 2013 (CD)
- <sup>11</sup> "Demolition of five housing units in 'New Qurn`a' one year after residents move in...with no injuries," *Jarīdata al-Badīl* (9 June 2011).
- <sup>12</sup> HIC-MENA, "Cairo2050" Workshop Report, 13–14 July 2011, at: <http://hic-mena.org/img/documents/report%20of%20workshop%20eng%20final.pdf>.
- <sup>13</sup> UNDP, *Strategic Development Plan for Greater Cairo Region 2050*, (undated), at: [http://www.eg.undp.org/content/egypt/en/home/operations/projects/democratic\\_governance/StrategicPlanforGreaterCairo2050/](http://www.eg.undp.org/content/egypt/en/home/operations/projects/democratic_governance/StrategicPlanforGreaterCairo2050/)
- <sup>14</sup> Informal Settlements Development Facility (ISDF), "Development of Slum Areas in Egypt." ed. Informal Settlements Development Facility, (2013).
- <sup>15</sup> Anthony McDermott, *Egypt from Nasser to Mubarak, a Flawed Revolution* (London, New York, Sydney: Croom Helm, 1988); Saleh S. Abdelazim, *Structural Adjustment and the Dismantling of Egypt's Statist System* (doctoral dissertation, Virginia Tech University: November 2002), at: <http://scholar.lib.vt.edu/theses/available/etd-12232002-083424/>
- <sup>16</sup> USAID, "A Legal Paper Which Serves As The Basis For The New Egyptian Water Law," *Water Policy and Regulatory Reform Project*, (January 2012).
- <sup>17</sup> "Joint Submission to the Committee on Economic, Social and Cultural Rights" (November 2013), at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNGO%2fEGY%2f15308&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNGO%2fEGY%2f15308&Lang=en)
- <sup>18</sup> The third-person masculine pronoun is used here, as governors in Egypt are invariably male.
- <sup>19</sup> *Supra note* 20
- <sup>20</sup> Sarah Ben Néfissa, "Cairo's City Government: The Crisis of Local Administration and the Refusal of Urban Citizenship," in Singerman, Diane, ed., *Cairo Contested: Governance, Urban Space and Global Modernity* (Cairo: American University Press, 2011); *Supra note* 11
- <sup>21</sup> Tadamun: The Cairo Urban Solidarity Initiative, "The Right to Democratic Local Government in the Egyptian Constitution," December 2013. at: <http://www.tadamun.info/2013/12/05/the-right-to-democratic-local-government/?lang=en>
- <sup>22</sup> "Local Government and Human Rights Reach the UN," *Land Times/أحوال الأرض*, [English and Arabic], Issue 8, (December 2013), at: <http://landtimes.landpedia.org/newsdes.php?id=pGtn&catid=pQ==&edition=qg==>
- <sup>23</sup> *Supra note* 20
- <sup>24</sup> Marion Séjourné and David Sims, in World Bank, "Egypt: Urban Sector Update," Vol. 1 of 2 (Washington: World Bank, 2008)
- <sup>25</sup> Sarah Sabry, "Poverty lines in Greater Cairo: Underestimating and misrepresenting poverty," International Institute for Environment and Development (IIED) Poverty Reduction in Urban Areas Series Working Paper 21, (May 2009).
- <sup>26</sup> Samir `Abd ul-Wahhāb, Local Administration in the Draft of the New Constitution...General Observations, *Bawābat al-Sharq*, 20 October 2012 at: <http://www.shorouknews.com/columns/view.aspx?cdate=20102012&id=dc4a83bd-b1bb-403b-aa9e-aaa973fafa4a>.

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<sup>27</sup> The prohibitions against torture, and the human right to freedom from torture is a subject that affects a bundle of rights, including civil, cultural, economic, political and social rights.

<sup>28</sup> Organizations that participated in the compilation of this collective parallel report were: al-Nadim Centre for the Rehabilitation of Victims of Violence, The Hisham Mubarak Law Centre and The New Woman Research Centre. Endorsing organizations were: The Cairo Institute for Human Rights Studies, The Centre for Trade Unions and Workers Services, The Egyptian Organization for Human Rights, The Group for Democratic Development and The Human Rights Centre for the Assistance of Prisoners. Both the Egyptian Center for Housing Rights and the Land Center for Human Rights presented separate, but complementary parallel reports.

<sup>29</sup> *Supra note 18*

<sup>30</sup> As explained by a MoP economic advisor to the minister, dismissing the Brazilian experience, in an interview with this writer, April 2014.

<sup>31</sup> *ScoopEmpire*, "Q&A: Laila Iskander, Egypt's New Minister of Urban Renewal and Informal Settlements," 5 July 2014, at: <http://scoopempire.com/ga-laila-iskander-egypts-new-minister-urban-renewal-informal-settlements/>.





# Imagining the Right to the City in Jerusalem<sup>1</sup>

*Joseph Schechla*

Located on a plateau in the inland hills between the Mediterranean and the Dead Sea, Jerusalem is one of the oldest continuously inhabited cities in the world. During its long history, Jerusalem has been destroyed twice, besieged 23 times, attacked 52 times, and captured and recaptured 44 times.<sup>2</sup> Today, it is considered holy to the three major Abrahamic religions—Judaism, Christianity and Islam.

The concept of the right to the city encompasses participation in the public sphere on the basis of equal citizenship in (and benefit from) the political, social and cultural life of the area in which one lives, a prospect that is difficult in an urban context of colonization, population transfer, institutionalized discrimination and occupation. Jerusalem is a city deeply divided along religious, political and cultural lines, where the indigenous inhabitants are unable to move freely, let alone realize any right to equal participation in decision making and access services. In light of the consequent physical, social, military, political and economic divides in Jerusalem, this report explores how diverse Jerusalemites—and the diverse and complex status among them—could assert and exercise the “right to the city” toward democratization and restoration of the range of human rights.

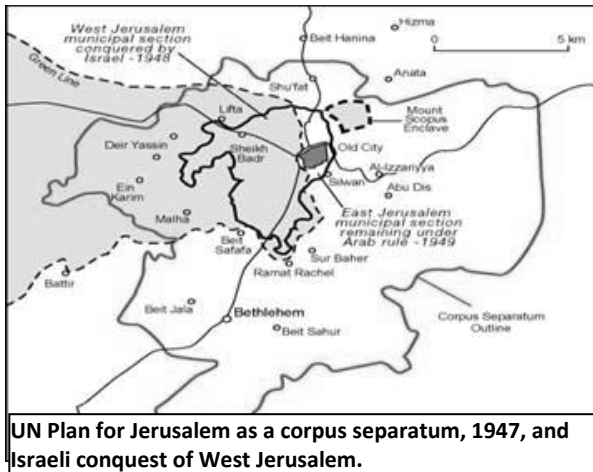
## **Dividing the City**

Since Israel’s conquest of West Jerusalem in 1948, occupation of East Jerusalem during the 1967 war and subsequent formal “annexation” in 1981, the settler state has striven to transform Jerusalem into a demographically Jewish city by applying its domestic laws and institutions privileging legal and natural persons holding “Jewish national” status, at the material expense and disadvantage of the indigenous Palestinian Jerusalemites. Explicitly since 1967, municipal governance processes across the occupied Palestinian territory (oPt) pursued a four-part demographic-manipulation policy of (1) confiscating and destroying Palestinian property and (2) forbidding Palestinian construction and development, (3) denying Palestinians residency and housing rights in their self-acclaimed capital and (4) constructing and expanding Israeli-Jewish settler colonies on Palestinian public and private property.<sup>3</sup>

Israeli authorities have built at least 17 settler colonies on the confiscated properties and occupied lands of Palestinian East Jerusalem and its surrounding villages, including those depopulated and demolished in the context of war. These lands and properties are now incorporated into an ever-expanding zone under the occupying Power’s acclaimed Jerusalem Municipality jurisdiction. 80% of today’s occupied Jerusalem municipal zone was not part of the city before 1967, but currently encompasses parts of Bethlehem and 28 other West Bank towns and villages.

Like apartheid South Africa, Israeli occupation maintains a severe pass system, curtailing Palestinian movement into or out of the city. Jerusalemite Palestinians who are accorded the legal status of “permanent residents” and are subjugated to discriminatory laws, taxes and differentiated rights. Moreover, every year, Israel authorities revoke the resident status of hundreds of Palestinians in Jerusalem, reflecting a common tactic used to drive Palestinians out of their capital. However, unlike the foregone South African counterpart, the process in Jerusalem has involved waves of cross-border expulsion of the indigenous population, relying instead on immigrating Jewish settlers and other foreign labor.

Palestinians officially demand that Jerusalem be shared, with the eastern portion of the city occupied by Israel in 1967 as the capital of the independent State of Palestine. The official position of some Western



governments supports dividing the city (although not necessarily along the lines that Palestinians prefer) and has predicated any eventual peace agreement on such an outcome. International law considers Jerusalem to remain an international zone (*corpus separatum*).<sup>4</sup> Indeed, the much-contested “two-state solution” to the seemingly intractable Palestine Question envisages an Israeli Jerusalem (Yerūshalayim) that would function as Israel’s capital, and a Palestinian capital of al-Quds (meaning, “the sacred”), contiguous with and integrally linked to development and service-delivery systems through a common development authority.

### Nationality, Citizenship and Israel’s “Development” Organizations

The State of Israel maintains a unique system of dual-tiered civil status, which conveys the privileged status of “Jewish national and citizen” to its Jewish population and denies civil status or conveys inferior status to Palestinian citizens and residents within pre-1967 Israel and, due to the 1967 annexation and extension of Israeli law, also to Palestinians in occupied East Jerusalem. Under the 1952 Israeli Citizenship Law, that system provides “Israeli citizenship” based on four criteria: “return” (reserved for Jewish immigrants), residency (for Palestinians who remained in the country after Israeli’s establishment in 1948), birth and naturalization (of non-Jewish immigrants and relatives of Israeli citizens). The Law annuls the citizenship held by Palestinians during the British Mandate and excludes all 1948 Palestinian refugees from civil status in Israel, making them stateless, thereby violating the customary rules of state succession. The 1952 law and a new law adopted in 2002 also prohibit naturalization and residency in Israel for persons from Arab and other neighboring nationalities categorized as “enemy countries, including Palestinians from outside Israel and the annexed Jerusalem.”<sup>5</sup> Finally, the status of “Israeli citizen” alone does not ensure equal treatment and, in fact, forecloses a bundle of economic, social and cultural rights that are reserved for others claiming “Jewish nationality,” wherever they may live.

The concept of “Jewish nationality” (i.e., belonging to a Jewish “nation,” or *le’om yahūdi*) is enshrined in the charters of mentioned Israeli state agencies, World Zionist Organization/Jewish Agency for the Land of Israel (WZO/JA), Jewish National Fund (JNF) and their subsidiaries, which were established for the purpose of colonizing Palestine.<sup>6</sup> Today, these parastatal organizations form the development superstructure of the state, assuming authority for many decisions involving land use, housing and “national” projects. The alienation of these organizations from the people they affect is cavernous.

The Israel Lands Law (“The People’s Land”) (1960) ensures that lands will be managed, distributed and developed in accord with the principles of the JNF and its discriminatory charter. The Israel Land Administration, also established in 1960, rested on four “cornerstones”: Basic Law: Israel Lands (1960), Lands Law (1960), the Israel Land Administration Law (1960), and the Covenant between the State of Israel and the Zionist Executive (World Zionist Organization/Jewish Agency and Jewish National Fund). The Israel Land Council (ILC) determines ILA policy, with the Vice Prime Minister, Minister of Industry,

Trade, Labor and Communications as its chairman, while the 22-member Council is comprised of 12 government ministry representatives and ten representing the JNF.

Recent legislation in the form of the Israel Lands Authority Law, Amendment 7 (2009) and a 2010 amendment of the British Mandate-era Land Ordinance (Acquisition for Public Purposes) (1943) introduced tactical adjustments to the land tenure system in Israel during the period of this review. The 2009 amendment authorizes more powers to the JNF in land management. It also establishes the Israel Lands Authority (ILA) (no longer “Israel Lands Administration”) with increased powers, granting of private ownership of lands and setting approval criteria for the transfer of state lands and Development Authority lands to the JNF. The 2010 amendment “makes sure” that lands expropriated for “public use” never “revert” to original owners and now can be transferred to a third party (likely the JNF).<sup>7</sup>

The new 2010 law appears to prevent—or severely impede—Palestinian citizens of Israel from ever reclaiming their confiscated land, if it were not used for the original public purpose acquisition if more than 25 years have passed. Well over 25 years have passed since the confiscation of the vast majority of Palestinian lands and properties, including those in Jerusalem. Meanwhile the ownership of large tracts of land has been transferred to third parties, including Zionist institutions such as the JNF.<sup>8</sup> However, most indigenous inhabitants of Israeli-controlled areas are not Jewish, including East Jerusalem.

The same state-linked agencies of WZO/JA and JNF, also operate as tax-exempt organizations in some 50 other countries as “charitable organizations” also to recruit persons of Jewish faith and/or their (consequently tax-exempt) financial contributions to carry out development on behalf of Jewish settlers.<sup>9</sup> Thus, this dynamic involves an exceptional extraterritorial dimension.

### **Territory and Demographics**

After Israel occupied East Jerusalem in 1967, it never “legally” annexed the conquered territory, but rather extended the city’s municipal boundaries to include 70 km<sup>2</sup> of Palestine’s West Bank (comprising 6 km<sup>2</sup> of East Jerusalem’s municipal boundary from 1948 to 1967, plus an additional 64 km<sup>2</sup> of West Bank territory). Israel’s parliament (Knesset) then adopted the affirming legislation<sup>10</sup> that applied Israeli law in these areas, despite prohibitions under international law governing occupation.<sup>11</sup>

The Israeli government expanded Jerusalem’s municipal boundaries for two purposes: (1) The territorial purpose compelled incorporation of the Old City and adjacent Jewish historical sites into Israel, establishing borders that facilitated the city’s defenses at the country’s extreme eastern frontier and complicated a future division of the city. (2) The demographic goal was to implant Jewish settlers to achieve a solid Jewish majority and administratively minimize the indigenous population.

For many Israelis, the enlarged borders of municipal Jerusalem, including the ancient center and the Palestinian Arab city, plus 28 more Arab Palestinian villages, are ideologically associated with the Holy City’s sacred-pedigree character, overlooking other values and indigenous residents’ interests. The spatial and epic “unification” of Jerusalem in Israel signals an eternal revival of a primordial pedigree and, therefore, Jewish “right.”

The Israeli occupation authorities did not impose Israeli citizenship on indigenous East Jerusalem Palestinians, but offered them a choice between citizenship and “permanent residency,” a status that confers certain rights, including to social security and voting in municipal—but not “national”—elections. This semi-privileged status accompanies obligations to pay municipal tax (*arnona*, in

Hebrew).<sup>12</sup> The majority has refused Israeli citizenship; in the past ten years, fewer than 7,000 have applied.<sup>13</sup>

The demographic reality has not met the occupation planners' targets. After Israel expanded the municipal boundaries in 1967, Jerusalem's Arab population was roughly a quarter of the total. Since then, they have grown to about 36% (over 290,000). From 1967 to 2010 Jerusalem's Jewish population grew by 155%, while the Arab population grew by 314%.<sup>14</sup>

By 2010, a three-decade pattern of Jewish-Israeli population migration out of Jerusalem became the norm. The migration of adult Jewish residents in 2012 saw 7,300 people moving to the city (including 2,900 new immigrants to the state), while 17,400 left.<sup>15</sup> This, together with the enforced urbanization of the Arab population and the Arab population's natural growth rate in Jerusalem, contributed to the decline of Jerusalem's Jewish majority. This unexpected trend recently compelled Jerusalem's planning institutions to update the demographic target in Jerusalem for the year 2020. Their reality check projected no longer 70% Jews and 30% Arabs, as in the 1970s and 1980s. The readjusted policy officially now seeks a demographic "balance" of 60% Jews and 40% Arabs (of all faiths).<sup>16</sup>

### **Municipal Governance**

The Jerusalem Municipality is relatively weak, which trait harkens back to the British Mandate, when local authorities confronted a city deeply split between Arabs and Jews. The state maintains a highly centralized grip on local developments, reducing the municipality's autonomy, while it bears the burden of delivering services to Jews and Arabs, east and west.

The Jerusalem City Council is comprised of 31 members. The mayor is elected, serves a 5-year term and is paid from municipal funds; his six mayor-appointed deputies are well paid.<sup>17</sup> However, the 24 elected council members serve on a volunteer basis. Religious Jewish political parties traditionally dominate the Council. The Council holds most meetings in secret, holding only one public session per month.

According to Israeli jurisprudence,<sup>18</sup> the non-Jewish residents of East Jerusalem are considered as bearers of "licenses" for permanent residency, eligible to those who were counted in the population census of 1967. However, this residency status for Arab residents actually forces them into a situation in which their right to continue living in their homes and to conduct normal life in the place of their birth and continuous residency subjects them to the constant threat of expulsion from the city with the arbitrary rescinding of "residency."

Under the *Basic Law: The Knesset*, Jerusalemite Palestinians do not have the fundamental civil right to vote or to be elected for central government institutions, including Israel's parliament.<sup>19</sup> They are not allowed to carry Israeli passports.<sup>20</sup> They are entitled to vote and run in elections for the Jerusalem Municipality under the Local Authorities Law (Elections) (1965), but are statutorily ineligible to become mayor.<sup>21</sup> In practice, most of the Palestinians of East Jerusalem boycott the municipal elections and Palestinian national leadership has rejected the option of Palestinians participating in Israeli elections in their capital.<sup>22</sup>

However, even local decisions and municipal bylaws are subject to centralized authorities such as the Israel Lands Administration, which is responsible for local government. The Interior Minister has the power to remove mayors, determine municipalities' planning zones, approve municipal plans, determine municipalities' income and the distribution of land resources. This central control structurally



In the extent to which popular counterforces have raised the language of the right to the city, their local articulation of that right argue for democratizing development decisions, by having citizens take power over the production and management of their socially produced space. Within the global right to the city framework, urban citizenry is not rooted in parochial nationality, rather by local urban residency. However, in the Jerusalem case, national identity remains very much at stake.

Some authors assert that identity based claims to the right to the city appear to contradict a universalistic right to the city.<sup>30</sup> However, in this case, it is perhaps unrealistic to expect communities undergoing settler colonization to shed their respective indigenous and constructed identities. In the main, Israeli expressions and visions of the right to the city tend to address inequality, while offering only to equate the competing claims to the city space.<sup>31</sup> Meanwhile, the Palestinian Jerusalemites generally assert and pursue their right to the city as primordial and part of their liberation from a century of invasion, colonization and occupation.

Recently, some authors and students have grappled with right to the city concepts in the context of divided cities.<sup>32</sup> In the particular Jerusalem context, urban planner Rassim Khamaisi<sup>33</sup> has proposed the alleviation of the Palestinian plight through the realization of the right to the city in Jerusalem and elsewhere under Israeli state control.<sup>34</sup> He poses a right-to-the-city entitlement based upon municipal “citizenship,” while recognizing that the lack of the right to the city in Jerusalem stems from the centralized nature of the State of Israel with political regime of dispossession, control and distribution of resources, skewing the balance of power.<sup>35</sup> In many ways localizing *de facto* residency as the principal criterion of municipal citizenship would disentangle the highly centralized governance of the city, as referenced above.

Palestinian civil society organizations have engaged in *de facto* right to the city activities by engaging local communities in advocacy and alternative planning. Among them is the International Peace Cooperation Center (IPCC), which is a nongovernmental organization (NGO) dedicated to the vision of a vibrant, sustainable and democratic Palestinian society and state through an integrated approach of research, urbanism, community engagement and training.

The Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ) is an independent, nongovernmental, nonprofit coalition of organizations, institutions, societies and associations dedicated to the promotion and protection of Palestinian rights in Jerusalem. Established in 2005 and based in Jerusalem, CCPRJ has been working to combat human rights abuses under the Israeli occupation through research and legal analysis, advocacy and human rights education. The Coalition's primary focus is on the following areas: (1) housing, land and planning rights; (2) civil and political rights; (3) economic, social, and cultural rights; (4) the rights of the child (including the right to education); and (5) and the right to freedom of expression. Recently, the Coalition has developed Guidelines that aim to help nonlawyers understand and apply international law to Israel's oppressive regime over the entire Palestinian people: those in the occupied Palestinian territory since 1967, Palestinian citizens of Israel, and the Palestinian refugees since 1948.<sup>36</sup>

The Land Research Center (LRC) is a long-established Palestinian NGO that focuses on both rural and urban cases of land deprivation. In a LRC conference on World Habitat Day, on 29 May 2011, the organization formally relaunched the Palestinian Housing Rights Movement. LRC also has been a regular participant to the HIC-HLRN Middle East/North Africa Land Forum, contributing on the segment on the right to the city with a focus on Jerusalem.

On the Israeli side, certain civil society initiatives have highlighted institutionalized discrimination in Jerusalem, including discussion of the concepts of the right to the city. Ir Amim (Hebrew: עיר עמים; "City of Peoples" or "City of Nations") is an Israeli activist nonprofit organization founded in 2004 that focuses on the Israeli-Palestinian conflict in Jerusalem. It seeks to ensure the "dignity and welfare of all [of Jerusalem's] residents," safeguarding their holy places, as well as their historical and cultural heritages. While the organization describes itself as "left wing," its program is seen as promoting coexistence within a frame of normalization.

Ir Amim has worked with some Palestinian nonprofit organizations to strengthen civil society in East Jerusalem, emphasizing infrastructure works such as sanitation, water, roads, sidewalks, street utilities (streetlamps, bus stops) or neighborhood services (clinics, emergency services, mail delivery, waste collection).<sup>37</sup> An example of one such organization is Nuran Charitable Association, which provides emergency ambulance service in East Jerusalem.

### **Conclusion: Imagining the Right to the City**

The Palestinians of Jerusalem, as part of a distinct indigenous people living within the jurisdiction of the State of Israel, the State of Palestine and in their diaspora, have a right to the City of Jerusalem that is being systematically denied. They are expressly the category of persons restricted from entry and residence there. As subjects of a right to the city movement, Palestinians should expect from the responsible local and central governments not only fully equal treatment as accorded to all other citizens, but also the recognition of their rights as a historically excluded and marginalized indigenous people, institutionally discriminated against, subject to human rights violations for which the modern state and the international community bear liability. These conditions call for a right to the city movement with an explicit affirmative-action agenda in favor of this excluded class of Jerusalemites. This calls for the right to the city in Jerusalem as that concept relates to wider processes of transitional justice, including reparation.<sup>38</sup>

Considering, as it must, the state context of the city, the Jerusalem right to the city movement would reveal this city to be the tip of a proverbial iceberg of institutional, locally "legalized" and policy-driven discrimination affecting the Palestinian people as a whole. Generalized practices of discrimination and dispossession, particularly carried out and/or managed through the operations of Israel's WZO/JA, JNF and affiliates' official practice since the founding of the State of Israel. A right to the city movement in Jerusalem logically would have to face the social justice dilemmas of this past.

Few cities are would be needier candidates for a right to the city movement. Simultaneously, few cities are polarized more than today's Jerusalem.

The abstract language of socially produced space and social function of property may not suffice to affect the current situation where even notions of "social cohesion" have become so distorted as to shed their positive meaning and become tools of material discrimination.<sup>39</sup> The definition and pursuit of the right to the city in Jerusalem may require an accompanying process of deconstruction and disambiguation of fundamental concepts that the Israeli colonization and occupation have constructed.

In such a situation of institutionalized discrimination, international norms recognize that temporary special measures<sup>40</sup> may be needed to correct historic discrimination and its disadvantageous effects, among other actions to reform laws and institutions. For example, the CESCR's General Comment No. 20 urges that

Such policies, plans and strategies should address all groups distinguished by the prohibited grounds and States parties are encouraged, amongst other possible steps, to adopt temporary special measures in order to accelerate the achievement of equality. Economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination. Public and private institutions should be required to develop plans of action to address non-discrimination and the State should conduct human rights education and training programmes for public officials and make such training available to judges and candidates for judicial appointments.<sup>41</sup>

The importance of implementing right-to-the-city principles in Jerusalem cannot be over emphasized. The city is not only geographically central to the country, it lies at the strategic core of resolving the protracted Arab-Israeli crisis and epitomizing social justice, rather than repelling it at the city limits. Given the interlacing of Israeli municipal and central government jurisdictions in Jerusalem as implementers of institutional discrimination, the movement for the right to the city inevitably forms part of a wider effort to democratize the state. Failing to correct the intense injustice in Jerusalem is to perpetuate conflict, erode the legitimacy of any state claiming to represent peoples.<sup>42</sup>

Jerusalem's status at the core of the Palestine question raises also the international responsibility of the United Nations and extraterritorial states for the situation in the city. In this context, the call for the right to the city in Jerusalem takes on a uniquely global dimension.

#### Endnotes:

<sup>1</sup> This paper is part of a longer and more detailed report on the Right to the City in Jerusalem; the full study can be downloaded at: <http://www.hic-mena.org/activitydetails.php?id=o3FoaA==>.

<sup>2</sup> Eric H. Cline, *Jerusalem Besieged: From Ancient Canaan to Modern Israel* (Ann Arbor: University of Michigan Press, 2005).

<sup>3</sup> These functions are consolidated in Israeli Military Order 418 Concerning Towns, Villages and Buildings Planning Law (Judea & Samaria) (1971), which authorizes the Israeli occupation's High Planning Council to replace the Jordanian Planning Law in force at the time of Israel's invasion of the oPt and maintain three occupation subcommittees: (1) for Israeli settlement, (2) for house demolitions and (3) for local planning and development.

<sup>4</sup> UN General Assembly, "Future government of Palestine," Part III: City of Jerusalem, A/RES/181(II)(A+B), 29 November 1947; Division for Palestinian Rights, *The Origins and Evolution of the Palestine Problem: 1917–1988*, Part II 1947–1977 (New York: United Nations, 30 June 1979), p. 31; On 1 March 2001, Theodor Wallau, Germany's ambassador to Israel, sent a letter to Israeli Foreign Minister Ariel Sharon, reaffirming the European Union's longstanding formal support for Jerusalem's internationalization as outlined in UN General Assembly Resolution 181 (II), stating: "We reaffirm our stated position regarding the specific status of Jerusalem as a *corpus separatum*. This position is in accordance with international law." Palestine Information with Provenance database, at: <http://www.corkpsc.org/db.php?eid=548>.

<sup>5</sup> "Law of Citizenship and Entry into Israel" (2003), amended by Section 3A in 2008.

<sup>6</sup> The JNF charter also applies the terms "Jewish religion, race or origin/descendancy" [emphasis added]. Jewish National Fund (JNF), "Memorandum of Association of Keren Keyemeth Leisrael," Article 3(C), 1953.

<sup>7</sup> The 2010 legislation also circumvents the Israeli Supreme Court's precedent-setting judgment in the 2001 Karsik case, which obliged authorities to return appropriated land to its former owners in the event it has not been used for the purpose for which it was taken. Israeli High Court of Justice, *Karsik v. State of Israel*, 55(2), H.C. 2390/96, P.D. 625, (13 February 2001).

<sup>8</sup> Jeremy Forman and Alexandre (Sandy) Kedar, "From Arab land to 'Israel Lands': the legal dispossession of the Palestinians displaced by Israel in the wake of 1948," *Environment and Planning D: Society and Space*, Vol. 22, 2004.

<sup>9</sup> See: Jewish Agency for Israel (JAFI), at: <http://www.jafi.org.il/about/abroad.htm>.

<sup>10</sup> By amendments to two existing laws: "Law and Administration Ordinance" and the "Municipal Corporations Ordinance"), and the interior minister issued a corresponding administrative declaration, "The Jerusalem Declaration, 1967"; Ian Lustick, "Yerushalayim, al-Quds, and the Wizard of Oz: Facing the Problem of Jerusalem after Camp David," *The Journal of Israeli History*, Vol. 23, No. 2, ((autumn 2004).

<sup>11</sup> The Hague Convention IV respecting the Laws and Customs of War, §43 (Hague) (18 October 1907)

<sup>12</sup> Though termed "permanent," residency can be revoked in a variety of circumstances, most notably when a resident can no longer prove that his or her "centre of life" is in Jerusalem. "East Jerusalem: Key Humanitarian Concerns, Special Focus", UN



- Office for the Coordination of Humanitarian Affairs – occupied Palestinian territory (OCHA-oPt), March 2011. Since 1967, 14,000 East Jerusalem Palestinians (just under 5% of the current total) have had their residency status revoked, approximately half of them since 2005 when a sharp increase occurred, a policy referred to by Israeli human rights organisations as “quiet deportation.” Israel maintains this policy today though revocations have dropped dramatically: in 2008 the interior ministry revoked the residency of nearly 4,600 East Jerusalem Palestinians while in 2010, the number dropped to less than 200. The ministry claimed that most of the revocations resulted from relocation abroad in which the individual in question was granted citizenship or permanent residency.
- <sup>13</sup> International Crisis Group, “Extreme Makeover? (II): The Withering of East Jerusalem,” *Middle East Report* N°135 (20 December 2012).
- <sup>14</sup> Nadav Shragai, *Demography, Geopolitics, and the Future of Israel’s Capital: Jerusalem’s Proposed Master Plan* (Jerusalem: Jerusalem Center for Public Affairs, 2010), at: <http://jcpa.org/text/jerusalem-master-plan.pdf>.
- <sup>15</sup> Israel Central Bureau of Statistics, 2013
- <sup>16</sup> Shragai, op. cit.
- <sup>17</sup> Between NIS36,000 and 46,000 (€7.455–9,525) per month; Peggy Cidor, “Corridors of Power: A tale of two councils,” *The Jerusalem Post*, 15 March 2007, at: <http://www.jpost.com/Local-Israel/In-Jerusalem/Corridors-of-Power-A-tale-of-two-councils>.
- <sup>18</sup> The court rejected the petitioner’s argument that his residency in Jerusalem constituted a status of “quasi citizenship”; Israeli High Court of Justice, *Awad v. The Prime Minister and Minister of the Interior*, 282/88, PD 45 (2) 424, ruling on Section 1(b) of the Residence and Entry into Israel Act (1952).
- <sup>19</sup> Basic Law: The Knesset, § 5, 6, (1958), at: [https://www.knesset.gov.il/laws/special/eng/basic2\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic2_eng.htm).
- <sup>20</sup> Sections 2 of the Passport Law, 1952.
- <sup>21</sup> “Local Authorities Law (Election of Authority Head and Deputies and their Tenure)” (1975).
- <sup>22</sup> Menachem Klein, “Jerusalem as an Israeli Problem: A Review of Forty Years of Israeli Rule over Arab Jerusalem,” *Israel Studies*, Vol. 13, No. 2, (2008); Talia Sasson, “The Status of Jerusalem,” in *Permanent Residency: A Temporary Status Set in Stone* (Jerusalem: Ir Amim, 2008), at: <http://www.ir-amim.org.il/en/report/permanent-residency-temporary-status-set-stone>.
- <sup>23</sup> R. Merhav and R. Giladi, “*Va’adat haSarim l’Inyanei Yerushalayim*,” in A. Ramon, ed., *Ir be’Svach*, (2004), [in Hebrew]
- <sup>24</sup> Mark Purcell, “Citizenship and the right to global city: reimagining the capitalist world order,” *International Journal of Urban and Regional Research*, (2003), at: <http://faculty.washington.edu/mpurcell/ijurr.pdf>; and “Excavating Lefebvre: the right to the city and its urban politics of the inhabitant,” *GeoJournal*, 58 (2003), pp. 99–108, at: <http://faculty.washington.edu/mpurcell/geojournal.pdf>.
- <sup>25</sup> Henri Lefebvre, *Writing on Cities* (Oxford and Cambridge MA: Blackwell, 1996); and *The Production of Space* (Oxford: Blackwell, 1997).
- <sup>26</sup> Purcell, op. cit.
- <sup>27</sup> Hasson Shlomo, ed., *Jerusalem in the future: the challenge of transition* (Jerusalem: The Floersheimer Institute of Policy Studies, 2007), at: <http://futura institute.com/jif.pdf>.
- <sup>28</sup> The Palestinian Non-Governmental Organizations Network, The Civic National Commission in Jerusalem and The Palestinian BDS National Committee (BNC) letter to Mr. John Gatt Rutter, European Union Representative for the West Bank, Gaza Strip and UNRWA, (29 January 2013), rejecting the EU’s “People to People and Partnership for Peace”
- <sup>29</sup> Salim Tamari ed., *Jerusalem 1948: The Arab Neighborhoods and Their Fate in the War* (Jerusalem Institute for Jerusalem Studies and BADIL Resource Center for Palestinian Residency and Refugee Rights), at: [http://www.badil.org/index.php?page=shop.product\\_details&flypage=garden\\_flypage.tpl&category\\_id=2&product\\_id=125&vmcchk=1&option=com\\_virtuemart&Itemid=4](http://www.badil.org/index.php?page=shop.product_details&flypage=garden_flypage.tpl&category_id=2&product_id=125&vmcchk=1&option=com_virtuemart&Itemid=4).
- <sup>30</sup> Gillad Rosen and Anne B. Shlay, “Whose Right to Jerusalem?” *International Journal of Urban and Regional Research*, Vol. 38 Issue 2 (6 January 2014), at: [http://onlinelibrary.wiley.com/journal/10.1111/\(ISSN\)1468-2427/earlyview](http://onlinelibrary.wiley.com/journal/10.1111/(ISSN)1468-2427/earlyview).
- <sup>31</sup> Ibid.
- <sup>32</sup> Jon Nagle, “Sites of social centrality and segregation: Lefebvre in Belfast, a ‘divided city’,” *Antipode*, Vol. 41, Issue 2, (March 2009), at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8330.2009.00675.x/abstract>; and John Nagle, Mary-Alice C. Clancy, *Shared Society Or Benign Apartheid?: Understanding Peace-Building in Divided Societies* (London: Palgrave MacMillan, 2010).
- <sup>33</sup> Professional urban, regional planner and Senior Lecturer in the Geography Department at Haifa University.
- <sup>34</sup> Rassim Khamaisi, “In the shadow of the separation wall: impeding the right to the city and shaping the Palestinian spatial environment in Jerusalem/al-Quds,” in Shlomo Hasson, ed. *Jerusalem in the future: the challenge of transition* (Jerusalem: The Floersheimer Institute of Policy Studies, 2007), at: <http://futura institute.com/jif.pdf>.
- <sup>35</sup> David Nachmias, “Constitutional Issues in Local Governance,” in David Nachmias and Gila Menahem, eds., *Social Processes and Public Policy in Tel Aviv*, Vol. III (Tel Aviv: Tel Aviv University Press, 2005).
- <sup>36</sup> CCRPJ, “Guidelines for Advocating for Palestinian Rights in conformity with International Law” (2014).
- <sup>37</sup> For further information, see Ir Amim’s Empowerment Project, at: <http://www.ir-amim.org.il/Eng/?CategoryID=188>.

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- <sup>38</sup> UNGA, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/60/147, (22 March 2006).
- <sup>39</sup> Suhad Bishara, “On Class and Nationality in Housing Rights,” *Adalah's Newsletter*, Volume 11, March 2005.
- <sup>40</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (1965), ratified by Israel 2 February 1979, provides in Article 1(4): “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”
- <sup>41</sup> CESCR, General Comment No. 20 “Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2 of the Covenant),” E/C.12/GC/20, §38, (June 2009).
- <sup>42</sup> Wil Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford and London: Oxford University Press, 2007); Klaus Vondung ed., Ruth Hein, transl., *The Collected Works of Eric Voegelin, Volume 2: Race and State* (Baton Rouge LA: Louisiana State University, 1997); Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN), “The State of Housing Rights: World Habitat Day 2004 in the Middle East/North Africa” (Cairo: HIC-HLRN, 2004).



## **5. Corruption**



## Land Dimensions of Corruption and Embezzlement in Tunisia

*Ahmed Mansour Ismail*

Among the last efforts to retain his regime in the face of widespread uprising calling for his ouster, Tunisia's previous President Zine el-Abidine Ben `Ali established two principal national-level mechanisms that paved the way for transitional justice. The National Commission to Investigate Abuses resulting from human rights abuses that began with the uprising 17 December 2010–23 October 2011, established by Decree No.8/2011, recorded personal injury cases involving violence by government agents.<sup>1</sup> In parallel, the National Commission to Establish the Facts of Corruption and Embezzlement Cases,<sup>2</sup> established by Decree No.7/2011, was the main procedure to investigate administrative corruption.

Both commissions' final reports are considered essential references in diagnosing the issues that a future transitional justice (TJ) process in Tunisia, particularly due to the richness of their data and information. They represent the first step toward eventual adjudication of violations and crimes, as well as identifying the parameters of just remedy that is presumed to result from TJ. However, the National Commission on Corruption and Embezzlement is the mechanism that embodied the arduous task of charting the matrix of economic crimes and misdeeds that involved investment, privatization, land grabbing, extortion, shady real-estate deals and dispossession over the longer period of the Ben `Ali regime.

The head of the Commission, the late Abd al-Fattah Amor, revealed in the final report that his Commission found systematic corruption that progressively penetrated the state administration throughout the previous regime. The Commission received 10,062 case claims, 5,310 of which the Commission investigated and 588 the Commission referred to the judiciary. The others have been submitted to the relevant public bodies and authorities to study and resolve. The report and its case outlines covered economic crimes that involved public land grabbing by the president's family members and entourage, registering it as private property. In other cases, the investigations revealed that sale of land and real property under direct order and illicit contracts at low and token prices to relatives of the family president. These were in some of the most sublime areas of the country such as Sidi Bu Sa'id and al-Ḥammamat.<sup>3</sup> However, the report itself does not reproduce the names of the suspects, as determining guilt or innocence remains the remit of the courts and other adjudication bodies.

Illicit land sales by direct order have included agricultural land and other parcels for construction and tourism projects in the capital's suburbs such as Ḥalq al-Wadi, al-Kram and Carthage, and in Sousa, and other cities on the north coast. The Commission affirmed that the public-property grabbing by the previous regime was not limited to Tunisian citizens, but included also certain foreign political figures. In some cases, the Minister of Public Properties allocated Tunisian real estate to one of the Persian Gulf state leaders, and other one to an unnamed prince of one of the Gulf royal families.

The Commission also conducted field verification missions to some presidential palaces such as Carthage and Sidi al-Dharif residences. They found that the previous president seized those

lands at a cost to the Ministry of Defense of T.D. 4 million (€1,855,000).

The investigation revealed that the sector of the public procurement and contracts was other main subject of corruption. Contracts deals were decided in the presidential palace at Carthage without referring to the competent committee.

As the report mentioned, the regime of Ben `Ali has manipulated and circumvented the law to allocate public contracts to ineligible persons and concluded contracts with them by direct presidential order, in contravention with the necessary bidding procedures. The contract to construct the “cultural city” to house the Ministry of Culture was one such illicit contract. (The monstrous complex remains unfinished to date.) Other illicit contracts were for the concession to provide transport between Sfax and Qarqanna Island, a contract to establish a unit to manage the transport of liquefied gas and petroleum products and other public contracts that Ben `Ali's family used it for their personal interests. Other sources have reported their own investigations into corruption, complementing the Commission's findings.<sup>1</sup>

During the rule of the previous regime, corruption in the implementation of privatization policies without antitrust regulations became relevant to economic and social variables. That policy left the private sector to dominate the public resources, causing great economic and social costs, impeding economic development and impoverishing the people.

The Commission found during their investigation in different cases with evidence that the corruption and bribery has widespread and involved most of the administrative and political decision centers in the state. It was widely understood that bribery is a successful way to access administrative facilities, obtain a favorable decision, or secure a public-sector job.

The Commission identified the most-prominent areas affected by corruption of the administrative bodies overlapped with the economic institutions. The report listed 15 affected sectors of the economy and the levers of state as follows:

- Real estate projects,
- Agricultural land,
- Public bodies properties,
- Public contracts,
- Mega projects,
- Privatization,
- Procurements,
- Communication,
- Media and public-relations sector contracts,
- Financial and banking sector,
- Administrative licenses,
- Presidency / Cabinet,
- Taxation,
- Administrations and mandates,
- Judiciary.



The main corruption and embezzlement practices committed by President Ben `Ali and his inner circle that led to unjust self-enrichment through a variety of interwoven tactics:<sup>2</sup>

- Changing the category of land to enable construction and sometimes changing the purposes for which the land was allocated for construction to multiply the economic values of land. This practice proved to be a main source of self-enrichment for the previous president and his relatives.
- The Real Estate Bureau allocating prime real estate for construction purposes as a favor or gift to ineligible applicants in violation of the objective criteria regulating the public facilities.
- Changing the status of the public domain by transferring it to private property and selling it at a very low price, or renting such land to cronies at reduced prices not commensurate with the market value. This practice was common in the case of privatizing public farms, cancelling long-term leases of small-holder farmers, many of whom lost their livelihoods.
- Concluding contracts for public works and procurement in violation of tendering and bidding procedures, in some cases assigning contracts to the ineligible applicants. The role of Higher Committee for Public Procurement was confined to reviewing contract files and presenting suggestions to the president.
- Using privatization policies and related public institutions without consideration for public interests, turning privatization arrangements into the individual political favors traded among the president's relatives and some businessmen.
- The president and his relatives brokering administrative licenses of numerous economic activities and enterprises such as the automobile and alcoholic markets, cement, sugar and transport fuel production and distribution.
- Monopolizing trade in consumer good, from agricultural products (e.g., grain and fruit), to spare parts, clothing, home appliances imported from Asia outside of the customs regime and quality control. These practices affected the national economic, and bankrupted many Tunisian companies.
- Using the public institutions including the Central Bank, to serve private companies of the president's family by allocated loans without insurance and writing off debts.
- Using the tax regime to blackmail competitors and adversaries, while protecting tax evaders by intervention of the Ministry Finance and influencing judicial rulings.

In value terms, the real-estate sector corruption in the form of public-land grabbing reportedly was the most-egregious example of corruption. The Commission found official documents on these practices to be "virtually endless," enabling the deposed president and his family to amass huge ill-gotten gains.

Additional to the report of the Commission to Investigate Corruption and Embezzlement listed the cases in its report, some international institutions' reports on the corruption of Ben `Ali and his family went further by listing details of the assets.

As Freedom House mentioned in its report issued in 2012 on transitional process in Tunisia, that during Ben `Ali regime the property laws were not able to protect and ensure the right of property, although the right of property was recognized and protected by the state however sometimes the real estate owners were compelled to selling or transfer some of their interests to one of Ben `Ali's family to protect the rest of their properties.<sup>3</sup>



While according to a report issued by World bank in March 2014, that Ben `Ali and his 114 family members collected 220 companies owned by Ben `Ali himself and his family represented 21% of all private sector profits, as well as, between 1994 and 2010, 22 presidential decrees issued by Ben `Ali himself included new authorization requirements pertaining to 45 sectors and restrictions of the Foreign Direct Investment in 28 sectors.<sup>1</sup>

Following the Tunisian Revolution, the transitional government confiscated the assets of Ben `Ali family, including some 550 properties, 48 boats and yachts, 40 stock portfolios, 367 bank accounts and approximately 400 enterprises valued at approximately \$13 billion, representing more than one-quarter of Tunisia 2011 GDP.<sup>2</sup>

From 22–24 September 2011, the Commission organized an international conference on “Corruption and Embezzlement: What to Do” and identified priority reforms, including the formulation of specific policies and institutions for the prevention of corruption in risk areas. The conference has come up with important recommendations, most of them are reflected in the national report of the commission.<sup>3</sup>

- **Create an independent and permanent structure to combat corruption and embezzlement, with a mandate to prepare and implement relevant policies, co-coordinating the various stakeholders, and supporting the role of the justice system in fighting corruption and embezzlement;**
- **Accelerate the implementation of an anticorruption system in the context of a coherent, global strategy that places the public interest above private interests;**
- **Incorporate the United Nations Convention against Corruption into Tunisia law by introducing the necessary legislative amendment and supplementing incomplete procedures so as to guarantee their proper application, especially for eliminating illegal acts of corruption;**
- **Reform the justice system and its supervision, regulation and audit structure, and reinforce its autonomy by equipping it with the necessary material and human resources to improve performance;**
- **Pursue the dismantling of corruption networks and take the steps necessary to protect witnesses, informants, experts and victims;**
- **Establish a transitional justice mechanism in this area and introduce the issue of fighting corruption into education programs.**

Already in 2011, Tunisia’s interim government has addressed the high-levels of corruption in the country by establishing a national anticorruption commission charged with investigating past practices and recommending concrete measures to combat corruption. A government-produced national anticorruption strategy has initiated a national system of integrity that encourages civil society participation in policy formulation. Tunisia’s anticorruption portal<sup>4</sup> has resulted from a strategic partnership among government, civil society and the United Nations Development Programme (UNDP) in Tunisia.

Despite these positive changes, Tunisia still faces many impediments to the fight against corruption. Rules governing public official to declare their assets, conflicts of interest and codes of conduct are still lacking. No specific program protects witnesses and whistleblowers in the public sector, and legislation in the private sector remains unenforced. The indispensable civil society infrastructure to deter corruption is still weak.<sup>5</sup>

Remedy for economic, social and cultural (ESC) human rights violations, in general, and reparations—including restitution—for land-grab victims, in particular, are reportedly low-priority items on the Tunisian TJ agenda. Nonetheless, ILO has recognized that “Rural divestment, debt and dispossession of small-scale farmers” form one set of 15 features of the North Africa region impeding decent work and development.<sup>6</sup> This Tunisian case for restoration/restitution of ill-gotten assets raises the prospects for processes exemplifying the convergence of ESC human rights, TJ and development processes involving all branches of government, the private sector and civil society at once.

## Endnote:

- <sup>1</sup> With an open-ended mandate period, the full title of the National Commission of Investigation into the Excesses Recorded during the Period Running from 17 December [2010] until the End of [Their] Cause (in French: *Commission nationale d'investigation sur les dépassements enregistrés durant la période allant du 17 décembre jusqu'à l'extinction de sa cause*; in Arabic: اللجنة الوطنية لاستقصاء التجاوزات المسجلة خلال الفترة الممتدة من 17 ديسمبر 2010 إلى حين زوال موجيها).
- <sup>2</sup> The body's title, in French, is: *La Commission Nationale d'établissement des faits sur les affaires de Malversation et de Corruption* and, in Arabic: اللجنة الوطنية لتقصي الحقائق حول الرشوة والفساد.
- <sup>3</sup> التقرير النهائي بشأن اللجنة الوطنية لتقصي الحقائق حول الرشوة والفساد المالي، نوفمبر/تشرين الثاني 2011، تونس. على: <http://www.scribd.com/doc/72486444/Rapport-CICM-%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D9%84%D8%AC%D9%86%D8%A9-%D8%AA%D9%82%D8%B5%D9%8A-%D8%A7%D9%84%D8%AD%D9%82%D8%A7%D8%A6%D9%82-%D8%AD%D9%88%D9%84-%D8%A7%D9%84%D8%B1%D8%B4%D9%88%D8%A9-%D9%88-%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF>.
- <sup>1</sup> Bob Rijkers, Caroline Freund and Antonio Nucifora, “All in the Family: State Capture in Tunisia Policy,” Research Working Paper 6810 (Washington: The World Bank, Middle East and Northern Africa Region, Poverty Reduction and Economic Management Unit and Office of the Chief Economist & Development Research Group, Trade and International Integration Team, March 2014), at: [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/09/16/000456286\\_20140916144712/Rendered/PDF/861790DPRO12800Box385314B00PUBLIC0.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/09/16/000456286_20140916144712/Rendered/PDF/861790DPRO12800Box385314B00PUBLIC0.pdf); Nicolas Beau and Catherine Graciet, *La Régente de Carthage* (Paris: Éditions la Découverte, 2009), at: [http://www.editionsladecouverte.fr/catalogue/index-La\\_regente\\_de\\_Carthage-9782707152626.html](http://www.editionsladecouverte.fr/catalogue/index-La_regente_de_Carthage-9782707152626.html); Freedom House, “Countries at the Crossroads 2012: Tunisia,” <https://freedomhouse.org/report/countries-crossroads/2012/tunisia#.VPyNxLccSh0>.
- <sup>2</sup> Ibid.
- <sup>3</sup> Chomiak Laryssa, “Countries at the Crossroads 2012: Tunisia,” *Freedom House*, 2012, Tunisia. at: [https://freedomhouse.org/report/countries-crossroads/2012/tunisia#.VPsWbj\\_8l8](https://freedomhouse.org/report/countries-crossroads/2012/tunisia#.VPsWbj_8l8)
- <sup>1</sup> Rijkers, Freund and Nucifora, op. cit.
- <sup>2</sup> Ibid.
- <sup>3</sup> Ahmad Shawqi Binyoub, “Taqrir hawl al-Masar ila Wadha` Mashru` Qanun al-`Adala al-Intiqaliyya fi Tunis” [“Report on the Path Toward Posing the Draft Transitional Justice Law in Tunis”] [Arabic] (Tunis: UNDP, October 2013), at: [https://www.google.com.eg/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBwQFjAA&url=http%3A%2F%2Fhcdh-tunisie.org%2Fwp-content%2Fuploads%2F2013%2F11%2FRapport-Benyoub\\_Version-finale.doc&ei=yh\\_7VLqgNYPJPL2UgegF&usq=AFQjCNEw6OtT6yhEMQyNidH-H\\_zehpPQ1w&bvm=bv.87611401,d.ZWU](https://www.google.com.eg/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBwQFjAA&url=http%3A%2F%2Fhcdh-tunisie.org%2Fwp-content%2Fuploads%2F2013%2F11%2FRapport-Benyoub_Version-finale.doc&ei=yh_7VLqgNYPJPL2UgegF&usq=AFQjCNEw6OtT6yhEMQyNidH-H_zehpPQ1w&bvm=bv.87611401,d.ZWU).
- <sup>4</sup> *Portail National pour La Lutte Anti-Corruption* (in French), at: <http://www.anticor.tn/?id=5>.
- <sup>5</sup> Findings of Transparency International's Global Corruption Barometer 2013 note that over half of surveyed Tunisian households reported that they would not report incidents of corruption and, of those, more than a third cited fear of consequences as the main reason. See Transparency International, *The Global Corruption Barometer 2013*, at: <http://www.transparency.org/gcb2013>.
- <sup>6</sup> *Independent evaluation of the ILO's Decent Work Country Programme Strategies and Activities in North-Africa: 2010–2013* (Geneva: ILO, 2014), at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_mas/---eval/documents/publication/wcms\\_314439.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_mas/---eval/documents/publication/wcms_314439.pdf); “Challenges in MENA: An ILO inter-regional response Creating opportunities for people while empowering and protecting the most vulnerable” (Geneva: ILO, undated), p. 6.



## A Stolen Land: The Deepening Political, Security and Legitimacy Crisis in Bahrain

Akeela Ali and Joseph Schechla<sup>1</sup>

*The issue of land grabbing in Bahrain was one of many state digressions behind the (ongoing) uprisings during the Arab Spring. The conditions and safety for activists in Bahrain working on issues of land, among others, is not secure. Speaking out nationally, or participating in international forums on violations of the state, can lead to harsh punishments within the Kingdom. It was during the third session of the Land Forum that this representative was able to share an extensive and concrete look into the situation of land in Bahrain, and the concurrent effects of state control.*

The case of Bahrain is outstanding in its severity, as it is the country with the smallest land base (760km<sup>2</sup>) and largely dependent on food imports. That area includes more than 70km of the Bahrain coast reclaimed over the past thirty years, increasing the landmass by over 10%.<sup>2</sup> However, more than 90% of the newly created land has been privatized, despite legal prohibitions, making the coastline into private property of the ruling family.<sup>3</sup> Because of the commercialization of coastal land, many of Bahrain's traditionally small family fisheries have lost their livelihood, and the country, a heritage.<sup>4</sup> Moreover, nearly half of the island nation's landed property remains foreclosed to Bahrainis while occupied by United States military bases serving the U.S. Navy's Fifth Fleet.

In the region, Cyprus, Palestine and Western Sahara share the distinction of military occupation of significant portions of their territories. In the case of Bahrain, however, the foreign military presence remains with the consent of the sovereign (i.e., the king) and his entourage. None dare call that occupation.

Over the years preceding the uprisings against the Āl Khalīfa ruling family, youth and regime opponents had been protesting the lack of housing and livelihood prospects that result from the self-enrichment by the "royals" and their supporters.<sup>5</sup> The rulers' confiscation of lands and all access to the sea, coincident with material discrimination in the provision of public goods and services that favor the minority Sunnis, became an issue of such contention that the Council of Deputies (lower house of parliament) undertook an investigation into the privatization of public lands and resources. Published in March 2010, the study identified 65km<sup>2</sup> of public land valued at more than US\$40 billion transferred to private hands since 2003, without proper payment to the public treasury.<sup>6</sup>

A Bahraini parliamentary study uncovered how the system has functioned. Bahraini land grabs especially have involved state property that the king has transferred to private hands at the expense of the general citizenry by a repertoire of 16 corrupt techniques. These include:

1. Creating chaos in the inventory of state property;
2. Encroachment on private lands re-registered to Khalīfa family members at no charge;
3. In the north around al-Manama, most land grants were distributed free of charge, of which just 12 grabs comprised an area of 37km<sup>2</sup>;
4. Public land granted to the Āl Khaīfa-controlled Stone Co. before their registration as state land;
5. Issuing replacement title deeds on the claim that the original was lost, without requesting the replacement deed, which violates the Land Registration Law;
6. Granting constitutionally nationalized reclaimed lands for private investment;

7. The Land Survey and Registration Authority unilaterally dissolving state ownership;
8. Land reclaimed from the sea with state funds, such as Jufair and the Diplomatic Area, illegally excluded from state property, with some title deeds having disappeared from the Ministry of Finance with changes in the file numbering sequence to hide the missing files;
9. The lack of an accurate inventory of state land;
10. Poor planning and management of the stock of state land, whereas many important public projects have been carried out on lands without proper ownership documents (e.g., the University of Bahrain campus);
11. Forfeiting valuable archaeological sites by failing to register them in the name of the state;
12. Land acquired for public purpose over some 22 years, but not registered as public, as in the case of Dilmun Paradise Water Park;
13. The absence of strategic planning of housing projects, exacerbating the scarcity of land;
14. Ambiguity and withholding of information relating to land-use and planning;
15. Shortcomings in the Ministry of Finance's maintenance of state lands, validating royal orders to amend land records;
16. The lack of integrity of the Land Survey and Registration Authority in its role to uphold the public interest.



The available data has confirmed that some of the state properties have transferred to private parties without charge or payment, and without the state benefitting from any return on them. The king has made royal gifts of property intended for public benefit, such as land recently reclaimed from the sea. These lands are constitutionally excluded from privatization. Nonetheless, by mid-2008, private parties had taken 94% of this land for “special projects.”

The parliamentary report also revealed cases of seizure and forgery of title deeds as part of an organized and systematic policy of land fraud. Cases of bribery, particularly those associated with the royal-controlled Alba company (Aluminium Bahrain BSC),<sup>7</sup> became notorious. The official investigation alleged that, over the years, the prime minister's advisor Shaikh `Isa bin `Ali Āl Khalifa has received bribes estimated at \$2 billion dollars (an amount equivalent to the state budget for one full year). The king then issued royal pardons for the defendants, while the cases were still before British and U.S. courts.<sup>8</sup>

Given that corruption in the management of state property is so widespread and complex, the Bahraini parliamentary report recommended follow-up at the legislative, executive and judiciary levels. It proposed that a Committee on Financial and Economic Affairs manage state property with powers to investigate and requisition needed information and documentation, since the lack of access to reliable information had impeded the initial investigation.

Generally, an organized youth outcry rose against the corrupt nature of Bahraini politics and governance. On 14 February 2011, as the region was undergoing its “Arab Spring,” the youth demanded: (1) a new constitution written by the people and (2) the establishment of a body that has a full popular mandate to investigate and hold to account economic, political and social violations, including: stolen public wealth, political naturalization, arrests, torture and other oppressive security measures, and institutional and economic corruption.<sup>9</sup>

## Rewarding the Sheikh

Amid the swelling unrest over state-level land and housing policy malfeasance, UN-Habitat awarded Khalifa bin Salman Āl Khalifa its 2006 Scroll of Honour Award in light of his “impressive efforts in lifting the living standards of all Bahrainis through an active focus on poverty alleviation and modernization while preserving the cultural heritage” of his country. “UN-HABITAT applauds your efforts to place the urban poor at the centre of the modernization strategy for the Kingdom of Bahrain.”<sup>10</sup>

The Bahrain Center for Human Rights (BCHR) responded directly to UN Secretary-General Ban Ki-moon in a 2007 letter. Their message arrived with clarion bluntness:

Since the independence of Bahrain in 1971, the ever-since powerful prime minister has been THE symbol of corruption and oppression in Bahrain and the Gulf region. Therefore, to be awarded by the United Nation is a clear contradiction with UN ethics and norms, a disappointment for the disadvantaged and a wrong message to oppressors and corrupt officials around the world.<sup>11</sup>

The Center also gave specific examples of the award recipient’s habitat credentials:

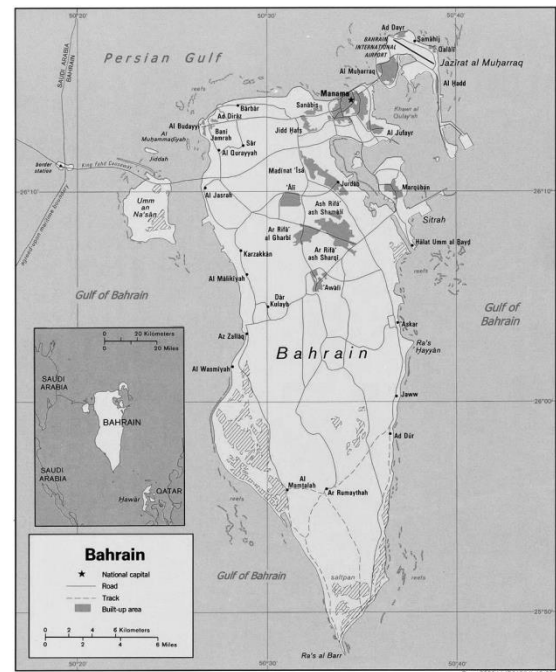
He also seized for himself one of the large islands “Jedah” on which no citizen can put a foot. The total area of land seized by the prime minister is larger than all lands allocated for housing projects.<sup>12</sup>

The BCHR also posed some practical remedies for the General-Secretary:

- To conduct a quick research on the allegations of corruption and Human rights violations against the prime minister of Bahrain,
- to review the reward decision and call off the ceremony, or as a way out, to reduce the level and size of the ceremony and direct the reward to Bahrain as a country rather than to the prime minister as a person,
- To conduct a thorough investigation in the basis for the nomination and the intentions of the responsible UN staff who nominated the prime minister of Bahrain for the award, and
- To review the standards and process of nomination for UN rewards in general.

The ceremonies continued for nearly three years, with a multi-capital tour and exhibition with the award. At the ECOSOC High-level Segment Substantive Session in 2007, H.E. Mr. Sheikh Khalifa Bin Salman Āl Khalifa received, once again, the Scroll of Honour Award from both UN-Habitat Executive Director H.E. Anna Kajumulo Tibaijuka and H.E. Mr. Ban Ki-moon.

Along with the Award recipient came seven Bahraini ministers in his train. At the same exhibition in ECOSOC Geneva at the Palais des Nations, one Bahraini ministerial official confided that “we could build 150 very respectable homes in Bahrain with the money it took to pay for this event.”



## Endnotes:

- <sup>1</sup> This paper combines two participant contributions on the subject of land tenure governance in Bahrain.
- <sup>2</sup> Ibrahim Sherif el-Sayed "Territorial and Coastal Usurpation" (باصتغا يضارلا و لحاوسلا) The Secretariat and Four Associations Forum, 10 November 2005 (Arabic).
- <sup>3</sup> "State's Property: National Fights Go on until Citizens' Lands Restored" (المعارك الوطنية ستستمر حتى تسترجع الأراضي "أملاك الدولة") (للمواطنين) [Arabic], *al-Wasat News* (12 May 2010), at: <http://www.alwasatnews.com/2805/news/read/420213/1.html> (Arabic).
- <sup>4</sup> Sahar Aziz & Abdulla Musalem, *Citizens, Not Subjects: Debunking the Sectarian Narrative of Bahrain's Pro-Democracy Movement* (Washington: Institute for Social Policy and Understanding, July 2011) [http://ispu.org/pdfs/640\\_ISPU%20Report\\_Bahrain\\_Aziz\\_Musalem\\_WEB.pdf](http://ispu.org/pdfs/640_ISPU%20Report_Bahrain_Aziz_Musalem_WEB.pdf), p. 11.
- <sup>5</sup> "Bahrain: Royal Land Seizures, Poor Housing at Root of Unrest," *HIC-MENA News* (3 April 2009), at: <http://hic-mena.org/pNewsId.asp?id=839>.
- <sup>6</sup> *Report of the Parliamentary Committee to Investigate Public and Private Property of the State, March 2010* (تقرير لجنة التحقيق) [Arabic], at: <http://www.hlrn.org/img/documents/amlak-2-4-t.pdf>. See also "Bahrain Public Lands Sold and Rented to Private Investors," *The National* (25 March 2010), at: <http://www.thenational.ae/news/worldwide/middle-east/bahraini-public-lands-sold-and-rented-to-private-investors>.
- <sup>7</sup> Dylan Bowman, "Alba suing US firm for over \$1bn," *Arabian Business* (2 March 2008), at: <http://www.arabianbusiness.com/alba-suing-us-firm-for-over-1bn-151370.html>; Elizabeth Broomhall, "Bahrain royal accused in \$6m UK corruption case" *Arabian Business* (31 October 2011), at: <http://www.arabianbusiness.com/bahrain-royal-accused-in-6m-uk-corruption-case-427874.html>.
- <sup>8</sup> "Former Alba Employees Pardoned," *Gulf Daily News* (19 January 2012), at: <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=321929>.
- <sup>9</sup> "A statement by Bahraini Youth for Freedom," *Bahrain Online*, 14 February 2011, at: <http://www.webcitation.org/5wKQYGf0Q>.
- <sup>10</sup> The UH-Habitat agency Executive Director Anna Tibaijuka quoted in "Bahrain's Prime Minister awarded UN citation for efforts to help urban poor," *UN News Centre* (5 March 2007), at: <http://www.un.org/apps/news/story.asp?NewsID=21761>.
- <sup>11</sup> Copy on file with HLRN.
- <sup>12</sup> The BCHR is able to provide copies of official documentations and Google-Earth pictures of the mentioned lands. See also: "Bahrain: Satellite Images Reveal Royal Decadence," *HIC-MENA News* (20 March 2011), at: <http://www.hlrn.org/news.php?id=pGxkZQ==#.VQS0FWfwjtjo>; satellite images in pdf, at: <http://www.ogleearth.com/BahrainandGoogleEarth.pdf>; Human Rights Watch, "United Nations: Bahrain Prime Minister Poor Choice for Habitat Award," (1 July 2007), at: <http://www.hrw.org/ar/news/2007/06/30/united-nations-bahrain-prime-minister-poor-choice-habitat-award>.

## **6. Indigenous Peoples**





# Communal Land Rights, Identities and Conflicts in Sudan: The Nuba Question<sup>1</sup>

*Guma Kunda Komey*

## Introduction

Complexity is a key feature of the root causes of many state/community conflicts, particularly in Africa and the Middle East. Contemporary Sudan is no exception.<sup>2</sup> The centrality of the land factor in conflict stems from the fact that rights to land are intimately tied to membership in specific communities, ranging from a nuclear or extended family, clan, or ethnic group to the nation-state.<sup>3</sup>

Nothing evokes deeper passions—or gives rise to more bloodshed—than disagreements about territory, boundaries, or access to land and related resources. From national governments' perspective, land in its entirety is a physical basis of political sovereignty and power, as well national economic wealth. However, most rural communities see land as a symbol for their collective socio-cultural and political identities, as well as a basis for their economic survival. This relation among land, identity and livelihood implies that access to land is a fundamental human right. This becomes clear whereas its denial does not only deprive the affected communities from their economic and socio-cultural well-being, but also endangers their very survival and existence.

80% of Sudan's population relies on natural resources for their livelihood, and agricultural production continues to employ 80% of the country's workforce.<sup>4</sup> Despite the centrality of land rights, field-centered, empirically grounded and theoretically informed material from Sudan demonstrates that the interests and the rights of the rural majorities and their subsistence are not well integrated into, or harmonized with successive national governments' policies and development interventions. Paradoxically, development interventions are carried out usually in the name of "public or national interests." Meanwhile, some affected, excluded and/or disadvantaged rural groups tend to resort to survival strategies, articulating various forms of belonging and identities, in order to counteract such disguised and exclusionary national development policies and government practices. Subsequently, various levels of land-based, state/community conflicts recur. The mechanized rain-fed farming schemes and oil exploration in the Nuba Mountains region form two such examples.

The self-identified indigenous Nuba people in Sudan claim their communal land rights as a people excluded from development opportunities by the postcolonial Sudanese state when intervening on their territory under the banner of "national development." The Nuba case reveals the state's exclusionary land practices, in particular, and the overall development policies, in general.

The consequent, state-induced local conflicts tend to escalate into large-scale war. This suggests that, with the progress of a conflict, land can form an intrinsic cause of conflict, and increase its complexity, thereby reducing the possibility of managing, resolving and, ultimately, transforming it in a way that encourages broader nation-state affiliation. The escalation of land-based conflicts in the Nuba Mountains region in Sudan, from local to national level and their recurring trends in the present post-conflict era of the Comprehensive Peace Agreement (CPA), is living proof of the centrality of the land factor in contemporary Sudan's protracted crises, recurring conflicts and consequent civil wars, including the ongoing one in Darfur.

## **Sudan's Land Policies and Their Socio-Political Ramifications**

The land tenure system in the Sudan has been, and still is, characterized by sharp dualism. First, communal traditional land tenure systems are regulated by customary laws and institutions that are not legally recognized in government courts as legal ownership, or legally secure tenure. The main problem with customary law is that it is “uncollected, unrecorded and uncertain,”<sup>5</sup> in spite of being the main regulatory mechanism of land tenure for the bulk of rural communities.

Second, the modern state land tenure system is based on civil laws and institutions. Modern land laws, policies and, therefore, rights continue to concentrate functionally in the riverine areas of the central and northern Sudan and in the limited urban areas in the remaining parts of the Sudan.<sup>6</sup> As a consequence, most Sudanese rural communities continue their traditional land tenure system beyond the modern land tenure regulations.<sup>7</sup>

In rural traditional communities, land is communally owned with individual rights to use the land in accordance with tribal custom, or as tribal authority directs. Hence, the concept of tribal land significantly forms the main constituent of traditional land tenure in Sudan with a strong link to the practice of native administration. “Tribal land” means “land which has for long been at the disposition of the tribal land authorities.”<sup>8</sup> It is a major tenure system based on customary lines and follows historically derived tribal territorial rights initially constituted during successive indigenous kingdoms of pre-colonial Sudan. Within the tribal homeland, collective security of the community involves individual use and inheritance rights without alienating the land from the collective ownership of the community. However, as the society undergoes transformation under the modern system of laws and institutions, the land tenure system shifts gradually toward private ownership. This is particularly the case following the post-colonial parliament’s adoption of a series of land-allocation legislation in 1972, following the first Sudanese Civil War (1955–72).

However, the prevailing practices have much deeper roots. For example, with the rise of the Islamic Kingdoms of Funj (1504–1821) in northern, eastern and central Sudan, and the Keira Sultanate in Darfur in the 16<sup>th</sup> Century, authorities granted land rights to local administrators and religious and communal leaders. Some land properties were transferred in this way from communal to individual ownership, authenticated by documents known as wathīqah, or charters, in Funj, and hākūra, or concession/monopoly, in Darfur.

A wathīqah was a land-granting document bearing the ruler’s seal. The ruler and/or his representative generally granted land to religious and tribal leaders and other dignitaries, in order to win their favor. This land policy further consolidated and expanded during the Turco-Egyptian era (1821–85).<sup>9</sup> However, the most important stage shaping land rights and the tenure system in Sudan was the colonial period of 1898–1956.<sup>10</sup>

### **Land Policies during the Colonial Era**

During the colonial period, the politicization of land ownership was pursued through a series of land legislation amounting to more than fifteen colonial ordinances and their amendments from 1899 to 1930.<sup>11</sup> One major strict policy of these ordinances sought “to expand cultivation, while safeguarding the inhabitants’ rights and encouraging the formulation of a Sudanese proprietary class.”<sup>12</sup>

According to the *Title to Lands Ordinance*, 1899, government recognized individual land as an absolute entitlement in the northern region under a soft condition of “continuous possession, or receipt of rents

or profits, during the five years immediately preceding the date of claim, created an absolute title as against all persons.”<sup>13</sup> Toward that end, the colonial government appointed several land-settlement commissions in the northern and central districts. However, the administration pursued no registration of similar lands at that time in the Nuba Mountains, Darfur, southern Blue Nile and South Sudan. Consequently, no individual private landownership was recognized in these regions.<sup>14</sup>

In sum, six salient features of land tenure systems and the associated policies prevailed during the colonial administration. First, “until legal ownership has been established by a settlement, the bare ownership of all land is vested in the Government in trust for the native and subject to all rights of user belonging to natives in community or individually.”<sup>15</sup>

Second, the law recognized tribal lands. Thus, the colonial Government empowered the native authority with legal, administrative and financial arrangements to exercise powers not only to address land disputes, but also to rent portions of its land to strangers, charging them a rent in cash or kind.<sup>16</sup>

Third, in the areas where the processes of land settlement, registration, and expropriation were taking place, namely in the central and northern parts of the Sudan, the law recognized that “the interests of the local population who have to earn their living on the land must override the interests of those who merely wish to draw income out of rents.”<sup>17</sup> Thus, the law operationalized a kind of “social function of property” as far as subsistence lands were concerned in the central and northern regions.

Fourth, the colonial government retained power “to make use of the land for the purposes of the scheme, but at the same time retained to the owners their interest in the land. Power to deal with these interests has been progressively restricted, in order to prevent merchants and persons with no local connection from acquiring land solely for the purpose of investment or speculation.”<sup>18</sup>

Fifth, the colonial government maintained a consistent and strict policy of paying compensation in land, or partly in land and partly in money.<sup>19</sup>

Sixth, the settlement of land rights, followed by registration, has not been extended to the Southern Sudan, Southern Blue Nile, and the Nuba Mountains for three major reasons:

- (i) Land was plentiful;
- (ii) The inhabitants were for mostly at a stage of development in which land is held in common by a tribe or group, and an individual has no rights except as a member of such a tribe or group; and
- (iii) The inhabitants are pagans and unaffected by the recognition given to individual ownership of land by Islamic Law prevailing in the rest part of the Sudan.<sup>20</sup>

Importantly, the registration of land as private property meant acquisition of an asset of significant and durable economic value. This early process of recognition and eventual registration of individual land rights was not practiced for the indigenous peoples of the Nuba Mountains, Blue Nile, the south, and Darfur. In those regions, lands remained communal with no individual rights of ownership recognized apart from rights of use. Based on this reasoning, these early regional differences in land rights policy and practice largely formed the basis for the economic differentiation between the communities in the central and northern parts of the Sudan, on the one hand, and those in the rest of the country, on the other, with far-reaching socio-economic and political implications up to the present day.

## **Land Policies Destabilizing Communal Rights in Postcolonial Sudan**

In theory, postcolonial land tenure legislation did not deviate much from the colonial legacy. In practice, however, national state practices significantly undermined customary land rights and, therefore, the interests of local communities. With the pressure of population over land particularly for agricultural development, the premise of abundant land in areas other than central and northern Sudan collapsed. At this stage, it is assumed that the state administration progressively would take the process of land settlement and registration to its logical conclusion through its territorial jurisdiction. The colonial processes of recognition, settlement and eventual registration of the customarily and communally owned lands in the remaining regions of the Sudan was supposed to continue. By doing so, the “national” state would make use of the land for public purposes, while simultaneously upholding the customary communal or individual land owners' interest in the land.

However, the national state departed from these former land-administration principles. Instead of redressing the ethno-regional differences in land rights by land settlement and registration in the remaining regions of the Sudan, successive postcolonial governments exacerbated the imbalance. They subjected the unregistered communal lands in the peripheral regions to a systematic practice of land grabbing and expropriation for public and private investment, which again benefited mostly the riverines, while impoverishing local communities indigenous to the hinterland.

This, along with the problem of excessive regional disparities in “national” development, suggests that the Sudanese postcolonial state has proved to be a typical exclusionary state, while evoking a range of local appeals and emotions related to belonging, including some mythical autochthonous/indigenous notions by communities that find themselves landless in their own homeland. This exclusionary practice of the Sudanese state in land rights, among others, bears principal responsibility for current small and large-scale conflicts.

Prior to 1970, the postcolonial state continued to use the colonial Land Ordinances in land settlement, registration and expropriation. However, it soon became evident that private investor interests, basically the Jallāba of the riverine areas, overrode the interests of the local population who earn their living on the land. The process remains a critical development in land tenure policy, particularly for the rural communities of western and eastern Sudan, and southern Sudan (now, South Sudan), where most land remains communal and unregistered.

Moreover, the strict colonial policies of compensation in kind (i.e., replacement land), in cash, or both have ceased to exist as a strict practice in the postcolonial state. “Compensation,” rather than broader and more-remedial practices of reparations, remains valid only in the case of registered lands in the northern and central regions, as well as for urban registered lands in the remaining parts of the Sudan. At the same time, the bulk of unregistered land in these peripheral regions remains subject to grabbing and expropriation with no compensation or commitment to local communities' interests. In this way, land as a source of wealth and power, remains one of the main differentiating factors between the central and peripheral regions of the postcolonial Sudan.

With a high demand for arable land for public and private projects, the land tenure system became a bone of contention between the state and rural communities. The government consolidated its land policies by clearly undermining local people's interests by introducing the 1970 Unregistered Land Act, with far-reaching consequences for the rights of communal land ownership. The Act represents a major

shift in land rights, with a dramatic application of state power in postcolonial Sudan. It introduced an important modification to earlier legislation, particularly its section 4(1) which stipulates that:

All land of any kind whether waste, forest, occupied or unoccupied, which is not registered before the commencement of this Act shall, on such commencement, be the property of the government and shall be deemed to have registered as such, as if the provisions of the Land Settlements and Registration Act of 1925, have been duly complied with (*italics added*).<sup>21</sup>

Effectively, this legislation repealed Section 7(ii) of the Land Settlement Ordinance of 1905, which states that “[a]ll waste forest and unoccupied land shall be deemed to be the property of the Government until the contrary be proved.”<sup>22</sup> It also repealed Section 14(iv and v), which allows for compensation in kind (alternate land), in money, or both, for the affected community or individual.<sup>23</sup>

One major change in state practice was to deem occupied, unregistered land to be government land, with no chance for recognition, settlement, and eventual private or communal registration of such land, or for an alternative fair payment of compensation, as was the case during the colonial period. In this way, the Act challenges communal and tribal ownership nationwide, with enormous socio-economic consequences on the livelihood of rural communities in the peripheral regions who’s communally owned land is unregistered. Looking critically into the Act laments that:

The Act [...] deprives prior users from the right to be compensated for loss of land use rights, or for opportunities to be incorporated in the planned agricultural program. An immediate consequence of this Act is that “traditional” land uses, including agriculture are being pushed to more marginal areas, the better land being reserved for state interventions.<sup>24</sup>

Under this Act, communal land tenure that was legally recognized by the colonial administration was no longer secure, because it “is reduced to a mere license or 'tenancy' at will which may be revoked at any time when the Government invokes Section 8 of the Act and evicts the occupant....Tribal, communal, family and village “ownership” of land is tolerated in so far as it is not repugnant to the Unregistered Land Act, 1970.”<sup>25</sup>

Despite the fact that all rural communities in western, eastern, and southern Sudan have—or had—no previous system of land registration in force, the application of the Act was enforced nationwide. Moreover, it did not provide a transitional period for land users eventually to register their rights under the 1925 Act. Rather, according to Article 7.1, any registration process underway was to abate upon the commencement of the Act.<sup>26</sup> Obviously, the main intention is to make “it easier for the Government to expropriate land for large agricultural schemes regardless of claims to ownership.”<sup>27</sup> In short, the Act became “a government tool to facilitate the acquisition of large tracts of land for agricultural schemes, at the expense of rural dwellers.”<sup>28</sup>

The 1970 Unregistered Land Act was implemented indiscriminately all over Sudan, despite the fact that the development of land tenure in the northern and central parts of the Sudan had a different history from that of the south, the Nuba Mountains, the Blue Nile, and Darfur. In fact, the Act proved to have even more repressive, detrimental and discriminatory arrangements than its colonial precursors. Under this Act, all rural lands became government lands, while large portions of the land in central and northern Sudan were already privately owned land, because it was recognized, settled and registered during the colonial period.

To ensure suppression of community or individual resistance to land grabbing, the Sudanese government put three interrelated measures into place: First, the Article 8 of the Act gave the government the right to use force in safeguarding land designated as government land, stipulating that:

If any person is in occupation of any land which [sic] is registered or deemed to be registered in the name of the Government, the Government may order his eviction from such land and may use reasonable force if necessary.<sup>29</sup>

Second, the Act was virtually concurrent with the abolition of the native administration, which had acted as an important institution for regulating land and managing inevitable land related conflicts. Third, it also enabled the government to implement a development policy, based on the expansion of mechanized farming, and oil exploration, production and transportation by allocating vast tracts of land to private investors (both local and foreign) at the expense of rural communities' traditional land rights.

With this Act, during the 1960s, the government instituted a different form of tenancy in the development of the mechanized rain-fed, large-scale projects in the central rain land and in the Nuba Mountains. Since this is the same land that largely constitutes the livelihood of sedentary and nomadic communities, the *nouveau riche*, nonlocal merchants owned huge tracts of land, while local communities were confined to small, fixed and increasingly infertile plots.

The 1984 Civil Transaction Act and its amendments of 1991 and 1993 further exacerbated the detrimental aspects of the 1970 Land Act. The 1984 Act ensured that any case against the government pertaining to unregistered land had no legal basis. Therefore, no court of law was competent to receive a complaint against the interest of the state (i.e., government).

These amendments interpreted the Islamic concept of land as public utility “owned by God” and regulated by the Islamic Shari`a principles in an Islamic state. It stipulated that “Land belongs to God”<sup>30</sup> and legalized selective elements of Shari`a Law, such as the official recognition of unregistered land rights connected with Islamic *urf* (custom).<sup>31</sup> The clue here is that this step institutionalized another form of regional and social differences in land rights, but along religious lines this time. It reinforced the rights of Muslim communities by accepting Islamic *urf* in legalizing unregistered land. It, thus, provided an opportunity for a Muslim claimant to transfer Islamic-based customary rights into full legal rights of ownership. No equivalent chance is granted for the bulk of African animist and Christians in southern Sudan, the Nuba Mountains, and the southern Blue Nile.

Despite the fact that both the 1970 and 1984 Acts never have been widely applied on a routine basis, the government continued to use them whenever and wherever it deems appropriate, instigating a high degree of communal insecurity among the affected communities particularly in rural Sudan.<sup>32</sup>

The political and socio-economic repercussions of the subsequent national governments' practices of grabbing land for public and private development lie in the persistent undermining of the rights of local people, followed by an incredible devastation of their livelihood and mode of life, with significantly greater impact in the South, Darfur, Southern Blue Nile, and the Nuba Mountains.

The cumulative result is successive differences and disparities in development between the center and the periphery coupled with bitterness and grievances among the local people of these peripheral regions. The result is a crisis of subsistence economies of both traditional farming and agro-pastoral communities with serious socio-economic and political repercussions particularly in areas other than central and northern Sudan.

## Communal Land Rights Denied in the Nuba Mountains

### *Physical and social settings*

The Nuba Mountains, or alternatively South Kordofan State, lies in the geographical center of the Sudan. The region is predominantly inhabited by a cluster of the Nuba peoples (70%), self-identified as indigenous to the area. They are composed of more than fifty different ethnic groups, while constituting ten distinct linguistics groupings.<sup>33</sup> They are of African origins and followers of Islam, Christianity and traditional religions. Despite their ethnic and linguistic diversity, some commonalities tie them together.<sup>34</sup> However, while this group represents a statistical majority, they are politically and economically marginalized.

The Baqqāra started arriving in the area of the Nuba Mountains over 200 years ago. Some of these nomads became sedentary groups that engaged in trade and mechanized rain-fed farming in the region.<sup>35</sup> Other small, but influential, groups include the Jellāba, traders from northern and central Sudan, the Fallāta, migrants from West Africa and the Shawābna, a creole group of mixed origins.<sup>36</sup>

Its land use pattern is predominated by the coexistence of the rain-fed subsistence cultivation practiced chiefly by the sedentary Nuba, and traditional pastoralism as the main form of life of the nomadic Baqqāra. In addition, modern mechanized rain-fed farming has spread in the region since 1960s.<sup>37</sup> As a promising agricultural region strategically located between the equatorial southern Sudan and the arid northern Sudan, the region acts as one of the major economic bases for Sudanese agrarian economy. Moreover, rich oil fields recently discovered and exploited in the southwestern Nuba Mountains in the 1980s have added more economic, political, and strategic significance and diversity to the region.<sup>38</sup>

### *State Policy of Grabbing Communal Land in the Region*

The conflict in the Nuba Mountains arises from a “long history of discrimination against Nuba peoples and their political, economic and social marginalization.”<sup>39</sup> This implies that the spillover of the war from southern Sudan to the Nuba Mountains region has been politically driven. Nevertheless, one of the root causes underlying the *Baqqāra*-Nuba conflict, on the one hand, and the government and the Nuba-led SPLA, on the other, has been related directly to the practice of land grabbing by the state for mechanized rain-fed farming.<sup>40</sup>

After independence, the Sudanese state subscribed to the illusion that mechanized farming is somehow “modern” and efficient (i.e., superior). In reality, it bears none of these qualities. The progressive introduction of mechanized rain-fed farming into the region since the 1960s led to a disturbance of the ecological system as resource base and, consequently, to an inevitable land-based conflict between local communities and the state.

Under the 1968 Mechanized Farming Corporation Act and upon the request of the World Bank to facilitate agricultural development in the Sudan, the government and development partners vigorously pursued mechanized rain-fed farming, particularly in the Gedarif area in the eastern part of central Sudan, the Blue Nile, Darfur, and the Nuba Mountains through public and private sectors. By the 1960s, private interest had shifted to large scale commercial farming of sorghum in rain-fed areas, using tractors to clear the bush and to plough, while remaining dependent on manual labor for most other tasks. By the end of the 1970s, about four million *feddāns*, stretching across the central clay plains, were registered under mechanized cultivation, compared with about nine million *feddāns* registered as



“traditional” rain land. By 1982, the area under mechanized cultivation had jumped to about six million *feddāns*. In 1986, it jumped again to over nine million *feddāns*, exceeding the traditional sector.<sup>41</sup>

Land grabbing has become a consistent government policy, with a resultant strengthening of the privileged ruling elites and their allied merchants, who acquired land at the expense of rural communities. In the process of allocation schemes, authorities hardly engaged local communities and their native institutions. As a result, many entrepreneurs ended up acquiring land that they had never even seen. Through time, the issue of schemes distribution proved to be crucial for the local people when land expropriation became the main practice of state policy in the region from the 1970s to the present day.



Map No. 4458 UNITED NATIONS  
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In the Nuba Mountains, some local wealthy Baqqāra, Fellāta and Jellāba with strong links to the central state became involved in the expropriation of small holdings of sedentary Nuba communities.<sup>42</sup> Nuba villages began to be surrounded by the mechanized schemes, and farmers were frequently fined (or even imprisoned) for trespassing. The mechanized schemes also lay across the grazing routes of Baqqāra cattle herders. To avoid prosecution for trespassing, they frequently re-routed their herds through Nuba farmland. In the absence of the old Native Administration to arbitrate the disputes that arose, government courts generally took the side of the Baqqāra against the Nuba. The dispossessed farmers consequently joined the ranks of marginal wage-laborers seeking work on the scheme or in the main cities.

In theory and according to the 1968 Act, 60% of land was to be allocated to local people, and no one was to have more than one farm. Despite the priority given to local and agricultural cooperative societies in the distribution of these schemes, the first beneficiaries were *Jellāba* merchants and allied local politicians and traditional leaders.

Thus, the way the government allocates the mechanized farming schemes to outside investors, with no consideration of the rights or interests of the local peoples, is one of the main sources of contention in the region. By 1974, the distribution of the schemes in Habila Agricultural Project was as follows: 11% for local farmers, 6% for cooperatives, 49.8% for merchants, 21.6% for retired officials, 5.8% for government officials, and 5.8% for other government related entities.<sup>43</sup> By the 1990s, two hundred mechanized farms in Habila were allocated as follows:

Four were leased to local co-operatives; one was leased to a consortium of local merchants, and four individually to local merchants. The remaining 191 were leased to absentee landlords mainly merchants, government officials and retired army officers from the north.<sup>44</sup>

In Keiga Tummero, one of the fieldwork sites, the sedentary Nuba people were discontent with the establishment of the mechanized schemes on their tribal land without their consent. From their perspective, any government land allocation for mechanized farming schemes customarily belongs to certain sub-hill communities. From the nomadic Baqqāra's standpoint, the mechanized farm projects usually intersect permanent migratory routes, and that inevitably forces them to detour and pass through some traditional farming zones.

### **The State: Land, People and Institutions**

From the government standpoint, all unregistered lands are government property, and the government asserts its rights in the name of the state, based on civil law and regulations, to determine their utilization as the government sees appropriate. The contradiction between the customary communal rights of the two traditional communities (farmers and nomads) and modern state civil law, which does not recognize these customary rights, is obvious.

Consequently, land expropriation for mechanized schemes monopolized by wealthy outsiders, with no consideration for the rights and interests of local peoples, brought about new political and economic dynamics, not only along the center-periphery line, but also along ethnic lines within the region. Local communities resist the encroachment of mechanized farming, and violent conflicts often erupt between them and the absentee landlords supported by the government. The conflict becomes multidimensional between (i) the local population and the scheme owners; (ii) the sedentary and nomadic local communities; and (iii) between the local sedentary and nomadic communities, on the one hand, and central and regional government institutions, on the other.

What is clearer is that, under the banner of "public interest," the mechanized schemes have involved privatizing local resources for the benefit of a few wealthy or politically connected individuals. Based on the slogan that "land should be given to those who are able to use it for the national interest," most of the best arable land in the region ended up in the hands of a few. Thus, concepts of "state," "government," "nation" and "public" have become conflated at the expense of constituent people and their institutions.

The crux of the matter here is that due to the expanding mechanized rain-fed farming schemes in the region, local Nuba communities were—and still are—being systematically squeezed out, not only to the

margins of their livelihood base but also to the peripheral socio-economic and political status. That is why, when the civil war broke out in the South in 1983, the Nuba peoples were ripe for rebellion and armed struggle for their own causes, with land, as their livelihood base and source of identification, remaining the single biggest issue.<sup>45</sup> These land grabs led to massive displacement, and was a main reason why, in the late 1980s, people in Southern Kordofan joined the Sudan People's Liberation Army (SPLA) insurgency.<sup>46</sup>

Apart from the mechanized rain-fed farming, since the early 1990s, evidence shows that the government also committed systematic and violent scorched-earth policy in the Nuba Mountains in the processes of oil exploration and subsequent exploitation.<sup>47</sup> Moreover, the state has continued deliberately and systematically to depopulate huge corridors through the Nuba Mountains, in order to safeguard the oil pipeline from the oil fields to Port Sudan, the main port in eastern Sudan.

### **Oil Exploration and Land Deprivation**

The practice of forceful depopulation of the local communities in the oil fields and along the pipeline line started with Chevron, a United States-based oil giant, and the first company to explore for oil in Sudan in 1978. In 1992, it sold out its concession, due to civil war and the associated gross human violations. In 1993, a small Canadian oil company Arakis came in. In 1996, it took in the China National Petroleum Company (CNPC) and Petronas of Malaysia as partners. These companies, together with Sudapet Limited, the Sudanese national oil company, formed the Greater Nile Petroleum Operating Corporation (GNPOC).

In 1998, Talisman, Canada's largest oil and gas producer, purchased Arakis and its assets in GNPOC. Talisman involvement in oil investment during the war in Sudan was besieged by complaints from international communities of its possible role in fueling the war and committing human abuses. For example, a Canadian Human Rights group concluded, in 2002, that the government forces used airstrips and road established by the company to fly its helicopters and move its heavy military armor to execute offensive attacks on villages in the rebel-controlled areas. The UN Special Rapporteur on Sudan reported, in 2002, that oil has seriously exacerbated the conflict while deteriorating the overall situation of human rights and continue to cause widespread displacements of the local communities.<sup>48</sup>

Oil exploitation has been made possible by clearing the oilfields of their civilian population through the activities of the Sudanese armed forces and the Baqqāra militias from Southern Kordofan, and then securing the areas through alliance with the Nuer SPLA breakaway factions. Once installed, the Sudanese military used the oil company roads and airfields to attack civilian settlements within a widening security radius.<sup>49</sup>

Since the early of the 1980s, oil development in Sudan has forcibly displaced tens and perhaps hundreds thousands of local communities by military means, in order to obtain land for the international oil companies. Direct responses to gross human rights violations have involved both violent reactions and legal measures by the local communities against the government and the oil companies in the region.<sup>50</sup>

Following the CPA, some Nuba communities attempted to sue the Sudanese government and the involved oil companies. One such court case is still in the process is the one that two elites from the area filed on behalf of 98 local farmer households against the consortium of involved oil companies in al-Dalenj Court.<sup>51</sup> Those farmer households are demanding fair compensation for the loss they incurred

since 1995 as a result of oil pipeline that destroyed their livelihoods, including farming and grazing lands and settlements.

Although it is unlikely that these affected local communities will win the case under the present land laws that dismiss customary land rights, the case demonstrates beyond doubt that oil investment in the region is central to a series of gross human rights violations and a disrupting factor for the socioeconomic livelihoods of the local communities in the region.

## Conclusion

Exclusionary land practices, in particular, and the overall development policies of the Sudanese state, in general, seem to have had acted as primary factors that evoked all kinds of sub-national identities, belonging appeals and emotions. With the passage of time, these state-induced local conflicts tend to escalate into large-scale wars with their attendant gross violations of human rights. This implies that land factor can invert, with the progress of a conflict, to become an intrinsic cause and, in the process, increase its complexity, thereby reducing the possibility of managing, resolving and ultimately transforming it.

Conversely, the prior respect, protection and realization of land rights would both prevent and remedy such conflicts. However, the post-colonial Government of Sudan has not been foresighted to applying such a rights-based policy. The consequences of the corresponding commissions and omissions on the part of the Sudanese government and its development partners have set in motion a formula for ongoing conflict that ultimately undermines the presumed socio-economic and territorial bases of the state. The 2012 separation of South Sudan from its northern neighbor testifies to this self-fragmenting state policy.

The escalation of land-based conflicts in the Nuba Mountains region in Sudan—from local to national level and their recurring trends in the present post-conflict era of the Comprehensive Peace Agreement (CPA)—constitute living proof of the centrality of the land factor in contemporary Sudan's recurring local conflicts and their consequent protracted civil wars associated with internal tensions, disunity, and gross violation of human rights. Development alternatives must seek to maintain communal land rights as a fundamental human right not only for peoples' livelihoods but for their very survival, and to ensure the functional integrity of the state that remains.

## Endnotes:

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<sup>1</sup> This paper was written for the 1<sup>st</sup> session of the Land Forum, before the independence of South Sudan.

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- <sup>4</sup> International Labour Organisation, Evaluation and Monitoring Unit, *Independent evaluation of the ILO's Decent Work Country Programme Strategies and Activities in North-Africa: 2010–2013* (Geneva: ILO-EVAL, October 2014), at: [http://www.ilo.org/addisababa/WCMS\\_314439/lang-en/index.htm](http://www.ilo.org/addisababa/WCMS_314439/lang-en/index.htm).
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- <sup>6</sup> Bolton 1954; MacMichael 1954; Simpson 1976, 1991; Mahadi 1979; Spaulding 1982; Gordon 1986; Goldflam 1988; Kapteijns and Spaulding 2005.
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- <sup>8</sup> Simpson 1965: 90.
- <sup>9</sup> Spaulding 1982; Goldflam 1988; Abdul Jalil 2005.
- <sup>10</sup> Sampson 1965, 1976; Bolton 1954; Lebon 1969; Warburg 1970; Mahdi 1979; Gordon 1985, 1986; Goldflam 1988.
- <sup>11</sup> Sudan Archive: 627/12/3-44; Simpson 1965.
- <sup>12</sup> Warburg (1970), p. 156.
- <sup>13</sup> Sudan Archive 1899: 627/12/7.
- <sup>14</sup> Bolton 1954: 187; Warburg 1970: 159.
- <sup>15</sup> Sudan Archive 719/10/2.
- <sup>16</sup> Sudan Archive, 542/23/1–2.
- <sup>17</sup> Sudan Archive, 627/16/11–12
- <sup>18</sup> Sudan Archive, 627/16/11.
- <sup>19</sup> Sudan Archive 627/12/17.
- <sup>20</sup> MacMichael (1954), p. 80; Bolton (1954), p. 195.
- <sup>21</sup> Mahdi 1979: 221, Egemi 2004: 4.
- <sup>22</sup> Sudan Archive, 627/12/15.
- <sup>23</sup> Sudan Archive, 627/12/17.
- <sup>24</sup> de Wit (2003), p. 11.
- <sup>25</sup> Mahdi (1979), p. 9.
- <sup>26</sup> de Wit (2003), p. 10.
- <sup>27</sup> Simpson (1991), p. 102.
- <sup>28</sup> de Wit (2003), p. 10.
- <sup>29</sup> Ibid.
- <sup>30</sup> Civil Transaction Act 1984: Section 559(1), quoted in Gordon (1986), p. 149.
- <sup>31</sup> de Wit (2003), p. 11.
- <sup>32</sup> Mohammed Salih 1999; de Wit 2003; Harragin 2003; Egemi 2004.
- <sup>33</sup> Mohamed Salih (1999), p. 1.
- <sup>34</sup> Nadel 1947.
- <sup>35</sup> Haraldsson 1982; Suliman 1998, 1999.
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- <sup>37</sup> Battahani 1980, 1986; Saeed 1980; Saavedra 1998.
- <sup>38</sup> Suliman 2001; Mohamed and Fisher 2002; Johnson 2006; Pantuliano 2007; Patey 2007.
- <sup>39</sup> African Rights (1995), p. 5.
- <sup>40</sup> Mohamed Salih 1995, 1999; Harragin 2003; Pantuliano 2007; Pantuliano et al 2007; Komey 2008b.
- <sup>41</sup> Duffield (1990), p. 5.
- <sup>42</sup> Johnson (2006), p. 132.
- <sup>43</sup> Ibrahim, (1988), p. 128.
- <sup>44</sup> African Rights (1995), p. 41; Suliman (1998), p. 8.
- <sup>45</sup> Ayoub 2006; Johnson 2006; Suliman 1998.
- <sup>46</sup> Pantuliano (2007), p. 3.
- <sup>47</sup> Africa Watch 1992a, 1992b; Suliman 1998, 2001; Mohamed and Fisher 2002; International Crisis Group 2002; Rone 2003; Johnson 2006; Pantuliano 2007; Patey 2007.
- <sup>48</sup> "Situation of human rights in the Sudan - Report of the Special Rapporteur Gerhard Baum," E/CN.4/2002/46, 23 January 2002, at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2002/46&Lang=E>.
- <sup>49</sup> Johnson (2006), op. cit., p. 163.
- <sup>50</sup> Suliman (2001), Rone (2003), and Patey (2007).
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## Nubian Land Rights

*Manal Tibe*

Since the dawn of history of the Egyptian people and the emergence of the Egyptian state, the River Nile has represented the heart and soul of life for most Egyptians and the land on which they live. Successive governors have attempted to control and manipulate the river to achieve desired development on its banks. The earliest recorded attempt to build a dam near Aswan was in the 11<sup>th</sup> Century, when the sixth Fatimid Caliph al-Hākim bi-Amr Allah (985–1021) summoned Ibn al-Haytham to regulate the Nile floods, but the scheme daunted him at the time.<sup>1</sup> In the modern era, this challenge was marked by modernizer Muhammad Ali Pasha (1805–52), with construction of the first dam across the Nile, 19 km north of Cairo, the subsequent construction of the Aswan Dam (1898–1902) under British occupation, and the presidency of President Gamal Abd al-Nasser, who embarked on the construction of the upstream High Dam in 1963.

In most instances, the various hydro-projects on the River Nile sought economic and development benefits, measuring their success by the amount of water retained from what otherwise would have been lost to the sea during the flood season. Little consideration was given to the social impact of those projects. In this context, the Nubian people, who used to live on the riverbanks in the south Nile Valley, have paid the heavy price of displacement and forced migration off their traditional lands, affecting entire generations throughout the last century, until today.

The Nubian people have lived throughout their long history in a symbiotic relationship with the Nile. That symbiosis has molded their way of life and culture as a community fulfilling the criteria of an indigenous people: (1) primordial presence, (2) distinct cultural characteristics and language, (3) traditional territory and (4) indigenous identity.

Hence, the indigenous Nubians' displacement from their original habitat to other areas in the desert has dispersed them to other Egyptian governorates as a consequence of the flooding of their villages after the construction of the Aswan Low Dam and, later, the High Dam. In addition to the material loss, their diaspora has led to a state of estrangement and isolation, which continues until today. Adding insult to injury, the situation worsened by the very inadequate manner with which the Egyptian State has dealt with the problem during and after the Nubians' eviction and displacement, whether in the very meager compensation given, or the inadequate housing and land provided for the displaced masses.

The successive Egyptian governments have disregarded the subsequent demands of the Nubian people to return to their traditional land around the High Dam reservoir (Lake Nasser), favoring instead the logic of investment and profit over peoples' rights in the development state-sponsored projects on the banks of the lake after the stabilization of the water level. Such policies and practices have maximized the state's estrangement of the indigenous Nubian people.

Nonetheless, Nubians have not lost hope to return to their traditional land in the warm embrace of the Nile, where their fertile land and cultural roots lie, with their houses typically facing the river stand. In this context, the Nubian people's aspirations have not stopped at the level of mere dreaming, but they have started to move steadily toward demanding their legitimate rights through precision, legal study,

organizational work, comprehensive plans and collaborative efforts with all those interested in the Nubian cause.

Egypt is a diverse society, including several minorities. The Nubians' "indigenous people" status in Egypt is distinct from "minority groups" and other subnational categories by their claim to, and rights deriving from their continuous presence in, and use of their traditional lands and corresponding natural resources, and their unique lifestyle. Therefore, Nubians are indigenous people in a minority position who are entitled to indigenous people's rights and minority rights and protections.

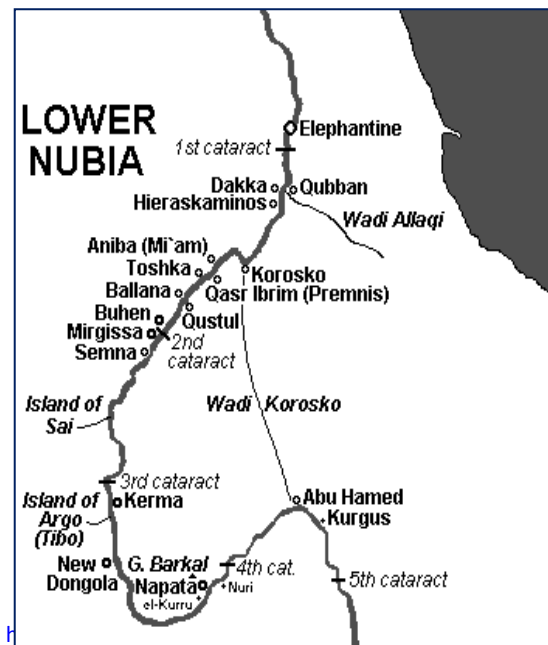
### **Nubian Territorial, Cultural, Numerical and Historic Identity**

Nubians are a distinct ethnic, cultural and linguistic group of people who used to inhabit the portion of the Nile Valley that is historically known as Nubia, which extends from the first cataract at Aswan, Egypt, to the fifth cataract near Dongola, in what is now Sudan.<sup>2</sup> Before the construction of the High Dam, Nubia in Egypt extended some 376 km between Aswan and Wādī Halfa and included diverse linguistic subgroups. Between Aswan and Sebuja are the Kenuz speakers. Between Sebuja and Korosko lived a Nubian group that spoke only a dialect of Arabic, and, from Korosko to Wadi Halfa, were the Mahass speakers, who are referred to as the Fadīja or Nubiīn.<sup>3</sup>

*Map of Lower Nubia, including Egyptian and Sudanese Nubia*

No recent official statistics exist in Egypt to establish the number of Nubians, because official statistics do not consider the Nubians as a distinct group requiring separate statistical disaggregation. The last—and only—official statistics on Nubians (1960) estimated their numbers at 98,601. However, some nonofficial studies estimate the number of Nubians in Egypt to number about one million.<sup>4</sup> Nubians themselves claim that they are about 3 million.

Herodotus, the Greek father of historians, described Nubians as people with dark skin, between black (ebony) and light (bronze). Their face's features are not similar to [sub-Saharan] Africans, but more similar to Europeans. He described them as "peaceful, honest and honorable people who have their own distinct culture and language that differ from the mainstream of the states' population."<sup>5</sup>



Nubians are believed to count among the first human civilizations on earth.<sup>6</sup> Over 5,000 years ago, they maintained a great civilization called the Kingdom of Kush. Ancient Egyptians used to call Nubia, the area from south of Aswan to Khartoum, "Kush." However, some writers have noted that the ancestors of today's Nubian speakers likely entered the region and began farming around the beginning of the fourth century A.D., when the political dominance of Roman Egypt, to the north, and the Great Kingdom of Meroe, to the south, was on the wane.

Before that time, the fell into decline for nearly seven hundred years, “partly because the low level of the Nile had made agriculture a precarious pursuit.” The immigrants appear to have been the “Nubatae,” as reported by Byzantine historians to be “a mountain or desert people” from somewhere west of the Nile, in present-day Sudan.<sup>7</sup>

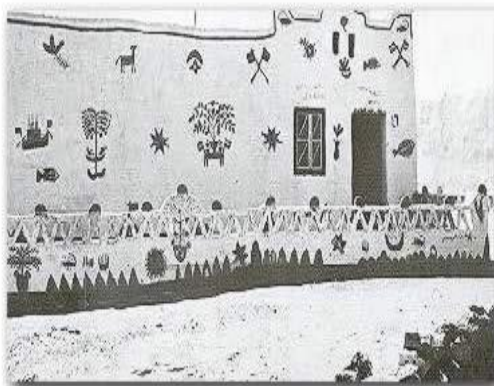
Because of the lack of economic potential, Nubia has been culturally and economically a marginal area from the beginning of the civilized history of the Middle East.<sup>8</sup> However, it enjoyed political autonomy, as in the Kush Kingdom.<sup>9</sup> Limited economic resources “generally prevented the growth of large populations that could be continued as a powerful kingdom and also made the area undesirable as a site on which empires might establish important sub-capitals.”<sup>10</sup> Geographically, Nubia often served as a buffer zone between military regimes, or as a frontier for the strategic pursuits of others.

The Egyptians exploited the region for gold, building stone, and copper, all of which were found in the eastern Nubian Desert and traded throughout the realm. The Nubian mines at Wādī `Allāqī supplied much of the gold of ancient Egypt, and were often a source of conflict during the subsequent Christian and Islamic periods.<sup>11</sup>

As the empires of Egypt and Meroe fell into decline, Nubia experienced a cultural and political flowering that would persist “through most of the Christian period, until, in the late fourteen century, the Arabs finally Islamized Nubia and reduced the area to a petty province of Egypt.”<sup>12</sup>

Despite the fact that the Nubian kingdoms had passed through violent confrontations with the ancient Egyptian state (in the attempt of the latter to unify the entire Nile Valley under one strong political flag), Nubians maintained their cultural and social attributes throughout history. This steadfastness is attributed to the nature of economic and ecological life that linked the Nubians’ continuous existence along the river in this fertile area.<sup>13</sup> The Nubian language remained the tongue used by the Nubians orally, with attempts to establish basic principles for the Nubian language alphabet delayed until recently.<sup>14</sup>

Successive Egyptian governments customarily left Nubians alone, as they policed themselves.<sup>15</sup> This is perhaps why the Nubian culture maintained its unique aspects until the era of division and displacement in Egypt in the 19<sup>th</sup> and 20<sup>th</sup> Centuries. This autonomy, for instance, gave rise to the unique pattern of the typical Nubian house, overlooking the Nile directly, with a courtyard facing the sky, accommodating also poultry and cattle, and constructed on a typical 350–500 m<sup>2</sup> area with natural materials.<sup>16</sup>



Examples of traditional Nubian homes with exterior decoration<sup>17</sup>



## **Separation of Nubian Villages**

The first phase of the Nubian diaspora in modern history took place in the 19<sup>th</sup> Century, after the Ottoman Sultan ordered the border demarcation between Egypt and Sudan in 1841. That act of statecraft did not take into consideration the population groups and their uniqueness when the Ottoman ordered the demarcation of Egypt's southern borders.<sup>18</sup>

Subsequently, the Ottoman Minister of Interior Affairs amended the Egyptian-Sudanese borders, based on the bilateral agreement between Egypt and the British colonial power in 1899. That cartographic sleight of hand separated ten villages of Halfa District, in the Nubia Governorate, south of the 22<sup>nd</sup> latitude, annexing them to Sudan.<sup>19</sup> The part lying inside the Egyptian borders extended from the village of Adendan, in the south, to al-Shallal, in the north, encompassing a population of 34,942, and a land area covering 17,142 acres (6,937ha).<sup>20</sup> The name of the Nubia Governorate, formerly known as the "Borders' Directorate," was changed to "Aswan Directorate." Thus, the administrative borders demarcated by the British colonial power further fragmented the Nubian people, encumbering communication among kindred Nubian communities, and erasing their name from the land.

## **"Development" and Land Deprivation**

Beyond their arbitrary division by Sudan and Egypt borders, the Nubian people's ordeal began in earnest when Egypt contemplated controlling the Nile by retaining the maximum amount of water otherwise lost during flood season. Meanwhile, the expansion of new land cultivation and the transition from the traditional "Basin Irrigation" sought a "Permanent Irrigation" system. Hence, the thought to construct a reservoir to the south of Aswan, and indeed, the first Aswan Dam was completed to the north of the Nubian village of al-Shallal, in 1902. The dam held a surplus of water that rose to a level of 106 meters,<sup>21</sup> flooding the land with its houses, farms, waterwheels and date palm trees in ten Nubian villages.<sup>22</sup>

Committees for estimating the due compensations for the Nubians were formed, classifying "compensations" as: (1) cash payment for property (land, palm trees and buildings) submerged by the reservoir water until the water receded, enabling its cultivation<sup>23</sup>; and (2) land totally submerged by water throughout the whole year, whereby the government would pay the price of land, palm trees and buildings.<sup>24</sup> Those compensations were estimated to be about 80,000 Egyptian pounds, which represented a pitifully meager "compensation," that the Nubians consequently rejected.<sup>25</sup> Nevertheless, the government did not pay any attention to the Nubian demands, issuing a "supreme" (presidential) order, on 1 July 1902, to expropriate the lands for public benefit.<sup>26</sup>

Following the dam's initial construction, the first elevation of the Aswan Dam's water level in 1912 to 113.9 meters<sup>27</sup> drowned another eight Nubian villages.<sup>28</sup>

In 1933, the second elevation of the Aswan Dam water level to 121 meters drowned an additional ten Nubian villages for the third time,<sup>29</sup> leaving the remaining eleven Nubian villages severely damaged.<sup>30</sup> Those villages extend from the Aswan Dam south to the Egyptian-Sudanese border.

In 1933, the government found it necessary to legalize the position of the Nubians that were adversely affected. Accordingly, the Law No. 6 (1933) concerned Nubian expropriation and estimated the due compensations for the catastrophes of the years 1902, 1912 and 1932.<sup>31</sup> Despite general laws regulating expropriations—i.e., Law No.27 (1906) and Law No. (1907)—the government evaded issuing the new law to avoid paying the enormous expense of reparations for the expropriated Nubians.<sup>32</sup> This is evident from the very meager compensation that the Nubians received, with 1,700,000 Egyptian pounds from

which a sum of 500,000 pounds was reduced later on. More accurate estimates point to the fact that the minimum sum of the due compensations during that time should have been no less than 3,600,000 Egyptian pounds.<sup>33</sup>

This denial dates decades before the clarification of the rights to remedy and reparation for victims of gross human rights violations and grave breaches of humanitarian law. The Nubian affected people have endured gross violations, including “forced eviction”<sup>34</sup> and being “deprived of their means of subsistence.”<sup>35</sup>

With the eruption of the July Revolution in 1952, the intention of the Free Officers was to build up a strong, independent, self-contained state free of any colonial power and not subjected to any foreign agenda. The officers planned to do so by exercising more control over the Nile to achieve the maximum benefit of water and expanding the area of cultivated and reformed land on both banks of the Nile. Hence, the idea of building a huge dam at Aswan was born to carry out this task and, at once, to become a source of electrical energy.

In spite of the fact that the High Dam represented a national patriotic dream in the long rally and battle against imperialism and the hope for fulfilling the comprehensive development in Egypt, it, once again, came as a disaster to the Nubians. It caused the largest and most pronounced process of displacement and eviction in modern history after their villages, houses and lands were submerged by the High Dam reservoir.

According to the national census, which was conducted by the Ministry of Social Affairs in 1960, Nubians were estimated at 98,601<sup>36</sup> of which 48,028 were living in Nubian villages and 50,581 were living outside Nubian villages.<sup>37</sup> However, according to the Ministry of Social Affairs Nubians who had homes and land in Nubian villages in 1960 were 68,609 constituting about 25 thousands of families.<sup>38</sup> Those who inhabited Nubia were 48,028; while those who lived outside Nubia and had homes and lands in Nubia were 20,581.<sup>39</sup> The number of families already settled in Nubia was 16,861, whereas families settled outside Nubia were estimated at 8,467.<sup>40</sup> Again, despite the presence of actual laws to organize the process of expropriation (law No. 577 for the year 1945 & law No. 252 for the year 1960); the state issued law No. 67 (1962) concerning Nubian land expropriated and submerged by the High Dam water.<sup>41</sup> In addition, law No. 106 (24 June 1964) concerning surveying and compensating for land and housing of the Nubian people, authorized compensation as follows:

**Table 1: Compensation for lands and housing of the Nubians in 1964<sup>42</sup>**

Item	Units	Value per unit (L.E.)	Total (L.E.)
Palm tree	1,044,380	1.89	1,973,478
House	35,966	52,458	1,886,700
Feddans of land	15,957	135.1	2,155,720
Waterwheels & wells	1,064	19.66	20,920
<b>Total compensation due:</b>			<b>6,036,818</b>

In addition to the fact that the compensations was very meager compared to the values lost and degree of suffering that the Nubians incurred, the Egyptian government failed to fulfill its commitments. It dispensed only about half the compensation: L.E. 3,458,000.<sup>43</sup>

Moreover, since the beginning of displacement on 18 October 1963 at Abu Dabbour village, until its end at Abū Handal village, not all the alternative housing was finished. Available housing provided for only 15,107 families (15,030 houses), while the rest of Nubians lived in camps, or with their relatives in the houses that they received as compensation. Later, the rest of the 918 houses were finished. For those Nubians who lived away from Nubia, the beginning of compensation houses for them started only in 1976, 12 years after their displacement. The number of their replacement houses was 8,467, in addition to 636 houses under the title of "facilitation," totaling 9,103 houses.

According to the report of the "Committee of Housing, Public Facilities and Urbanization," after a field visit from 17 to 20 March 1998, the total number of already-built houses was 2,829, leaving 6,274 houses yet to be built.<sup>44</sup>

In March 2003 the Minister of Agriculture signed the contract with an overall budget of \$13,925,294, with a contribution from the Food and Agriculture Organisation (FAO) of \$6,114.71.<sup>45</sup> The first project was to build Bashāyir al-Khayr village, which was parallel to the old Nubian Garf Ḥusain village. Ironically, the government settled people other than Nubians from external Egyptian governorates in the newly built village.<sup>46</sup> The remaining part of the project is still in progress, and it is expected that what happened in Bashāyir al-Khayr would be repeated, denying the Nubians a tenure-secure foothold on their land, ensuring that their continued suffering and loss.<sup>47</sup> Nubians harbor a great fear that such governmental behavior would alter the historical character of the region.

## Conclusion

The combined loss of natural resources and lands with a lack of development projects benefitting Nubians have deepened the Nubian people's poor economic conditions. The want of local decent work opportunities has driven Nubian youth and adults to emigrate to other governorates, especially, Cairo and Alexandria, as well as some Arab and Western countries. Emigration to sustain families' livelihoods further disconnects Nubians from their origins and deprives new generations of their own culture and language.

No legislation in Egypt explicitly discriminates against Nubians as distinct from other citizenship. However, until the 25 January uprising, the Constitution and the national laws still did not recognize Nubians' rights as a distinct group entitled to special measures to protect their economic, social and cultural rights, including their right to land and other means of subsistence.<sup>48</sup>

For instance, the Egyptian Constitution recognizes only the Arabic language as the language of the state (Article 2). In addition, social discrimination continues toward Nubians specifically, and Blacks, in general.<sup>49</sup> Egyptian media, whether governmental or private, often portray Nubians as servants, drivers, or gatekeepers, with very narrow minds.<sup>50</sup> With the notable musical contributions of Muhammad Munir and the possible exception of the children's TV cartoon *Bakkar*, almost no cinematic, theatrical or TV production presents the Nubian people's life. That is despite media portraying the rest of Egyptian society, such as people from urban governorates, Bedouins, or other people from Upper Egypt. This omission has led to a general ignorance about the Nubian people's culture and way of life in the

mainstream Egyptian population. Further, it has led to stereotypes, presenting negative images of Nubians.

After the stability of the water level of the High Dam Lake, Nubian people have continued to demand successive Egyptian governments their right to return to the closest point to their original land that is the land around the Lake and to compensate Nubians who have not been compensated to date for their dispossessed houses and land since 1964. The Egyptian governments have continued to neglect these demands preferring to sell the land to other Egyptian, Arab, or foreigner investors. Such a behavior has sparked Nubian anger and made Nubians feel that their government does not appreciate their sacrifice of traditional land to make way for national projects.

Nubians claim their right to have the lands around Lake Nasser as a natural extension of the existing Nubian villages in Kom Ombo. However, even this form of restitution is by no means sufficient to absorb the new generations of Nubians, or to preserve Nubian culture.

The other factor that has sparked Nubian anger is the rehabilitation process that the Egyptian government has organized for non-Nubians peoples from different Egyptian governorates on the land that Nubians claim. Nubians see this as deliberate demographic manipulation on the part of government decision makers.

This policy behavior persists despite President Husni Mubarak declaration that the Nubian people took priority in the regional-development process.<sup>51</sup> Such a contradiction has pushed Nubians to believe that the non-rehabilitation of Nubian people reflects insufficient support from the central government.<sup>52</sup> Such beliefs have been reinforced by the many unsuccessful attempts made by Nubians to deliver their demands to the high circle of Egyptian officials including the president himself.

After receiving hundreds of complaints from Nubian villages, and in 18-21 April 2007, the Egyptian Center for Housing Rights in cooperation with the Nubian Follow up Committee in Alexandria, the Nubian Follow up Committee in Cairo and the Association for Nubian Heritage in Aswan organized the first Nubian conference in Egypt entitled Nubia between Resettlement and Development to discuss the Nubian dilemma, determine Nubian demands and rights, and to bring the Nubian issue to the public attention in Egypt.

At the closing session of the Conference, Nubians announced a declaration in which they emphasized their Egyptian citizenship, their right to have special measures as indigenous peoples, and articulated five main demands as follows:

1. The right of Nubian people to return to the closest point to their traditional land, which is the land around the Aswan High Dam reservoir (Lake Nasser).
2. The right of Nubians who have not been compensated from the year 1964 until now to be compensated with houses and lands around the High Dam reservoir.
3. Separating Kom Ombo from Nasr al-Nuba Center's electoral province and establish a new electoral province in Kom Ombo to allow Nubians to have adequate political representation at the parliament and in the Shūra Council.
4. The right to development in order to provide work opportunities for Nubians youth.
5. The right to maintaining Nubian houses in Kom Ombo where their houses have collapsed or are subjected to collapse, because of unsuitable soil.<sup>53</sup>

These demands have been sent to President Mubarak and to the high circle of governmental officials. The only response that the Nubians got after many years of struggle is the intention of the Egyptian government to compensate the Nubians, in exiles, who lost their homes and lands in 1964, about 5,221 Nubian families, and who have not been compensated until today with a house and land in Karker Valley.

Initially, Nubian people considered this step as a beginning to get the rest of their demands meet and they welcomed the Egyptian initiative and started to negotiate. After reaching an agreement with Aswan governor, local councils and Nubian community leaders, which was written in a memorandum signed by Nubian community leaders, the governor and the local councils started to pull back from their initial obligations in this agreement and never signed the memorandum. Contrarily, the governor assigned other Nubians who do not represent the majority of Nubians and who agree to his plan to compensate Nubians in exile. That plan excludes some areas of land that the Nubians community leaders insisted on in the memorandum.

Accordingly, Nubians have started to protest and, for the first time, demonstrated in Cairo and issued a statement asserting their rights. These include their right to exist, their right to return to their traditional land, their right to development, and their right to maintain their culture through preserving their languages and heritage.<sup>54</sup> In addition, Nubians asserted the strong relation between their right to culture and the right to their traditional land.

After the 25 January uprising and in the process of drafting a new constitution, members of Muslim Brothers and Salafists in the Constituent Assembly, who were the majority, stalwartly refused to recognize Nubian rights in the new Constitution. For that and other major human rights concerns, the Nubian representative to the Constituent Assembly resigned, and the Constitution was declared without Nubian's rights in 2013.

After the 30 June uprising, the new Constituent Assembly recognized—in Article 236—the right of Nubians to return to their original land within ten years of adopting the new Constitution, which was declared in January 2014. In September 2014, the Ministry of Transitional Justice formed a committee of governmental and Nubian representatives to draft a new law to interpret Article 236. After four months of meetings and work, no agreement was achieved due to many reasons, the most important of which is the disagreement about the type of land tenure would be allocated for the Nubians. Thus, the government insisted to allocate the land right to use the land, and Nubian insisted on their right to own the land as freehold tenure. The debate continues.

## Endnotes:

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<sup>1</sup> Roshdi Rashed, "Portraits of Science: A Polymath in the 10th Century," *Science*, Vol. 297, No. 5582 (2 August 2002), p. 773, at: <http://www.sciencemag.org/content/297/5582/773.full>; Liadain Sherrard and Philip Sherrard, Henry Corbin, transl., *History of Islamic Philosophy* (London; Kegan Paul International in association with Islamic Publications for The Institute of Ismaili Studies, 1993), p. 149.

<sup>2</sup> John G. Kennedy, *Struggle for Change in Nubian Community: An Individual in Society and History* 13 (New York: Mayfield Publishing Company, 1<sup>st</sup> ed., 1977).

<sup>3</sup> Ibid.

<sup>4</sup> Anita Kalunta-Crumton and Biko Agozino, eds., *Pan-African, Issues in Crime and Justice*, Interdisciplinary Research Series in Ethnic, Gender and Class Relations (London: Ashgate Publishing, 1<sup>st</sup> ed., 2004), p. 49; Games S. Olson, *The Peoples of Africa; An Ethnohistorical Dictionary* (London: Greenwood Press, 1996), p. 448.

- <sup>5</sup> Translation from the Arabic version of Description of Egypt (*Wasf Masr*), published in 1822 in French. Forward by Shereif Sleman Sherif and presented at conference "Nubians between Resettlement and Development" (*al-Nuba bayn al-Tawṭīn wa al-Taṭwīr*), organized by Egyptian Center for Housing Rights (ECHR), 18–21 April 2007, at 193–205.
- <sup>6</sup> Kennedy, *op. cit.*
- <sup>7</sup> *Ibid.*, p. 16.
- <sup>8</sup> *Ibid.*, p. 13.
- <sup>9</sup> *Ibid.*, p. 6.
- <sup>10</sup> *Ibid.*, p. 13.
- <sup>11</sup> *Ibid.*
- <sup>12</sup> *Ibid.*, p. 16.
- <sup>13</sup> Hitham Gabr, "*al-Nuba bayn al-Tawṭīn wa al-Taṭwīr*" ["Nubia Between Resettlement and Development"], unpublished paper at ECHR conference "Nubian People between resettlement and development," 18–21 April 2007, at 5.
- <sup>14</sup> *Ibid.*
- <sup>15</sup> Kalunta-Crumton and Agozino, *op. cit.*
- <sup>16</sup> Gabr, *op. cit.*, p. 5.
- <sup>17</sup> "Egypt: Nubian Houses," *Egypt Tour*, at : <http://www.touregypt.net/HistoricalEssays/nubiae1.htm>.
- <sup>18</sup> Maher Haboub, the Nubian anxiety (*al-Ham al-Nubi*), unpublished paper at ECHR conference "Nubia between Resettlement and Development" (*al-Nuba bayn al-Tawṭīn wa al-Taṭwīr*), 18–21 April 2007, p. 1.
- <sup>19</sup> *Ibid.* Those villages were Anfash, Ḥalfa, Daghīm, Dabrūsa al-Tawfīqiyya, Arqīn, Ashkīt, Dbīra, Surra Sharq (East), Surra Gharb (West), Faras, Gazīrat Faras.
- <sup>20</sup> *Ibid.*
- <sup>21</sup> "Nubian People's Displacement between 18 October 1963 and 30 July 1964," 23 (Cairo: Information and Public Relations Department, Ministry of Social Affairs [IPRD-MoSA], 1965).
- <sup>22</sup> Haboub, *op. cit.*, p. 2. These villages are Dabbūr, Dahmīt, Amberkaab, Kalabsha, Abu Hur, Marwaw, Qashtemanah Sharq (East), Qashtemanah Gharb (West), Garf Husain and al-Dakkah.
- <sup>23</sup> *Ibid.*, p. 1.
- <sup>24</sup> *Ibid.*
- <sup>25</sup> *Ibid.*
- <sup>26</sup> *Ibid.*
- <sup>27</sup> IPRD-MoSA, p. 23.
- <sup>28</sup> Haboub, p. 2. These villages are Quarta, al-Allaqī, al-Sayālah, al-Muḥarraqaḥ, al-Madhīk, Wādī al-`Arab and Shatermah.
- <sup>29</sup> *Ibid.* These villages are al-Malkī, Korosko, al-Rīqa, Abu Ḥandal, al-Diwān, al-Dūr, Tawmās, `Afiya, Qutta, Abrīm and Gazīrat Abrīm.
- <sup>30</sup> *Ibid.*, including Enība, Masmās, al-Ganīna, al-Shubbāk, Tushka Sharq (East) and Tushka Gharb (West).
- <sup>31</sup> IPRD-MoSA, pp. 23–27.
- <sup>32</sup> Gabr, *op. cit.*, p. 3.
- <sup>33</sup> Haboub, p. 2. This is clear from the speech delivered by Muḥammad Shafīq Pāshā, the Minister of Public Work during the second Prime Ministry of Ismā`il Sadqī Pāshā "Jan–Sept 1932" during Egyptian Congress session, 29 February 1932, in which he said: "Egypt has spent millions on constructing the Aswan Storage and on elevating it. All of Your Highnesses are eager to see the level of water increase and our current hopes are to store it. If we wait five years until the regular procedures of expropriation are accomplished we will, then unjustifiably, deprive Egypt from a valuable source of water. Following the ordinary law in the procedures of expropriation will subject Egypt to deprivation of water all this period. If the aforementioned law enabled us to seize the lands immediately, it will be impossible neither to judiciary system, nor experts or the concerned people to recognize the features of lands after it will be submerged under water by next November."
- <sup>34</sup> Commission on Human Rights resolution 1993/77 (1993).
- <sup>35</sup> "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/RES/60/147, 21 March 2006, at: <http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147>.
- <sup>36</sup> IPRD-MoSA, p. 21.
- <sup>37</sup> *Ibid.*
- <sup>38</sup> Egyptian People Assembly, *Report of the Committee of housing, Public Facilities and Urbanization of the Egyptian Parliament on the field visit held from 17 to 20 March 1998*, 12 November 1998, p. 3.
- <sup>39</sup> *Supra* note 25, pp. 44–45.
- <sup>40</sup> Egyptian People Assembly, 1969, *op. cit.*, p. 4.
- <sup>41</sup> *Ibid.* and IPRD-MoSA, *op. cit.*, pp. 68–69.
- <sup>42</sup> Haboub, p. 70.

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- <sup>43</sup> Egyptian People Assembly, *Report of the Parliament's Special Committee to Study the Nubians' problems after their Displacement*, 23 December 1969, p. 18.
- <sup>44</sup> Egyptian People Assembly, 1998, op. cit., p. 5.
- <sup>45</sup> A Clarification Note, Ministry of Foreign Affairs, Egypt, 25 March 2003, p. 1.
- <sup>46</sup> Gabr, op. cit., p. 5.
- <sup>47</sup> Ibid.
- <sup>48</sup> Article 1.2, International Covenant on Economic, Social and Cultural Rights (1966), ratified by Egypt in 1982.
- <sup>49</sup> Muḥammad Jalāl Aḥmad Hāshim, "The Policies of De-Nubianization in Egypt and Sudan: an Ancient People on the Brink of Extinction," *Respect, Sudanese Journal for Human Rights, Culture and Issues of Cultural Diversity*, Issue 6, (November–December 2007), at: [http://mobile.sudan-forall.org/sections/ihtiram/pages/ihtiram\\_issue6/pdf\\_files/muhammad-Jalaal-Haashim.pdf](http://mobile.sudan-forall.org/sections/ihtiram/pages/ihtiram_issue6/pdf_files/muhammad-Jalaal-Haashim.pdf); Kalunta-Crumton and Agozino, op. cit.; Olson, op. cit.
- <sup>50</sup> See, Ahmed Sukarno, "Āl Nūba wa al-Nubīn fī al-Sīnīma' wa al-Tilivizyūn al-Masrī" ["Nubian People in Movie and Egyptian Television"] [Arabic], unpublished paper, introduced to the Conference (Nubians between Resettlement and Development): and "al-Tharwah wa al-Biznis wa al-Abīd fī 'āilat al-Hūdabī" ["Wealth, Business and Slaves in al-Hūdabī Family"], *al-Fagr*, No. 196 (30 March 2009), in which the newspaper mentioned that *al-Hūdabī* family used to maintain Nubian slaves. However, Nubians never were slaves at any time of Egyptian history.
- <sup>51</sup> Gamal Essam El-Din, "Reaching out to the regions," *al-Ahram weekly on-line*, Issue No. 964 (10–16 September 2009), at: <http://weekly.ahram.org.eg/2009/964/eg2.htm>.
- <sup>52</sup> As example for these occasions, the governor of Aswan declared on *al-Hayat al-Yawm* TV Channel (30 April 2009) that Nubians already had all their rights. The governor declared, commenting on the protest, that Nubians organized in the same day against compensating Nubians in exile in Karker Valley.
- <sup>53</sup> Concluding declaration of the conference "*al-Nuba bayn al-Tawṭīn wa al-Taṭwīr*" ["Nubians between Resettlement and Development"], op. cit.
- <sup>54</sup> See, "Nubians Refuse the State's Policy of Selling Their Land to Businessmen and Demand Return to Their Traditional Land" [Arabic], *al-Dustūr* (2 May 2009); "Nubians Declared Their Anger and Demanding Their Return to Their Traditional Land" [Arabic], *Nahḍat Masr* (2 May 2009).

## Contours of the Land Question in Kurdistan

Sheruan Hassan and HIC-HLRN

The Kurds are one of the oldest and largest peoples of the Middle East/North Africa region. At least 26.7 million Kurds live in the parts of Western Asia divided among four states: Turkey, Iran, Iraq and Syria.<sup>1</sup> The Kurdish diaspora is comprised of about 1.5 million people. The Kurds, therefore, total over 28 million; however, some estimates set the global number of Kurds at 40 million. The Kurdish people constitute the world's largest stateless nation.

The Kurdish language is Indo-European, as is Persian, but distinct from the Turkic and Arabic language families of the region. Kurdish has three main dialects, with 65% of Kurds speaking Kurmandji, 30% Soranî, and 5% Zaza or Dumilî. 95% of Kurds are Muslim. The Kurdish seasonal feast—Nawrûz—is celebrated on 21 March, and has come to symbolize the Kurdish people's connection to the land and the struggle for national rights. The majority of Kurds are of Sunni Muslim faith (mostly of the Shafa'i school), but include significant minorities adhering to Shi'a Islam (especially Alawites), Yazidism, Yarsanism and Judaism.

The original territory occupied by Kurdistan is 503,000 km<sup>2</sup> and has been divided into four parts since 1923: 210,000 km<sup>2</sup> are in Turkey (that is 41.75% of Kurdistan and 26.90% of Turkey); 195,000 km<sup>2</sup> in Iran (38.77% of Kurdistan/11.83 of Iran); 83,000 km<sup>2</sup> in Iraq (16.5% of Kurdistan/18.86% of Iraq); and 15,000 km<sup>2</sup> in Syria (2.98% of Kurdistan/8.10% of Syria).

The part of Kurdistan that is currently autonomous is in Iraq. That territory represents only 16.5% of the historical territory of Kurdistan, where Kurdish people have control over their lands, after a long experience of dispossession and population-transfer policies.

### Origins and History

Arising from the ancient Mardoï (Mèdes) and Kyrtoï (Scythes) tribes, who probably arrived in the region among the first wave of migrating Iranic Aryan tribes into ancient Iran from the late 2<sup>nd</sup> millennium BCE (circa 1000 BCE) (the collapse of the Bronze Age) through the beginning of the 1<sup>st</sup> millennium BCE (circa 900 BC).

Various hypotheses attribute the predecessors of the modern Kurds and origins of their distinct identity as related to the Carduchoi of classical antiquity.<sup>2</sup> Written history records them in 401 BCE as inhabiting the mountains north of the Tigris River, living in well-provisioned villages.<sup>3</sup> At the time, they were known to be adversaries of the king of Persia, and served as Greek mercenaries with Xenophon.

Gordyene<sup>4</sup> is the ancient name of the region of Bohtan, in southeast Anatolia (now Şırnak Province, in Turkey), also known as Beth Qardu in Syriac sources. It was a small vassal state between Armenia and Persia on the left bank of the Tigris River and in the mountainous area south of Lake Van in modern Turkey.

Historic texts also cite this territory as the country of the Carduchians, a fertile mountainous district, rich in pastureland.<sup>5</sup> The Kingdom of Gordyene emerged from the 1<sup>st</sup> Century BCE decline of the Seleucid



Empire, and was a province loyal to the Roman Empire. However, in the period from 189 to 90 BCE, Gordyene was independent.

The 7<sup>th</sup> to 9<sup>th</sup> Centuries CE were marked by the re-emergence of Kurdish political power, after three centuries of decline under the centralized governments of the Sasanians of Persia and the Byzantine Empire. The following three centuries (10<sup>th</sup> to 12<sup>th</sup>) Kurdish influence spread. Through steady emigrations and military conquests, their political rule extended from central Asia to Libya and Yemen.

The earliest known Kurdish dynasties under the Islamic period are the Hasanwayhids, the Marwanids, the Shaddadids, followed by the Ayyubid dynasty, founded by Salāh al-Dīn al-Ayyūbī al-Kurdī (Saladin). However, the Battle of Chaldiran of 1514 is an important turning point in Kurdish history. With their victory over the Safavid Empire, the Ottomans gained immediate and permanent control over far eastern Anatolia and northern Iraq. This accompanied an alliance of Kurds with the Ottomans.

From the end of the 15<sup>th</sup> Century until the 20<sup>th</sup>, the Kurds underwent a period of steady decline in every aspect of their national life, with the possible exception of national literature.<sup>6</sup> Two primary causes of this decline over 250 years (ca. 1500–1750) were: (1) the division of the region into two warring (Safavid Persian and the Ottoman Turkish) empires, with the heartland of Kurdistan as a major line of confrontation, and (2) the economic isolation of Kurdistan that resulted from the major redirection of trade routes away from land-locked Kurdistan. Moreover, an important proportion of the nation also found itself deported to far-away regions, whereas the Safavids forced hundreds of thousands of Kurds—along with large groups of Armenians, Assyrians, Azeris and Turkmens—from their border regions to resettlement sites in the interior of Persia. For example, the Khurasani Kurds are a community of nearly 1.7 million people whom the Persians deported from western Kurdistan to North Khorasan (northeastern Iran) during the 16<sup>th</sup> to 18<sup>th</sup> Centuries.<sup>7</sup> A large Kurdish kingdom, Zand, was established in 1750, but, by 1867, it fell to Ottoman and Persian governments.

#### Kurdistan and Self-determination

Kurds organized politically under independent principalities with various names over time, but never formed a “state” in the modern era. Opponents to independent Kurdish self-determination often cite this past of subordination to other states to justify denying them independence claims today. A large Kurdish kingdom, Zand, was established in 1750, but by 1867 it fell to Ottoman and Persian governments.

Since the 16<sup>th</sup> Century, Kurdistan was divided between Ottoman and Persian empires, subordinating Kurdish principalities’ independence, but reinforcing the Kurds’ common sense of belonging to a distinct people. At the beginning of the 20<sup>th</sup> Century, emerging Kurdish cultural and political institutions and Kurdish-language newspapers reaffirmed Kurdish identity.

With the Ottoman Empire’s 20<sup>th</sup> Century dismemberment after World War I, the Treaty of Sèvres formalized the establishment of “states” to consolidate great power interests. This process resulted in the political borders of Turkey, Syria and Iraq. Meanwhile, the British and French Empires secretly agreed to share Greater Mesopotamia.<sup>8</sup>

The main British concern was to control local oil resources, namely by managing the formation of Iraq as an administrative unit. Because Central Kurdistan was rich in oil, the British favored establishing an “independent” Kurdistan, but under their control. Consequently, at the signing of the 1920 Treaty of Sèvres, the Allied Powers foresaw a state called “Kurdistan.” Although that putative state covered only

1/3 of Kurdish national territory, that international recognition was the unique time that the Kurds' right to self-determination was recognized internationally. However, it was never applied.

The British abandoned support for Kurdish autonomy as a consolation to Turkey, which had lost the oil-rich province of Mosul to British-constructed Iraq. Iraq and Iran also opposed the establishment of an independent Kurdistan. Again, the Kurds were caught between the colluding interests of greater powers, from the time of the old empire into the era of new republics. Despite many bloody uprisings for Kurdish independence, France and Britain divided Ottoman Kurdistan among Turkey, Syria and Iraq.

Since the end of WWI in 1918, Turkish statesman Mustapha Kemal Atatürk had struggled against the Ottoman Empire's disintegration to ensure that the new Republic of Turkey would encompass the largest territory as possible, however, with an international pledge to no further expansion. In exchange for Kurdish political and territorial accession, in 1919, Atatürk promised Kurds their equal rights in the new republic. However, the second post-war Treaty of Lausanne (1923) formally partitioned Kurdistan against the principle of *uti possidetis juris*<sup>9</sup> and denied all Kurds' rights, even to use their language.<sup>10</sup>

Thirty Kurds were elected to the first Türkiye Büyük Millet Meclisi in 1920. However, not long after the establishment of that Turkish Parliament, Atatürk's government had some of the Kurdish deputies arrested, imprisoned and even assassinated. Much of the remaining leadership went into exile. In the new Republic of Turkey, Atatürk also led the military in suppressing Kurdish revolts in 1925, 1930, and 1936–38.<sup>11</sup>

Meanwhile, a Kurdish Autonomous Province (Red Kurdistan/Kurdistan Uyezd) was set up, too, in the Lachin District of Soviet Azerbaijan in the 1920s. Under Stalin, however, the autonomous region was abolished in 1929, Kurdish culture was suppressed and Kurds came under severe pressure to assimilate to Russian or other acceptable nationalities corresponding to the constituent Soviet Socialist Republics (SSRs), to the point that allegedly even the word "Kurd" was banned.<sup>12</sup>

The first autonomous Kurdish government in the modern era was the "Mahabad Republic." The republic's foundation and demise were a part of the "Iran crisis" that took place during the opening stages of the Cold War, involving a failed attempt at the separate Azerbaijan People's Government at Tabriz. Kurdish leader Qazi Muahammad announced the establishment of the Mahabad Republic in January 1946.<sup>13</sup> However, within two month after its establishment, Iranian forced crushed the fledgling state after the Soviet Union withdrew its ambivalent support under pressure from Western powers.

**Continuum of Discrimination** Since the Kurds found themselves under foreign domination, they have been subjects of internal discrimination and displacement on their national land, and/or outside their land. External powers have used them as tools to destabilize neighboring states. Historically, between Iran and Iraq, Turkey and Iraq, state governments used the Kurds and their territory for cross-border incursions, as had the preceding empires. This historic continuum of practice has led to a series of reprisals and revenge attacks and measures of collective discriminatory treatment.

Given the Treaty of Lausanne's configuration of states in the region, the Kurds have been relegated the border regions of their host states, permanently rending them to the territorial periphery, where border security remains a premise for militarization of their lands and villages. A rebellious Kurdish secession bid in Iraq that began in 1963 finally was settled in the 1975 Algiers Agreement, after skirmishes with Iran over the Shatt al-Arab/Arvand Rud and Khuzestan borders to the south. In that period, the shah's Iran had supported Kurdish Iraqis financially and technically to such an extent that, when Iran and Iraq

agreed to the 1975 peace terms, the Iraqi Kurdish Party collapsed. Iranian support resumed with the beginning of the 1980–88 Iran-Iraq war, while its end led to intensified repression of the Iraqi Kurds.

Decades of violating Kurds' human rights actually have generated the greatest threat to Turkey's integrity as the republic ceased to be a state for all its citizens upon its establishment. Ironically, the state-integrity pretext became the Turkish authorities' preoccupation after the PKK began armed resistance in 1984 and a call to independence, the prospect of which would mean the Republic of Turkey's dismemberment.

The region's states often agreed to repress the Kurds living in their territorial jurisdiction. In Turkey, discrimination is institutionalized. The Constitution's Article 3 declares that the Turkish state, with its distinct territory and nation, is an indivisible entity, and that its unique national language is Turkish. Article 14 stipulates that the rights and freedoms embodied in the Constitution shall be denied to those violating the Turkish Republic's territorial and ethnic Turkish integrity. Articles 42 and 66 exclude recognition of other nationalities or languages other than Turkish.<sup>14</sup>

It is under this pretext that most human rights have been denied to the Kurds, because their very existence as Kurds is interpreted as a threat to the "integrity" of the constitutionally defined Turkey. Most Turkish state leaders since Atatürk have embodied this ideological position. In response to cumulative cultural, linguistic and economic marginalization, the Kurdish Workers Party (PKK) began an armed struggle in Turkey in 1984, which dramatically challenged this view and eventually sought external self-determination as the last resort to resolving the denial of Kurdish citizens' civil, cultural, economic, political, social rights.

### **The Continuum of Displacement and Dispossession**

Forced eviction practices—the "push factor" of population transfer—have had discriminatory purpose and/or effect, disproportionately affecting Kurds most dramatically in Turkey and Iraq. These have manifest in both incremental and large-scale displacements. (For contemporary incremental evictions disproportionately affecting Kurds, see "Neoliberal Urbanization and Land in Turkey," in this volume.)

The most dramatic displacements of Kurds in Turkey have been through counterinsurgency and premised as "security measures." This is coupled with reasons of "turkification," in order to maintain "the integrity of the [ethnic and territorial] state," if not a state with the constitutional integrity to ensure equal treatment of its peoples. However this policy may have gained world attention since the 1980s insurgency, compulsory displacement of Kurds has longer 20<sup>th</sup> Century roots.

On 3 March 1924, a Turkish government decree banned all Kurdish schools, organizations, and publications, as well as religious fraternities and medressehs, which were the only source of education for most Kurds. Deportations of Kurds to the west followed the Turkish army's crushing of the Sheikh Said rebellion in 1925. The purpose was to dilute the Kurdish population in order to facilitate its assimilation.<sup>15</sup>

On 4 May 1925, Turkey's Prime Minister İsmet İnönü announced:

"Nationalism is our only factor of cohesion. Before the Turkish majority, other elements have no kind of influence. At any price, we must turkify the inhabitants of our land, and we will annihilate those who oppose Turks or "le Turquisme."<sup>16</sup>

Turkey's 1934 "İskan Kanunu," or Housing [and resettlement] Law No. 2510, sought further to disperse the Kurdish population to areas where it would not exceed 5% of the total. Turkish authorities already had organized the depopulation of two-thirds of the total Kurdish settlements, and arbitrarily decided to keep these areas closed to Kurds.

In the 1930s and 1940s, the Kurds—like a dozen or more other nationalities—suffered mass deportations in the Soviet Union.<sup>17</sup> In 1937, Georgian SSR, Azerbaijan SSR, Armenian SSR, Turkmenian SSR, Uzbek SSR and Tajik SSR expelled about 2,000 Kurds to Central Asia (Kazakh SSR, Kyrgyz SSR). In 1944, the Georgian SSR expelled many of the remaining Kurds (ca. 3,000) to Central Asia.<sup>18</sup> Entire towns and villages were "deported," the men first, and later the women and children. The communities apparently were broken up and dispersed over the Central Asian republics (Kazakhstan, Kirghizia, Uzbekistan, Tajikistan and Turkmenistan) as well as Siberia. As many as half of them died on the way. Unlike other ethnic groups, the deported Kurds were denied the right of return to their original homes after 1957.<sup>19</sup>

In the Turkish State of Emergency region, within a few years, 2,489 Kurdish villages have been set on fire and partially or completely evacuated, at the rate of 874 villages in 1993, 2,374 in 1994 and 95 in 1995. This figure exceeded 2,500 in 1996.

In April 1990, in an ideological line very similar to the laws of the 1920s and 1930s, the Turkish National Security Council and Council of Ministers passed Decree with the Provision of Law (DPL) No. 413 that authorized compulsory relocation of anyone whom the regional governor the ten southeastern provinces determined "to act against the state."<sup>20</sup>

The 1990 decree (mentioned above) followed an intensification of PKK attacks. The Turkish military forced villagers to leave on the pretext that they were in too remote locations to be "protected" from the PKK, others for refusing to denounce the PKK as "terrorists" and, therefore, were considered as opponents of the state uniquely identified as ethnically Turkish.

Both as border-security measures and perceived disloyalty of the Kurdish population during its war on Iran, Iraq applied openly racist policies and practices by forcibly displacing 160,000 Iraqi Kurds toward Turkey and Iran at the end of the Iran-Iraq War. Saddam Husain's 1988 Anfal<sup>21</sup> campaign killed alone killed 182,000 Kurds, while destroying 4,500 Kurdish villages and towns. Saddam Husain's Iraq pursued a threefold policy of dispossession, "arabization" and "ba'thization." Consequently, 500,000–600,000 Iraqi Kurds remained internally displaced.<sup>22</sup> Another 1.5 million others fled for fear of reprisals during the invasion of Kuwait, because the USA was supporting them against the Iraqi regime.

The former Iraqi regime developed other practices, like scorched-earth missions to seize control of Kurdish landed property. In July 1988, Erbil Governorate's Security Directorate ordered all security branches to burn all "prohibited" harvest areas. As a matter of course, Iraq's arabization policy resulted in land confiscation and seizure of properties belonging to Kurdish citizens, even if some inhabitants still held land deeds issued by Saddam Husain's government.

In June 2000, the state confiscated 45,000 hectares of agricultural land belonging to Kurds and Turkomans, particularly in Kirkuk Governorate. In September, it announced the transfer of 10,000 plots of land from Kurds to Arab military officers there.

Today, at least one million internally displaced persons in Iraq are the living reminder of demographic manipulation (arabization) and dispossession policies. These repressive practices have dispossessed and alienated Kurdish and Turcoman citizens from their native lands. Part of the international efforts ongoing in Iraq (before the US-led invasion) resettled many displaced persons in Iraqi Kurdistan. Secondary displacements and property restitution now pose challenges nationwide.

Turkey and Iraq probably represent the darkest examples of systematic destruction of Kurdish villages and properties. In Turkey, not only villages, but also crops, vineyards and hectares of forest have been burnt. A variety of methods have been used, including bombings, napalm and bulldozers.

The Turkish Republic had put into place other kinds of legal measures to facilitate displacement and population transfer. It already has applied various forms of "state of emergency" (martial law) since 1940.<sup>23</sup> Despite conceding to a European complaint before the European Commission on Human Rights, Turkey ended its martial law, but restored it under "emergency legislation" in 1987.<sup>24</sup> That status covered most of the 11 Kurdish provinces (OHAL)<sup>25</sup> as a "super-region" to quell the Turkish-Kurdish conflict.

While any state of emergency is supposed to be punctual, exceptional, and short, it was extended 42 times in the four provinces of Diyarbakır, Hakkarı, Şırnak and Tunceli. This allows all the more human rights violations as Art. 15 of the Turkish Constitution stipulates that, in times of war, mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended. From 1994, OHAL gradually shrank, as provinces were downgraded to "neighboring province," then removed. Turkey ultimately discontinued OHAL and the state of emergency on 30 November 2002.

During the OHAL period, Kurdish-majority cities such as Şırnak, in 1992, and Tunceli, in 1994, also had to suffer mass destruction. Of course in most cases, the villagers did not receive any kind of compensation. Most of them today live in very poor conditions in shantytowns around İstanbul, İzmir, Adana, Mersin and Diyarbakır.

Although not necessarily with any legal pretext or administrative order, the large majority of displaced Kurdish villagers have had to relocate to escape bombs, repression, land mines and the destruction of their fields and crops. More indirect methods have had similar effect, such as the prohibition of camping in summer pastures, the partial blockade by collaborator Village Guards (see below), land and air military forces, and urban migration due to economic deprivation. Approximately 85–90% of the total population of Kurdish villages in Turkey—more than three million people—have had to migrate to city centers as a cumulative result of these measures.<sup>26</sup>

Meanwhile, another peripheral conflict further displaced Kurdish communities. During the conflict over Nagorno-Karabakh, Azerbaijan also, the Armenian government forced many non-Yazidi Kurds to leave their homes in Armenia. Following the end of the Soviet Union, Kurds in Armenia were stripped of their cultural privileges, and most fled to Russia or Western Europe. Most of the Azerbaijani and Kurdish populations fled the region during the heaviest years of fighting in the war from 1992 to 1993.<sup>27</sup>

## **Population Transfer**

### *Implantation of Settlers*

Few Turks have settled in the Kurdish region of Anatolia, despite the encouragement of the 1934 "Forced Settlement Law" No. 2510. The Law stipulated that the eastern and southeastern regions would be areas where Turks should be settled and Turkish culture popularized. Where the Republic of Turkey arbitrarily had decided to keep the Kurdish-emptied areas closed to Kurds, it was determined that "only Turks may settle these areas." Thus, the Turkish state instituted also the "pull factor" of population transfer in this way.

Especially after the death of Atatürk in 1938, the state and ethno-nationalist political parties encouraged Turkic immigrants (Diştürkler) from Yugoslavia, Bulgaria and elsewhere with special incentives to settle emptied areas under state guarantee. The process never covered the intended scale, however, partly out of newcomers' reluctance to settle in a conflict zone under State of Emergency.

In parallel, Iraq sought to complete its "arabization" policy, the Iraqi regime implanted 300,000 Arab Iraqi settlers in the Kurdish region in northern Iraq during the 1990s, in order to contain it. Iran and Syria have pursued similar policies of demographic manipulation. Rather than homogenize the state, these practices can backfire in ways that fragment the state, preparing a recipe for continuous and complicated land conflicts.<sup>28</sup>

### **Social Engineering and Underdevelopment**

Each of the Kurdish areas has been characterized as zones of arrested development. As a result of the division of Kurdistan, each component of the fledgling bourgeoisie was only able to develop through cooperation with the rulers of the states in which Kurds lived. Each of the host states have kept the Kurdish areas under permanent underdevelopment, where small-scale agriculture and animal husbandry dominate the economies. Modern industry and infrastructure have developed on a minor scale only where it has been useful for the exploitation of raw materials.

In Turkish Kurdistan, for example, only enterprises established by Turks receive state aid. Nonetheless, few investors risk enterprises in this area, because it is considered too unstable. Kurdish landowners face obstacles to investing capital in Kurdistan, and the indigenous bourgeoisie has undergone only the most rudimentary development. Migration from the land to the cities and towns is a widespread phenomenon in all four countries. The Kurdish society has both a national proletariat and Kurdish national capital, but both exist outside Kurdistan.<sup>29</sup>

Strategic reasons also have been claimed for depopulating more than 100 Kurdish border villages. The most ironical pretext that it uses though is "development" through dam building in the southeastern Kurdish region. It actually involves dispossession of the local Kurdish inhabitants' water resources, but also their "necessary" displacement. The biggest current project is the Illisu Dam, but Turkey has been working on more than a hundred other dams, displacing as a whole about 500,000 Kurds from their lands.

### **Other State Tools**

Across borders, states also have instituted other indirect ways of displacing and dispossessing indigenous Kurds. Besides directly combating Kurdish dissidents through persecution of their families, the former Iraqi regime also vengefully destroyed entire villages of those whom it considered

“saboteurs.” Another measure consisted of stripping Kurdish families of their official documents before deporting them.

In the same trend, but at a larger scale, the 1962 census in Syria left 120,000 Kurds stateless, because they could not prove that they had lived in Syria since at least 1935. The census was one component of a comprehensive plan to "arabize" the resources-rich northeastern part of the country, where the majority of non-Arabs in Syria concentrate. In 1996, they numbered 142,465. They do not have the option of relocating to another country, because Syrian authorities do not issue them passports. Besides the denial of their civic and political rights as citizens, they are not allowed to own land, houses and businesses. The children of half of them, who are not even issued identity cards, are not permitted to study beyond the ninth grade.

One of the Turkish state urban planning strategies is to decide where houses, or whole villages, have to be demolished and land confiscated is through the “Village Guards,” or “Village Protectors” system, established by law on 28 June 1975. The number of “Village Protectors” officially proclaimed was 12,000, but a January 2003 report counted 60,000.<sup>30</sup> Some were Kurdish collaborators recruited from the midst of village populations, while many were threatened and had no other choice but to serve as Village Guards, or be killed or expelled. This collaborator corps fought alongside the Turkish soldiers, and wielded more power than police forces.<sup>31</sup>

This Turkish Republic (TR) has used this device also to divide the Kurdish population. Yet, the increasing development of the guerilla struggle managed to weaken the Village Guard system, and the TR had to spend vast sums of money in order to maintain it.

Another means of displacement and fragmentation is infrastructure development. Before the 1991 Kurdish uprising, Turkey already had begun to harness some local rivers and was beginning to develop a complex of dams on the upper Tigris and Euphrates: the Southeast Anatolia Project (Güneydoğu Anadolu Projesi [GAP], in Turkish).<sup>32</sup> While every dam necessarily involves land confiscation for the construction itself, it also often means submerging numerous cities, villages and agricultural lands. Among the complex of works is the controversial Ilisu Dam, which has been the subject of opposition by local Kurdish communities, world heritage defenders, environmental conservationists and downstream civil society alike.<sup>33</sup>

#### Kurdistan Today

This article presents the contours of the Kurdish people’s struggle to maintain and develop their relationship to their territory and identity in the Middle East. One of the region’s four largest peoples, in population terms, this distinct nation remains without a recognized state that represents them as such, or as equals within a state that represents all of its citizens.

In 1991, at the end of the Gulf War, the Western powers that invaded Iraq after its occupation of Kuwait blockaded Saddam Hussein’s regime and protected the Kurdish north from further assaults. Following the 2003 invasion of Iraq and the replacement of the Baathist government, northern Iraq became an autonomous region. In 2003, the Coalition Provisional Authority established the Iraq Property Claims Commission (IPCC), later to be Commission for the Resolution of Real Property Disputes (CRRPD).<sup>34</sup> That restitution process was fraught with design flaws, has experienced tremendous complications and has undergone serial adjustments over the past decade. However, it represents a rare attempts at reparations for the hundreds of thousands of Kurds dispossessed in the recent period.

Both turkification and arabization have been the intractable ideological drivers behind state measures and policies that produce predictable historic outcomes. The concerned states have not yet sufficiently developed a super-ethnic basis for citizenship with equal rights and responsibilities.

Under its autonomous administration, Iraq's Kurdish population exercise a high degree of self-determination over its national wealth and natural resources. The Kurdistan Regional Government (KRG) has begun to develop as a new investment hub in the region. Approximately 55% of all investment in Iraq now is taking place in the Kurdistan Region. Its growth rate was 12% in 2012, and reached 8% in 2013. This growth promises to continue, as the first quarter of 2013 saw more projects underway in Kurdistan than were completed in all of 2012.<sup>35</sup> A variety of significant developments have facilitated this successful growth pattern, including local legislation of a new Investment Law in 2006, infrastructure improvements, industrialization, trade expansion and development of the oil-and-gas sector. However, the "oil curse" has manifest as unequal wealth distribution, corruption and autocratic governance.<sup>36</sup>

Apart from the KRG experiment, over the past half millennium, the Kurds have undergone a variety of repressive strategies to ensure their subordination under authoritarian regimes in each of the empires and modern states imposed upon them. These measures have ranged from denial of identity, a ban on the use of the Kurdish language, exile, systematic discrimination, dispossession and population transfer, including the implantation of settlers, mass destruction of homes and villages, and demographic manipulation. Among these runs a common objective: to sever the unique relationship between a distinct people and its land. In the case of the Kurds, these policies have encompassed cumulative violations so comprehensive as to deny a people's self-determination, whether through a politically independent Kurdistan, or internal to a democratic state by any other name.

## Endnotes:

<sup>1</sup> Estimates as of 2014; Turkey: "Kurdish 18% [of 81.6 million]", Iran: "Kurd 10% [of 80.8 million]", Iraq: "Kurdish 15%-20% [of 32.6 million]" Syria: "Kurds, Armenians, and other 9.7% [of 17.9 million]." [U.S.] Central Intelligence Agency, *The World Factbook*, at: <https://www.cia.gov/library/publications/the-world-factbook/>.

<sup>2</sup> As mentioned in Xenophon's *Anabasis*, Book 4, Chapters 1–4. See Carleton L. Brownson, ed. Xenophon, *Anabasis*, at: <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0202%3Abook%3D4%3Achapter%3D1>.

<sup>3</sup> As recorded in Xenophon's *Anabasis* at the time of the Battle of Cunaxa (401 BC) fought between Cyrus the Younger and his elder brother Arsaces.

<sup>4</sup> Or Girduene, also known as Beth Qardu in Syriac sources. A small vassal state between Armenia and Parthia in the mountainous area south of Lake Van in modern Turkey. Under Gnaeus Pompeius Magnus (Pompey), the Roman Republic annexed Gordyene. See *Parthian City Index*, at: [http://www.parthia.com/parthia\\_cities.htm](http://www.parthia.com/parthia_cities.htm). See also, Charles Scott Kimball, *A General History of the Middle East*, Chapter 7: "In the Shadow of Rome 63 B.C. to 226 A.D.," at: <http://xenohistorian.faihtweb.com/neareast/ne07.html>.

<sup>5</sup> The three principalities of Corduene, Moxoene, and Zabdicene are referred to as Carduchian dynasties. Cyril Toumanoff, *Introduction to Christian Caucasian History II: Status and Dynasties of the Formative Period*, Traditio, Vol. XVII (New York: Fordham University Press, 1961). pp. 31–32.

<sup>6</sup> In this era, medieval Kurdish historian and poet Sharaf al-Dīn Bitlīsī (1543–1599) wrote his *Sharafnameh* (1597), which forms a principal literary reference of Kurdish history. In 1695, Ahmad Khani composed the national epic of *Mem-o-Zin*, which gave impetus to Kurdish nationalism and called for a Kurdish state.

<sup>7</sup> Mehrdad R. Izady, *The Kurds: A Concise Handbook* (Washington: Taylor & Francis, 1992).

<sup>8</sup> The ancient Greek name for the region striding the two great Tigris and Euphrates Rivers.

<sup>9</sup> A principle of customary international law that serves to preserve the boundaries of colonies emerging as states. The principle derives from Roman law, but was applied by England's King James I in recognizing the existence of Spanish authority in those regions of the Western Hemisphere where Spain exercised effective control, and has been applied to establish the



- boundaries of decolonized territories in Latin America. A more-contemporary application is provided in the International Court of Justice Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), ICJ Judgment, 22 December 1986, para. 20, at: <http://www.icj-cij.org/docket/files/69/6447.pdf?PHPSESSID=48c0411022f9809a797e7d32f1d0a20b>.
- <sup>10</sup> Point 12 of Wilson's Fourteen Points declared "that non-Turkish minorities of the Ottoman Empire should be granted the right of 'autonomous development'." See Robin Bidwell, ed., Doc. 300 14285/134 Dispatch Sir George Clerk 18 Jan. 1932 Turco-Iraqi Commercial Treaty, in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office*, Vol. 7, "Eastern Affairs," June 1930–June 1932, Pt. II Series B: Turkey, Iran, and the Middle East (Frederick MD: University Publications of America, 1985), p. 384. The Treaty of Sèvres included Article 62, providing the Kurds with autonomy, and Article 64, allowing for possible independence. See Andrew Mango, *Atatürk: The Biography of the Founder of Modern Turkey* (New York: The Overlook Press, 1999), p. 486; David McDowall, *A Modern History of the Kurds* (New York: I.B. Tauris, 1996), p. 177.
- <sup>11</sup> Mark Muller, "Nationalism and the rule of law in Turkey: the elimination of Kurdish representation during the 1990s," in Robert Olson, *The Kurdish Nationalist Movement in the 1990s: Its Impact on Turkey and the Middle East* (Lexington KY: University Press of Kentucky, 1996), pp. 175–76.
- <sup>12</sup> Martin van Bruinessen, "Genocide of the Kurds," in Israel W. Charny, *The Widening Circle of Genocide: Genocide: A Critical Bibliographic Review*, Vol. 3 (Toms River NJ: Transaction, 1994), p. 170; Cultural Survival, "Population Transfer: A Scattered People Seeks Its Nationhood," at: <http://www.culturalsurvival.org/ourpublications/csq/article/population-transfer-a-scattered-people-seeks-its-nationhood>.
- <sup>13</sup> With a manifesto comprised of six pillars: (1) Autonomy for the Iranian Kurds within the Iranian state; (2) The use of Kurdish as the medium of education and administration; (3) The election of a provincial council for Kurdistan to supervise state and social matters; (4) All state officials to be of local origin; (5) Unity and fraternity with the Azerbaijani people; and (6) The establishment of a single law for both peasants and notables. MacDowell, op. cit., pp. 244–45.
- <sup>14</sup> Constitution of the Republic of Turkey (1982), at: [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf).
- <sup>15</sup> Michael Gunter, *Kurds and the Future of Turkey* (New York: St. Martin's Press, 1997), pp. 5, 6.
- <sup>16</sup> Quoted in Susan Meiselas, *Kurdistan: In the Shadow of History* (New York: Random House, 1997), p. 124.
- <sup>17</sup> Jeri Laber, "Stalin's Dumping Ground," *New York Review of Books* (11 October 1990), pp. 50–53; Nadir K. Nadirov, "Population transfer: A scattered people seeks its nationhood," *Cultural Survival Quarterly* (winter), pp. 38–40.
- <sup>18</sup> 92% of the deported were ethnic Georgians; the others were Kurds, Hamshils, Taraqamas and Karapapakhis. See J. Otto Pohl, *Ethnic Cleansing in the USSR, 1937–1949* (Westport CT: Greenwood Press, 1999); Pavel Polian, *Against Their Will: The History and Geography of Forced Migrations in the USSR* (Budapest: Central European University Press, 2004).
- <sup>19</sup> Laber, op. cit.
- <sup>20</sup> Nader Entessar, *Kurdish Politics in the Middle East* (Boulder CO and Lanham MD: Lexington Books, 2010), p. 138.
- <sup>21</sup> "Anfal," in Arabic, means "the spoils of war"; it is also the name of the eighth sūra, or chapter, of the Qur'ān.
- <sup>22</sup> Because the aim in providing figures would be to give a clear and comprehensive picture of the situation, the data on the transfer of Kurdish population are too incoherent to be presented here. Consequently, they are only reported as examples to illustrate the scale of the methods used. Moreover, only Turkish and Iraqi examples are developed here, which does not mean that there has been no population transfer affecting Kurds in Syria and Iran.
- <sup>23</sup> The first such law passed in 1940 was called law on extraordinary administration (idare-i Örfiye Kanunu). It was replaced in 1971 by Martial Law. The first law on state of emergency, mobilization and war was passed under military rule in 1983. *Olağanüstü hal kanunu, law 2935 of 25 October 1983, Official Gazette* (27 October 1983).
- <sup>24</sup> [Expert Helmut Oberdiek on Human Rights in Germany's internal and foreign affairs](#), hearing in *Bundestag* (parliament), 11–12 May 1993,
- <sup>25</sup> Turkish: Olağanüstü Hâl Bölge Valiliği, English: Governorship of Region in State of Emergency.
- <sup>26</sup> Ibrahim Sirkeci, *Migration, Ethnicity and Conflict: The Environment of Insecurity and Kurdish International Migration* (Sheffield: University of Sheffield, Department of Geography, 2003), at: <http://etheses.whiterose.ac.uk/6007/1/274968.pdf>.
- <sup>27</sup> Human Rights Watch, *Seven Years of Conflict in Nagorno-Karabakh* (New York: Human Rights Watch, December 1994), p. 14, 100, at: <http://www.hrw.org/sites/default/files/reports/AZER%20Conflict%20in%20N-K%20Dec94.pdf>.
- <sup>28</sup> *Restoring Values: Institutional Challenges to Providing Restitution and Compensation for Iraqi Housing and Land Rights Victims* (Cairo: Habitat International Coalition-Housing and Land Rights Network, May 2005), at: [http://www.hlrn.org/publication\\_det.php?id=q2o=#.VLlpTmfwtOw](http://www.hlrn.org/publication_det.php?id=q2o=#.VLlpTmfwtOw).
- <sup>29</sup> Maarten Martinus van Bruinessen, *Agha, Shaikh and State: on the social and political organization of Kurdistan* (Utrecht: Rijksuniversiteit te Utrecht, 1978), p. 22, at: [http://www.hum.uu.nl/medewerkers/m.vanbruinessen/publications/Bruinessen\\_ASS\\_Complete.pdf](http://www.hum.uu.nl/medewerkers/m.vanbruinessen/publications/Bruinessen_ASS_Complete.pdf).
- <sup>30</sup> Yahya Berman, International Helsinki Federation for Human Rights [IHF], "Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)" [extract] (IHF, 2005), at:

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[http://insanhaklarimerkezi.bilgi.edu.tr/source/turkce/4.2.5.4/International Helsinki Federation For Human Rights-Annual\\_Report\\_2005-Turkey.doc](http://insanhaklarimerkezi.bilgi.edu.tr/source/turkce/4.2.5.4/International_Helsinki_Federation_For_Human_Rights-Annual_Report_2005-Turkey.doc).

- <sup>31</sup> Human Rights Watch, *Destroying Ethnic Identity: The Kurds of Turkey* (1990), at: <http://www.hrw.org/reports/pdfs/t/turkey/turkey907.pdf>.
- <sup>32</sup> For an overview of the project and its Western financing partners, see “South-East Anatolian Project,” *European Institute for Research*, at: <http://www.medeab.be/en/themes/geopolitics/south-east-anatolian-project-gap/>.
- <sup>33</sup> İdris Emen, “Turkey: Call to Review Ilisu Dam Project,” *Hürriyet Daily News* (11 December 2014), in *HIC-MENA News*, at: <http://www.hic-mena.org/search.php#.VLI-5WfwtOw>; “Iraqi CSOs Urge Govt. to Confront Turkey over Dam,” (20 August 2013), in *HIC-MENA News*, at: [http://www.hic-mena.org/news.php?id=pW9oYw==#.VLI\\_U2fwtOw](http://www.hic-mena.org/news.php?id=pW9oYw==#.VLI_U2fwtOw); Kurdish Human Rights Programme, “Briefing Paper: The Ilisu Dam Project: An Update,” at: [http://www.khrp.org/khrp-news/human-rights-documents/briefing-papers/cat\\_view/40-briefing-papers-and-speeches.html](http://www.khrp.org/khrp-news/human-rights-documents/briefing-papers/cat_view/40-briefing-papers-and-speeches.html); “The Ilisu dam project,” European Rivers Network, at: <http://www.rivernet.org/turquie/ilisu.htm>.
- <sup>34</sup> Peter van der Auweraert, “Iraq updates its approach to former regime-related land and property claims,” *Terra Nullius* 11 March 2010), at: <https://terra0nullius.wordpress.com/2010/03/11/iraq-updates-its-approach-to-former-regime-related-land-and-property-claims/>.
- <sup>35</sup> According to Ministry of Trade and Industry reports, cited in “Overview: Kurdistan Region of Iraq,” *Invest in Group* (Dubai), at: <http://www.investingroup.org/publications/kurdistan/overview/economy/>.
- <sup>36</sup> Maya Janik, “The Kurdistan Region of Iraq: Achieving stability in a time of transition,” summary of the panel discussion, 15 June 2012, Diplomatic Academy of Vienna (Vienna: Austrian Institute for International Affairs, 2012., at: [http://www.oiiip.at/fileadmin/Unterlagen/Dateien/Summaries/Summary\\_Kurdistan.pdf](http://www.oiiip.at/fileadmin/Unterlagen/Dateien/Summaries/Summary_Kurdistan.pdf).



## Syrian Kurds under Systematic Housing and Land Rights Violations

*Sheruan Hasan and HIC-HLRN*

The Kurdish population in Syria, comprising approximately 10% of the country's total population, has been the target of discriminatory policies, laws and practices under successive governments. While discrimination against the Kurds in Syria has longer roots, marginalization and official discrimination increased and assumed new forms after Syria's independence in 1946, escalating through the 1950s and 1960, at the height of Arab nationalism. That state ideology continues to dominate Syrian legal and political institutions and is famously ungenerous toward non-Arab Syrian minorities.

Especially since the first declaration of a state emergency following the coup d'état of 1962, a continuum of measures have dispossessed many Kurdish Syrians of their land and property, resulting in the violation of a bundle of economic, social and cultural rights. Consequently, the Kurds of Syria have suffered acutely from a lack economic development and restrictions on social and cultural expression. Key to this process was an extraordinary 1962 census in Syria's northern al-Hasaka Governorate, where the majority of Kurds traditionally have lived.

In the interim between the September 1961 collapse of the Egyptian-Syrian union (United Arab Republic) and the first Ba`th Party coup (March 1963), the conservative interim government issued Decree No. 93, calling for a census to be carried out in al-Hasaka "in one single day." This hasty exercise took place under the ethnocentric Arab-nationalist vision of al-Hasaka's Governor Sa'id al-Sayyid, whose partisans characterized small-holding Kurdish farmers as "invaders." Anyone who could not produce family records on the census day would be denied entry into the registry, and all entries and appeals were reviewed ultimately by a "Supreme Committee" (Article 7 of Decree No. 93). Anyone in the area not registered as Arab Syrians would be considered "foreigners" (*ajānib*). This process effectively stripped more than 120,000 Kurds of their Syrian citizenship.<sup>1</sup> (With few exceptions, Kurds were the only non-Arab persons treated in this way.)

Thus, shortly after the entry into force of the international Statelessness Convention,<sup>2</sup> Syria created an entire class of stateless persons. While Syria has neither ratified nor signed the Statelessness Convention, the state never has sought to expel or "repatriate" Syrian Kurds to other countries. Instead, the strategy of dispossessing and marginalizing Kurds in Syria has been a more-indirect policy to encourage their departure; however, the community has remained firmly on their ancestral territory inside the Syrian Arab Republic until the recent civil war.

The state has created another special stateless category of those Kurds and their descendants unregistered in 1962: *al-maktūmīn* (Arabic: the silent ones). A union between two *maktūmīn* qualifies their children also as *maktūmīn*. The child of a recognized Syrian man and a *maktūma* woman becomes classified as a citizen. However, the scheme prohibits a Syrian women citizen and her child the right to pass on the mother's nationality, if she were to marry a *maktūm* man, the child would be *maktūm*.

Available statistics vary as to the number of persons treated as *maktūmīn* and *ajānib* in Syria, and reliable official statistics are generally unavailable. However, the Syrian government reported in 1995 that the number of *ajānib* in the country were only 67,465. Another source places the number at

approximately 200,000 registered *ajānib* and 80,000–100,000 *maktūmīn* in 2004, although Syrian officials dispute this estimate.<sup>3</sup> The most-recent available statistics indicate, for al-Hasaka Governorate alone, over 154,000 people (See table below.)

Under customary international law, everyone has the right to a nationality and the right not to be arbitrarily deprived of her or his nationality. The State of Syria systematically violates these human rights for hundreds of thousands of Syrian Kurds.

In Syria, the children of a marital union between two Kurdish *ajānib* are qualified also as *ajānib*. Thus, Syria is in violation of its treaty obligations under the Convention on the Rights of the Child to a nationality, as well as the other rights arising from full citizenship.<sup>4</sup>

### *Consequences of Constructed Statelessness*

The stateless Kurds in Syria (*maktūmīn* and *ajānib*) are subject to systematic persecution by Syrian governments, which situation has escalated in recent years. Their constructed status—outside of citizenship—makes them subject to a range of economic, social and cultural rights violations. Premised on their status as noncitizens, “*maktūmīn*” and “*ajānib*” Syrian Kurds are unable to own land, housing or businesses, which impedes their rights to an adequate standard of living.<sup>6</sup>

Those people are unable to obtain official documents. They cannot travel abroad formally. They have no access to public employment and are subject to discrimination in their access to health and education. They do not benefit from the public distribution of subsidized food.<sup>7</sup>

The access to subsidized food is particularly crucial in light of the recent land losses by administrative means, as well as the loss of food security and food sovereignty due to drought apparently brought about as a function of climate change. (See below.)

### *Land Deprivation*

The Syrian government in Damascus already had begun dispossess measures in the 1960s, with the confiscation of Kurdish families’ lands. Many land-owners alongside the borders of Syria with Turkey and Iraq were dispossessed at that time, in order to make way for the creation of the so-called “Arab Belt,” a 15 km-wide and 350 km-long swath of land. That policy inaugurated an unbroken pattern, continuing until the present.

The first decree that restricted the constitutional right to own property is the Legislative Decree No. 193 of 1952. Inspired by the ultranationalist Muhammad Tālib Hilāl,<sup>8</sup> the decree identified “the risks that arise from *suspected people* having property adjacent to the border” [emphasis added]. It (1) bans building and improvements on, and the transfer of land located in the border areas, including leases, joint ventures or contracts for agricultural investment over more than three years, and (2) prohibits all contractors and contracts that require agricultural investment to bring farmers, workers or experts from other districts or countries, without first obtaining a centrally approved license. Issuing such a license became bureaucratically cumbersome, and a Ministry of Agriculture denial is final and not subject to appeal. Arabs, Chaldeans, Syrians, Armenians and Assyrians have access to

<b>Kurds in al-Hasaka Governorate, 2008<sup>5</sup></b>	
al-Jawadiya	14,800
al-Qahtaniya	7,651
al-Qamishli	12,500
al-Hasaka	20,000
al-Malikiya	48,200
`Amudah	28,000
al-Darbasiya	11,400
Ra’s al-`Ayn	10,000
Tall Tamir	632
al-Ya`rubiya	768
Tall Hamis	385
<b>Total</b>	<b>154,336</b>

these licenses. However, to date, no Kurdish person ever has succeeded to obtain such a license.<sup>9</sup>

Decree No. 193 invalidates any previous contracts and negates any attempt to enforce terms of a previous contract, annuls any contract by an alias and any subsidiary conditions. This obligates the Attorney General to (1) nullify the registered contracts that are contrary to these provisions, and (2) imposes penalties to punish any official, title holder, or contractor in contravention of these provisions. The geographical scope of these 1952 conditions was: (1) the Qunaitra area and the entire al-Zawaya area, and (2) areas within 25 kilometers of the Turkish border.

A special decree followed Decree 193 to redefine the border area to include the town of al-Hasaka and, by extension, the entire al-Hasaka Governorate. This obliged everyone to obtain the license for these transactions, but the underlying reason of this measure was to recognize all of the land of al-Hasaka Governorate as a "border area." This administrative unit lies 100 kilometers inside the border, and is mainly inhabited by Kurds, and so this has the effect of denying Kurds' tenure over a wider area not limited to the border zone.

A few months after Decree 193 entered into force, an exchange of communications between the Ministry of Justice and the Directorate General of Estate Interests determined that the decree applied only to agricultural land, and that only such land should come under this license.

Law 41 of 2004 replaced Decree 193, but continued in the same vein. It established the penalty for offenses at a maximum of two years imprisonment and a fine of 100,000 Syrian pounds (€470). The previous decree allowed the purchase of lots or buildings that are within the city plan as before. However, the licenses were intended for agricultural land only, distinguishing Law 41 from Decree 193.

In 10 September 2008, Syrian President Bashār al-Asad issued Decree No.49 to amend Law No.41 as it related to property in the border areas. In its application, Decree No. 49 has led both directly and indirectly to the deprivation of Kurdish citizens' rights to adequate housing and to property, especially land as a source of livelihood and culture.<sup>10</sup>

Its first article prohibits the trade of property, mortgages, insurance, concessions, other franchises, or lending arrangements of a duration longer than three years, or that affect any legal rights concerning lands in the border area (including all of al-Hasaka) without central government permission, whether they are within or outside of a city plan, with or without a building on it, agricultural or nonagricultural land. The process remains prohibitively burdensome, and contracts outside these rules are deemed invalid.

Decree 49 prevents the courts from accepting any application to ratify a real estate sales contract, unless accompanied by the license. Contravening article 30 of the Syrian Constitution, the decree is retroactive and forces the dismissal of all pending cases in which the plaintiff (buyer) failed to produce the necessary license. Any current real estate sales without a license could be sent to auction as if no owner existed. It applies the licensing requirement also to rental properties for leases of more than three years. Decree 49 also prevents local councils from arranging municipal contracts for three years or more for shops, housing and agricultural property without obtaining a license in advance.

Kurds in Syria are effectively prevented from obtaining the requisite permits. Therefore, Decree 49 has derogated further their rights to housing, equitable land access and food security through agricultural, as well as many other forms of livelihood.

On 25 September 2008, the Syrian authorities issued Decree No. 59 on the demolition of structures built contrary to the planning law. Its Article 2 stipulates that all illegal buildings shall be demolished and the violators shall pay the expenses of the demolition and removal of the rubble. Article 7 authorizes demolishing and/or replanning of the areas under the Law No. 1 of 2003 in the provincial towns, thereby requiring retroactive application of the decree.

The general practice in Syria for years has been to regularize existing large-scale informal settlements under Law No. 46 (2004) which facilitates the granting of title as part of land-readjustment programs.<sup>11</sup> This contradicts the assumption about informal settlements: that investment depends upon a secure title. Clearly, the reverse applies in Syria, as investment commonly leads to a secure title under Law 46.<sup>12</sup>

However, Law No. 1 (2003) on illegal construction provides a set of draconian penalties for unlicensed building and aims principally at informal construction in existing planned areas extension zones. While implementation of Law No. 1 has not been strict, enforcement reportedly has targeted areas that include a majority of Kurdish people.<sup>13</sup>

Another indirect measure against Kurds right to adequate housing has manifest as a result of repeated droughts, whereas many families have migrated from rural Syria to urban centers. In 2009, some 29–30,000 families migrated, and estimates projected that number to have increased to 50,000, or higher, in 2010. As a result, some 160 villages have ceased to exist.<sup>14</sup> Those who have moved from the drought-affected regions are mostly small-scale farmers from al-Hasaka Governorate, the overwhelming majority of them are Kurds.

As affirmed in the UN Guiding Principles on Internal Displacement,<sup>15</sup> such persons have a right to state support for their welfare and housing,<sup>16</sup> return and rehabilitation<sup>17</sup> without negative discrimination.<sup>18</sup> However, Syria has not demonstrated the political will to uphold those rights.

In fact, by the timely Decree 2715 of 16 December 2010, the Ministry of Local Administration further prohibited officials from ratifying and sales or rental contracts to persons outside of their designated domicile. This measure, which is ostensibly is not specific to any ethnic groups, further complicates and forecloses housing options—and housing rights—for those most vulnerable to the present wave of displacements.

In May 2010, the the Directorate of Agriculture Reform in al-Hasaka issued Resolution No. 2707 on 17 March 2010. It removed the names of more than 580 Kurdish peasants from lists of those who have permission to use the land in the Dayrik area of al-Jazīra region, because they lacked legal authorization in accordance with the provisions of Law No. 41 (2004), as amended by Decree No. 49 (2008).<sup>19</sup> The Minister of Agriculture and Agrarian Reform `Adil Safar said, in a visit to al-Hasaka Governorate on 5 May 2010, that it was the Arab Ba'ath Socialist Party and the National Security Council, headed by Major General Hishām Bakhtiār, who made the decision. The National Security Council decided which Kurdish names to include in the list.<sup>20</sup>

In a continuing measure, on 10 February 2011, The Ministry of Agriculture and Agrarian Reform excluded stateless Kurdish peasants from government support in their usual cultivation of cotton under pretext that they are not citizens.<sup>21</sup> Meanwhile, the Syrian government has raised the price of agricultural inputs as a result of the recent drought, which, in turn, has increased the suffering of Kurdish peasants in Syria.<sup>22</sup>

Consistently over more than half a century, these serial measures have cut the livelihood resources of Kurds in Syria and further impoverished their lives. By removing the citizenship from the population, these methods have taken 335 villages from Kurdish people since 1974, and alienated them from their agricultural land in the entire al-Hasaka area. By pursuing a model of citizenship status subordinated to an ethnocentric state ideology, the source and consequence of the violations are evident, and the corrective measures required to pursue human rights-based statecraft are likewise obvious in the crucial field of land administration and urban development.

## Endnotes:

- <sup>1</sup> Arab Commission for Human Rights, "عديمو الجنسية في سورية (من غير اللاجئين الفلسطينيين)" ["Persons without Nationality in Syria (without Palestinian Refugees)"] (2004), at: <http://hem.bredband.net/dccls2/r1.htm>.
- <sup>2</sup> Convention relating to the Status of Stateless Persons, adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and social Council resolution 526 A(XVII) of 26 April 1954, entered into force 6 June 1960, in accordance with article 39.
- <sup>3</sup> As of 31 October 1995. See *Stateless Kurds in Syria: Illegal invaders or victims of a nationalistic policy?* (Berlin: KurdWatch, March 2010), p. 13.
- <sup>4</sup> Article 7, Convention on the Rights of the Child (CRC), adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990, in accordance with article 49. Syria ratified CRC on 14 August 1993.
- <sup>5</sup> *Stateless Kurds in Syria*, op. cit., p. 13. KurdWatch obtained these statistics from most of the civil registry offices in al-Hasaka Governorate.
- <sup>6</sup> Article 11, International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 3 January 1976, in accordance with article 27 status of ratifications declarations and reservations. Syria ratified ICESCR on 3 January 1976.
- <sup>7</sup> UN Special Rapporteur on the right to food Olivier De Schutter, Mission to Syria from 29 August to 7 September 2010 (preliminary remarks), at: [http://www2.ohchr.org/english/issues/food/docs/SyriaMissionPreliminaryConclusions\\_07092010.pdf](http://www2.ohchr.org/english/issues/food/docs/SyriaMissionPreliminaryConclusions_07092010.pdf).
- <sup>8</sup> The recently deceased (9 February 2011) Muhammad Tālib Hilāl (80) was a Saudi-naturalized Syrian who served as Ba`thist head of internal security in al-Hasaka Governorate. Throughout his life, he advocated the cleansing of the region of its non-Arab—particularly, Kurdish—population. As author of the infamous Arabization pamphlet "A Study of the Jazira Province from National, Social and Political Aspects" (1963), He set out a twelve-points plan to: (1) displace Kurds from their lands to the interior, (2) deny them education, (3) hand over "wanted" Kurds to Turkey, (4) deny Kurds employment opportunities, (5) conduct anti-Kurdish propaganda, (6) deport Kurdish 'ulama' (clerics) to be replaced by Arabs, (7) implement a divide-and-rule policy against the Kurds, (8) Arab colonization of Kurdish lands (9) militarize "northern Arab belt" and deport Kurds from the area, (10) create "collective farms" for the new Arab settlers, (11) deny rights to vote or public office to nonarabophones and (12) deny citizenship to any non-Arab wishing to live in the target area. The Syrian Ba`thi regional leadership and government formally adopted Hilal's plan in 1965. See Haitham Mana', "Adīmū al-Jinsiyya fī Sūriya" [Arabic] "Stateless Persons in Syria," (Geneva: Arab Commission for Human Rights, 2004), at: <http://hem.bredband.net/dccls2/r1.htm>.
- <sup>9</sup> Support Kurds in Syria, "Decree 49: Dispossession of the Kurdish Population?" at: <http://supportkurds.org/tag/decree-49/>.
- <sup>10</sup> "Decree 49 - Ethnic Cleansing of Kurds in Syria," Support Kurds in Syria. August 2010, at: <http://supportkurds.org/reports/decree-49-ethnic-cleansing-of-kurds-in-syria/>
- <sup>11</sup> Under Law No. 9 (1974) and amendments on the division, organize and urbanization of cities, at: [http://mohud.gov.sy/?page=show\\_det&category\\_id=13&id=251&lang=ar](http://mohud.gov.sy/?page=show_det&category_id=13&id=251&lang=ar).
- <sup>12</sup> Patrick McAuslan with Housam Safadi, "Positive Planning: A New Approach to Urban Planning Law in Syria" a report prepared in Action Plan 9 of the EU's Municipal Administration Modernisation project in Syria (August 2008).
- <sup>13</sup> لا تزال سارية المفعول بعد مرور عامين على صدورها رغم الاعتراضات الشعبي (69/59/49) لمراسيم السوداء (10 September 2010), at: [http://www.pydrojava.com/index.php?option=com\\_content&view=article&id=701:-495969-&catid=42:2010-08-05-11-11-39&Itemid=61](http://www.pydrojava.com/index.php?option=com_content&view=article&id=701:-495969-&catid=42:2010-08-05-11-11-39&Itemid=61). See the text of Decree No. 59 on demolishing illegal buildings, at: <http://www.legalsyria.com/ar/the-news/158----59----->.
- <sup>14</sup> Ladin Frimut, Gidon Bromberg, Munqeth Mehyar and Nade al-Khateeb, *Climate Change: A new threat to Middle East Security*, (Amman, Bethlehem & Tel Aviv: Friends of the Earth Middle East, 2007), at: [http://foeme.org/uploads/publications\\_public78\\_1.pdf](http://foeme.org/uploads/publications_public78_1.pdf).



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- <sup>15</sup> *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, 11 February 1998.
- <sup>16</sup> *Ibid.*, Principles 18 and 19.
- <sup>17</sup> *Ibid.*, Principles 29 and 30.
- <sup>18</sup> *Ibid.*, Principles 1, 2, 3 and 4.
- <sup>19</sup> "The Syrian Government Establishes Arab Belt to Separate Syria from Kurdistan Kurdistan Region of Iraq" [الحكومة السورية تنشأ [جزاماً عربياً لفصل كردستان سوريا عن إقليم كردستان العراق], *Peyamner News Agency*, at: <http://www.peyamner.com/details.aspx?l=2&id=179938>; Support Kurds in Syria, "Land rights of Kurdish Peasants removed in Syria," June 2010, at: <http://supportkurds.org/news/land-rights-of-kurdish-peasants-removed-in-syria/>; حسكة، شطب أسماء، "فلاحين كرد جدد من جدول المنتفعين من الأراضي الزراعية" at: [http://ar.soparo.com/index.php?option=com\\_content&view=article&id=13853:2010-05-20-16-29-26&catid=34:2008-05-23-23-58-43&Itemid=192](http://ar.soparo.com/index.php?option=com_content&view=article&id=13853:2010-05-20-16-29-26&catid=34:2008-05-23-23-58-43&Itemid=192).
- <sup>20</sup> Land Rights of Kurdish peasants removed in Syria. Rjhelat, the Kurdish Observer (June 2010), at: <http://english.rojhelat.eu/component/content/article/358>.
- <sup>21</sup> The Kurdish Organization for the Defense of Human Rights, "لماذا يتم حرمان المجردين من الجنسية من دعم القطن؟"، 10 February 2011, at: <http://dadhuman.info/1890.aspx>.
- <sup>22</sup> Lina Sinjab, "Syrian drought triggers rural exodus," *BBC News* (29 August 2010), at: <http://www.bbc.co.uk/news/world-middle-east-11114261>; World Food Program, "Syria: Over a million people affected by drought," February 2010, at: <http://www.wfp.org/content/syria-over-million-people-affected-drought>.

## The Forgotten Occupation: `Arab al-Aḥwāz

*`Adil al-Swaidi and HLRN*

The territory of al-Aḥwāz is administered as a province of southern Iran, named after its capital city, Aḥwāz. Its indigenous Arab people total approximately 2.4 million and live in the territory. The region's original name is debated among Arab historians as to whether the territory's original name was Aḥwāz, Aḥwāz, or Akhwāz. Under Iranian administration, however, the territory is formally known in the official Persian language as "Khuzestan," which appellation, according to folk etymology, derives from "land of the sugarcane grower" (*khūzi*). Today, the Arabs represent around 75% of the population in al-Aḥwāz territory. While some `Arab al-Aḥwāz activists claim that their population is more than 9 million.<sup>1</sup> Estimates include some 6,700 Aḥwāzi refugees living in southern of Iraq, since their properties were destroyed during the Iran-Iraq War, and others living in diaspora. Although Iran has imposed the Persian language in al-Aḥwāz, the Arabic language remains the mother tongue of Khuzestan's Arab population. The Arabs of Aḥwāz are 70% Shi`a, while 30% are Sunni Muslims. That minority is the only segment of Iran's population celebrating the `Id al-Fitr holiday, in spite of Iranian government attempts to prevent such events.

The total al-Aḥwāz territory before the 1925 Persian occupation measured 89,000 km<sup>2</sup>, stretching from southwest provinces of Iran to Iraqi border at al-Basra. However, some Arab Aḥwāzi nationalists claim the Aḥwāzi territory extends from southwest Iran to the Persian Gulf border. That area covers 370,000 km<sup>2</sup>.

*Province of Khuzestan/al-Aḥwāz*

After occupying al-Aḥwāz in 1925, Shah Reza's administration divided the region long known as "Arabistan" among Persian provinces in 1936: 11,000 km<sup>2</sup> of the southern region was annexed to the Fars Province, 10,000 km<sup>2</sup> of the western part was annexed to Isfahan Province, and 4,400 km<sup>2</sup> in the northern part were annexed to Lorestan Province. Thus, the total land area of the greater Arabistan region decreased to 344,600 km<sup>2</sup>.

### Origins and Historical Background

The human history of al-Aḥwāz dates back to the ancient Elam (a.k.a. Ilam, Elamtu) civilization in the 4<sup>th</sup> Millennium BCE, with records dating from 3,200 BCE. The Elamites were the first settlers, replaced by other Arab tribes such as Banū Murah, Banū al-`Am, Banū Tamīm, and Banū al-Kathīr.



The country underwent serial invasions: It was subject to the Achaemenid Empire (648–330 BCE), then the Seleucid Empire (312–63 BCE), then the Arsacid (Parthian) Empire (247 BCE–224 CE) and the Sassanid Empire (224–651 CE). Unable to suppress Arab tribes uprising against the regime, the Sassanid Empire granted them self-rule in the form of emirates, against payment of annual tax. The Sassanids already replaced many Arab tribes with Persian settlers, and Persians dominated economic activities, production and services in the cities and towns.

With the advent of Islam (637 CE), the Sassanid Empire collapsed, and the Arab tribes in al-Aḥwāz integrated with other tribes arriving after Islam. Al-Aḥwāz has struggled for many years to maintain self-rule within the wider Islamic region (*ummah*), until they were occupied by Shah of Iran Reza Pahlavi, amid the “great game” rivalry of the imperial powers (Britain and Russia) in 1925.

After the Islamic empire’s collapse, the Arab tribes remained struggling against Ottoman, Persian, and Western powers to control the strategic region. The Arab tribes had formed a political union led by the Banū K`ab. Established the state of K`abi, in 1724, the Aḥwāz Arabs expanded their reach along the Persian Gulf coast, and called their territory Arabistan.

In 1881, Governor of Ka`bi State Sheikh Maz`al cooperated with the British to open the Karun River to international shipping, and the British consulate was established in the region for that purpose in 1890. After Sheikh Maz`al’s death, Sheikh Khaz`al assumed leadership, and the region became a strategic asset for foreign powers, after the discovery of the oil in Aḥwāz, in 1908, and with the outbreak of World War I, in 1914.

Sheikh Khaz`al became a British candidate to become king of Iraq, after he signed a contract with British

Petroleum Company. However the governor of Fars, Reza Khan, was concerned over Sheikh Khaz`al’s growing power in the region. In 1921, Reza Khan signed a 1925 treaty with the British government, ending British support and protection to the Emirate of al-Aḥwāz, and Reza Khan relinquished his alliance with Russia. Persian forces then invaded and occupied al-Aḥwāz, and the new Persian governor, General Zahdi, kidnapped Shaikh Khaz`al. Then the Persian regime annexed the region and declared that al-Aḥwāz is part of a Persian state (Iran).

**Map of “Greater” Aḥwāz**



### **Discriminatory Practices & Persianization Policy**

After Persians occupied al-Aḥwāz, they annexed and divided the region into Persian provinces. They changed the names of the cities and villages from Arabic to Persian, as the name of the region was changed from Arabistan to Khuzestan Province, and the capital of Ka`bi state changed from al-Maḥammarah to Khoramshahr. Al-Falaḥīya city was changed to Shadegan. The Persian regime has forbidden and punished the speaking of Arabic language by the residents of al-Aḥwāz in public places, the Persian language replaced Arabic in the courts and officials bureaus, and the regime imposed

Persian dress on al-Aḥwāzi residents. The teaching of Arabic language was cancelled, and all religious schools were closed. The population was obliged to buy and read the new Persian newspaper *Khūzestan*. The regime also deported Aḥwāzi clerics and scholars to Iraq.

The residents of the region were prevented from travelling to other Arab countries. Thus, Reza Khan's regime prevented any Aḥwāzi from working in official positions, if the employee did not provide certify Persian language proficiency, which has led to the marginalization and impoverishment of many Arab families in the region. Additionally, the Reza Khan regime prevented Arab from families giving their children Arabic names. Those measures remain in place since 1928.

Also, Shah Reza confiscated the best quality lands and allotted them to his generals and other military officers under a pretext of national security and unification of the country. In 1968, Shah Muhammad Reza confiscated 68,500ha [ha] from Arab residents and citizens.

### **Development and Displacement**

Since al-Aḥwāz region was occupied by the Persian state, Reza Khan sought to transform its demographic composition in favor of Persians. His regime displaced many Arab families in al-Aḥwāz, confiscated their lands and reallocated them to Persian provinces around the region. Also the regime banned the Arabs from official positions or public jobs, or/and travelling to other Arab countries, moving them to impoverished and marginalized areas in Iran's Persian provinces.

Until end of World War II, the Iranian investment in development projects in al-Aḥwāz focused on oil facilities such as Abadan refinery in the southern and northern parts al-Aḥwāz. In 1950s, several so-called development economic plans had been set up in the Arab rural residential areas around the towns of Susa and Shushtar, where the central government demolished dozens of villages.<sup>2</sup>

The "persianization" policy continued under Reza Khan's son, Shah Muhammad Reza. Simultaneous with major land reforms in 1962–73, the shah confiscated many Arab tribal lands under the pretext of land redistribution and foreign-led projects that have increased the displacement of the Arab tribes inside Iran, preventing access to work, properties or their homes in Aḥwāz. (Announcing his White Revolution in 1963, the shah made one of his six targets the nationalization of forests and pastureland.) These reforms resulted in the newly created peasant landowners across Iran owning 6–7 million ha, around 52–63% of Iran's agricultural land. Despite the considerable Iran-wide redistribution of land, the amount received by individual peasants was not enough to meet most families' basic needs, and the putative development objectives of the land reform were not realized.<sup>3</sup>

Meanwhile, in the southern province of Khuzestan, the trend already was turning toward large-scale, corporate-led and mechanized farming. The process of refining sugar is said to have been invented at Jundī Shapūr in al-Aḥwāz/Khuzestan. However, sugarcane cultivation in Khuzestan was obsolescent about 600 years ago due to unknown reasons.<sup>4</sup> Efforts to establish sugarcane industry in Khuzestan started in 1950's. At present, the area of al-Aḥwāz available for planting sugarcane is over 130,000ha.

The Imam Khomeini Agro-Industrial Complex sugarcane project in Shu`aybiyya has resulted in the isolation of dozens of Arab villages, disrupting usual passage between the cities of Ahwaz and Shūshtar and requiring villagers to travel 5–10 kilometers further along the sugarcane plantations to access the main road. Such projects include "*Haft Tappeh* [seven hills] Sugarcane Agro-Industry Co," which has taken approximately 190,000ha for the project and to house the influx of non-Arab workers. Further

displacement took pace in both east and west part of Shu`aybiyya rural districts, on both Karun River banks and along the roads between Ahwaz–al-Maḥammarah/Khoramshahr and Ahwaz-Abadan.

### **Population Transfer, Implantation of Settlers**

At the end of the shah’s reign (1979), the al-Aḥwāz Arabs largely supported the Islamic Revolution, assuming that it would end the discrimination practiced against them. However, the Revolution period saw even more-vigorous persecution of the Arabs. Particularly, during the Iraq-Iran War in 1989—and despite the Aḥwāzi Arabs’ support for the Iranian side—the self-styled Islamic regime displaced over 1.5 million Aḥwāzis from the border areas.<sup>5</sup>

Aḥwāzi refugees in southern Iraq during Iran-Iraq War numbered around 6,700, most of whom were farmers. They still reside in refugee camps such al-Dujil, al-Kumit, but under Iraqi government threat to deport them.<sup>6</sup> Additionally, most of total 2 million displaced Aḥwāzis are living in Persian Gulf countries. More Arab Aḥwāzis migrated to other Arab countries, such as the south of Iraq, Kuwait, Qatar, UAE and Bahrain.

Transforming demographic composition of al-Aḥwāz in favor of Persians has been a key Iranian government policy objective in the region, especially during and after Iran-Iraq War. The Tehran government has taken more than 6,000ha of Aḥwāzi farmland north of Shush to resettle faithful nonindigenous Persians, according to directives by the Ministry of Agriculture and the Revolutionary Corp Command. The consequent marginalization and displacement have forced Aḥwāz Arabs into shantytowns around the region’s capital of Aḥwāz, the sixth biggest city in Iran.<sup>7</sup> In a dramatic transfer project, more than 15,000 Aḥwāzi Arab farmers made landless by the government’s land confiscation program have been forced to resettle in a camp named “Baheshti” outside city of Mashhad, in the northeastern Iranian province of Khorasan. Around 47,000ha of Aḥwāzi Arab farmland in the Jofir area has been transferred to “Isargaran” nonindigenous Persian settlers, government agents, security personnel and their family members.<sup>8</sup> A further 25,000ha has been taken from Aḥwāzi Arab farmers and given to the government-owned *Shilat* corporation and government agencies.<sup>9</sup>

In 2003, Tehran bulldozed the homes of 4,000 Arab residents of Sapidar, many of whom fought for Iran in the Iran-Iraq War. In September 2004, the Iranian regime began a large-scale housing project to resettle ethnic Persians to Khuzestan, while continuing to force ethnic Arabs to migrate to other provinces. In 2005, the UN Special Rapporteur on the right of adequate housing visited al-Aḥwāz region on a country mission and reported on government-executed forced evictions, carried out without posing alternative solutions and/or reparations for the displaced Arab families.<sup>10</sup>

Completed settlements include the Ramin-2 township, 45km to the south of the City of Aḥwāz, built to resettle 500,000 non-Arabs, and the Shirīnshahr settlement built north of Aḥwāz to settle 50,000 ethnic Persians from the central provinces. In early 2006, the Iranian government issued an announcement that outlined further expansion of the Ramin settlement, which involved further confiscations of Aḥwāzi Arab lands in areas of Sanicheh and Jalieah. Similar resettlement projects are underway in predominantly Arab cities, towns and villages such as Mahshar, al-Muhammarah/Khorramshahr, Abadan, Hamiodieh and Sosangard MulaSani.<sup>11</sup>

The Iranian government has codified this policy in presidential Decree No. 971/2009, which Chief of the Supreme National Security Council Akbar Hashemi Rafsanjani referred to as “*amīshe serzemen*” (demographic distribution). This policy redistributed many Arab villages and displaced their inhabitants.

This is seen also in the building of settlements for Persians in the middle of Arab villages, such as the “*Shirīn Shahr*” settlements that include more than 1 million Persians settling to pursue a livelihood from natural al-Aḥwāz resources in sugarcane projects, fish farming and other commercial schemes. The Shūshtar New Town, built by Karun Agro-Industries Corporation, contains at least 4,494 Persian settlers. The Iranian authorities also demolished the homes of 25 Arab families at Ḥaṣīr Ābād and displaced them without any compensation or alternative solutions.<sup>12</sup> In 2014, the Iranian government attempted to destroy a village in the central Aḥwāz on the pretext that their homes lacked building permits, but its Arab women residents effectively resisted.<sup>13</sup>

Meanwhile, more settlement projects are promised in the coming years. The national press promotes the scheme to “provide houses for youth and support the development in the region,” but these projects are not for the indigenous Arab people, but for the incoming Persian and other non-Arab (e.g., Azeris and Bukhtaris) settlers.

In the last 15 years, the Iranian government has confiscated more than 250,000ha from Arab farmers in the region for settlement of other ethnic groups in Iran. In 2008, the governmental Committee on the Economy granted to the Ministry of Energy more than 7,520ha of Aḥwāzi Arab land for drilling and oil extraction in the area of al-Khafjīya (in Persian, “*Dusht Azadgan*”), in cooperation with Chinese and Japanese companies.

### **Diverting Natural Resources**

The region contains a wealth of natural resources, which captured the attention of Western powers, especially after the discovery of oil there in 1908 and subsequent outbreak of World War I in 1914. With access to al-Aḥwāz and the opening of the Karun River—Iran’s only navigable internal waterway—to ship traffic, the British could penetrate the Turkish positions and connect the British settlements in India with those in the north (Near East). Al-Aḥwāz also played an essential role in World War II, especially after the attempts of Russian and British troops each to take the control of the region in 1941.

In 2005, the Iranian government announced the establishment of the “Arvand” free-trade zone, and ordered the Arab land-holding families to stop any construction or farming on lands designated for that project. That foreshadowed the forced eviction and displacement of more than 1 million Aḥwāzis from Abadan, al-Muḥammarah (Khoramshahr) and Mīnū Island, in the Persian Gulf.

The changing demographics have had a profound impact on the Arab population and culture. The Persian settlements that were established among the Arab cities and villages have isolated the Arab families into impoverished areas and slums not eligible for the development process or improvements to public facilities and services. Iranian authorities call these areas the “Arab poverty belt.” There inhabitants have been marginalized systematically to deepen their poverty and unemployment, motivating the Arab families to migrate from their lands and cities. Among the devices used is discrimination in hiring and sacking Arab workers in favor of Persian settlers.<sup>14</sup>

Some have referred to the Iranian authorities’ policies of impoverishing and forcing migration of the indigenous people of al-Aḥwāz as “ethnic cleansing”<sup>15</sup> and “population transfer.”<sup>16</sup> Meanwhile, the State of Iran realizes 83% of its gross national product from the natural resources in the Khuzestan/al-Aḥwāz region,<sup>17</sup> but the region itself has no budget commensurate with that natural wealth. The region remains outside the national development context, except for the areas that include the Persian, Bakhtiari, Azeri and other non-Arab settlements. Similarly, Arabs of al-Aḥwāz remain out of the national health-care

scheme, as they have no right to access to the national health insurance. They have no primary schools for their children and may attend only Persian schools.

The Iranian government uses certain other methods in discrimination policies are used against 'Arab al-Aḥwāz, and have negative impacts on the region's environment and natural resources. The diversion of the main rivers in al-Aḥwāz region—Karūn al-Jarāḥī—to the Persian provinces such as Isfahan, Yazd, and Kerman seek to increase agricultural lands there, while depriving local Arab farmers of their water.

The first plan to divert al-Aḥwāz rivers was adopted under President Hashemi Rafsanjani (1989–97) to divert the Karun River from al-Aḥwāz to Rafsanjan Province by the Rafsanjan Reconstruction Company, and to undertake construction of the Karun-4 Dam in the Jūnqān area of Chaharmahal-Bakhtiari Province. This has involved digging a 55km-long tunnel to convey water through an eventual 340 km-long system.<sup>18</sup> Another project channels water from Luristan Province to Qom Province. Marūn Dam maintains a height of 175m on al-Jarāḥī River,<sup>19</sup> the Dez River Dam stands at 203m<sup>20</sup>; the Masjid Sulaimān Dam is 177m high<sup>21</sup>; Karkheh Dam in al-Salḥiya has reached 127m.<sup>22</sup> Karun Dam-4 is 230m high<sup>23</sup>; Kotend Dam, on the north Karun River is 170m high. All of these dams prevent the water flow to Arab farmlands, and decrease the water in both Karun and al-Jarāḥī rivers, upon which the Arabs depend for 90% of irrigation drinking water.

The residue from development projects, factories, mines and sugarcane plantation all are taking their environmental toll, as wastewater from greater urbanization is dumped into the rivers. The quantity and quality of water for local use in Ahwaz has deteriorated markedly over recent decades.<sup>24</sup> Already in 2005, Members of the Iranian parliament representing Khuzestan Province launched a strident protest against the government's Karun River water diversion project and demanded the impeachment of Energy Minister Parviz Fattah over the development policy's detrimental effects on the local quality of life.<sup>25</sup> Meanwhile, Ahwaz has earned distinction as the world's most-polluted city.<sup>26</sup>

Also, desertification has increased in the region, and more than 280,000ha of land is desert.<sup>27</sup> In recent years, up to 60% of Aḥwāzi lands have experienced the worst long-term drought and most-severe crop failures since the regime began its scheme of water diversion. An estimated 1.5 million people who are mostly dependent on agriculture in the countryside, particularly in Huwayza, Muḥammara, Falaḥīyya, Omīdiyeh and Ramhormuz and Khalafīyya, have been driven into extreme poverty.<sup>28</sup> Most recently in 2012, the UN Environment Programme (UNEP) has warned that the river-diversion process in the region threatens ecological disaster similar to the desiccation of Central Asia's Aral Sea.<sup>29</sup>

### **International Attention**

International responses to the human rights situation in Aḥwāz remains largely mute, while Western neighboring states remain preoccupied with Iran's nuclear-development program and influence in regional conflicts. The violations in Aḥwāz have not gone completely without attention in major international forums, however.

UN Special Rapporteur on adequate housing Miloon Kothari conducted a country mission to Iran in July 2005 to assess living conditions and made a special visit to Aḥwaz (Khuzestan), where he saw for himself the level of discrimination against Arabs, including land confiscations. In his report submitted to the UN Economic and Social Council, he reported that: "In Kermanshah and Khuzestan, the overall living conditions in poor neighbourhoods mainly inhabited by Kurds, Arabs and Muslim Sufis were extremely unsatisfactory. Particularly serious conditions were observed in places like Ghal'e Channan and Akhar

Asfalt in Ahvaz with, in some cases, a complete lack of basic services impacting negatively on the populations' health status, in addition to contributing to severe security problems. Most poor neighbourhoods were unpaved, open-air sewage was sometimes observed and uncollected garbage blocked streets, obstructing traffic and access from the outside in case of emergencies...."

The Special Rapporteur "visited lands traditionally cultivated by Iranian Arabs, which were expropriated by the Government for remarkably low prices in order to provide space for development projects and plantations, such as the Dekhoda sugar-cane project. The affected population had no access to legal remedies to challenge the legitimacy and legality of the expropriation orders and existing legal remedies only enabled the inhabitants to initiate discussions related to the price offered for their lands. Allegedly, even in the very few cases in which the prices were slightly raised by courts, they were still fixed much lower than market values. The affected population was not consulted before or during the expropriation procedure.

Expropriations for the implementation of development projects have been especially criticized in view of the considerable amount of unutilized rural land, where displacement would be minimal, and which was already owned by the Government, where such projects could be located."<sup>30</sup>

These initial observations by the Special Rapporteur were followed to a cross-party motion of condemnation of land confiscation in Ahwaz by the European Parliament, with some politicians such as Paulo Casaca MEP, head of the European Parliament's delegation to NATO, stating that the Iranian government was carrying out a policy of systematic ethnic cleansing against Ahwazi Arabs.<sup>31</sup>

## **Conclusion**

The Aḥwāz region is strategically important for Iran, because of its located on the Persian Gulf coast, and Persia historically has had no access to the oceans except through the adjacent lands to the south. This area also was very important for the Ottoman Empire, as an extension of the Arab region under its control, providing an opportunity to control the navigation lanes of the Straits of Hormuz. In modern Iran, economic development and national security form the two basic justifications for the official Iranian policies of discrimination against the indigenous al-Aḥwāz Arabs since Reza Shah's reign until now.

This crossroads of the earliest civilizations remains a land of much contention today. From the perspective of land and natural resource management and administration, an ominously destructive pattern emerges. On the one hand, the material discrimination, dispossession and impoverishment of the indigenous Arab people of al-Aḥwāz constitute gross violations of the human rights of the people of that land. Meanwhile, on the other, the human loss is magnified in the environmental consequences arising from the manner of social engineering and development pursuits of an alien and alienating central government. Not only is this story a recipe for perpetual social and political conflict, it spells a larger disaster that may see no repair for this land and its people.

The indigenous Arab people of al-Aḥwāz urge—and seek international cooperation for—a corrective course. The signs reviewed here increasingly point them to the inescapable demand for full self-determination on their ancestral land.



## Endnotes:

- <sup>1</sup> For example, at a February 2011 press conference in Cairo's Tahrir Square during Egypt's revolutionary uprising, Ahwazi Arab activist Hamad al-Ameri denounced the persecution of "nine million people" living in al-Ahwaz region. He appealed to the Arab League to stop the Iranian regime's attempts to erase the region's Arab identity to exploit its rich natural resources. "Tahrir Square Ahwazi rally: Tunisia, Egypt, Libya, Syria...will Al-Ahwaz be next?" (blogpost), at: <http://defence.pk/threads/ahwaz-the-arab-springs-forgotten-uprising-news-and-discussion.204486/>.
- <sup>2</sup> The Arab Struggle Movement for the Liberation of al-Ahwaz [ASMLA], "Ethnic cleansing and oppression practices of Iranian regime against Ahwazi Arab villages," 2 October 2014, at: <http://ahwazna.net/en/ethnic-cleansing-and-oppression-practices-of-iranian-regime-against-ahwazi-arab-villages/>.
- <sup>3</sup> Country-data.com, "Iran-Rural Society," at: <http://www.country-data.com/cgi-bin/query/r-6428.html>.
- <sup>4</sup> Robert M. Adams, "Agriculture and Urban Life in Early Southwestern Iran," *Science*, Vol. 136, No. 3511 (13 April 1962), pp. 109–122, at: <http://www.sciencemag.org/content/136/3511/109.extract>.
- <sup>5</sup> The Foundation for War Refugees has estimated that 77% of the total 3–5 homeless and 3 million Iran-Iraq War displaced. Kaveh Ehsani, "The Urban Provincial Periphery: Revolution and War in Romhormoz," in Ali Gheissari, ed., *Contemporary Iran: Economy, Society, Politics* (New York: Oxford University Press, 2009), p. 49.
- <sup>6</sup> UNHCR, "More Iranian refugees flee intimidation in Iraq," 13 May 2003), at: <http://www.unhcr.org/print/3ec122b94.html>. The Syrian, Iraqi and Belgian governments have extradited Ahwazi refugees to Iran in 2006, 2008 and 2013, in grave violation for international refugee law and human rights norms. UNHCR, "UNHCR extremely concerned for Ahwazi refugees extradited from Syria to Iran," 22 December 2006, at: <http://www.unhcr.org/458bb964d.html>; "Dozens of refugees go on hunger strike in Brussels," *Ahwaz News Agency* (3 April 2013), at: <http://www.ahwaziarabs.info/search/label/refugees>.
- <sup>7</sup> The main shantytowns are Lashkar-Ābād, Raffish-Ābād, Gavmish-Ābād, Kūt `Abdullah, Haṣīr-Ābād, Zawīya, Zergān, Daghaghla, Sayīd Khalaf, Mallashīya, Shilang-Ābād.
- <sup>8</sup> Amnesty International [AI], "Iran: Land Confiscation and Population Transfer: The Case of the Ahwazi Arabs" (AI Index: MDE 13/060/2006), at: <http://www.amnesty.org/en/library/asset/MDE13/056/2006/en/4eac11e0-d429-11dd-8743-d305bea2b2c7/mde130562006en.pdf> and <http://www.refworld.org/docid/44c614ea4.html>.
- <sup>9</sup> Ahwaz Human Rights Organization [AHRO], "Submission to the UN Office of the High Commissioner for Human Rights," Universal Periodic Review: 7<sup>th</sup> Session of the UPR Working Group, February 2010, at: [http://www.unpo.org/images/peripheral/voices\\_iran/ahwazhumanrightsorganization.pdf](http://www.unpo.org/images/peripheral/voices_iran/ahwazhumanrightsorganization.pdf).
- <sup>10</sup> The report of special Rapporteur on adequate housing Mr. Miloon Kothari, E/CN.4/2006/41/Add.2, March 2006.
- <sup>11</sup> Ibid.
- <sup>12</sup> *Hamshahri* newspaper, No. 4555 (21 September 2006/30 Shahrivar 1385), p.2.
- <sup>13</sup> "The Iranian army plans to forcibly evict Ahwazi Arabs from their homes," *ASMLA* (24 September 2014), at: <http://ahwazna.net/en/the-iranian-army-plans-to-forcibly-evict-ahwazi-arabs-from-their-homes/>.
- <sup>14</sup> ASMLA, "Massive expulsion of Ahwazi Arab workers by occupier Iranian regime," (5 July 2014), at: <http://ahwazna.net/en/massive-expulsion-of-ahwazi-arab-workers-by-occupier-iranian-regime/>.
- <sup>15</sup> Minority Voices, "Iran: Stop Ethnic Cleansings In Ahwaz" letter to Secretary-General Kofi Annan, 3 May 2011, at: <http://www.minorityvoices.org/news.php/en/709/iran-stop-ethnic-cleansings-in-ahwaz>; Peter Tatchell, "Iran's anti-Arab racism," *The Guardian* (26 October 2007), at: <http://www.theguardian.com/commentisfree/2007/oct/26/iransantiarabracism>; Freeke Heijne, "Human Rights in Iran: the right to fair trial for Iranian-Arabs" University of Amsterdam Platform for Iranian-Dutch Academic Dialogue, 15 June 2007, p. 18, at: <http://www.zeytun.org/sites/default/files/Heijne.pdf>; Green MEPs, "Iran Is Guilty of Ethnic Cleansing" 13 November 2006, at: [http://www.carolinelucasmep.org.uk/news/executions\\_131106.htm](http://www.carolinelucasmep.org.uk/news/executions_131106.htm); .
- <sup>16</sup> AI, op. cit.
- <sup>17</sup> "Evaluating the Iranian economy 2000 to 2010," *FreePatentsOnline.com* (1 March 2012), at: <http://www.freepatentsonline.com/article/Review-Business-Research/293950206.html>.
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## **Amazigh People's Rights to Their Land and Natural Resources/ Azref g Wakal nnegh**

*In the absence of a formal paper on the Amazigh land question in North Africa, this section reproduces representative statements from Amazigh organizations on the human rights dimensions of land. These documents were among the Land Forum documentation that HIC-HLRN provided to Land Forum participants. This section also memorializes the precedent-setting Amazigh Land Forum of 2007, where participants outlined the land and natural resources issues and civil society engagements. The Land Forum IV, at Tunis (2013), benefitted from Khadija Bensaidane's presentation of Amazigh struggle against discrimination and extractivism targeting Amzigh lands.<sup>1</sup>*

### **Amazigh Land Forum (2007)<sup>2</sup>**

On 10 February 2007, the Amazigh League of Human Rights (LAHR), in collaboration with the World Amazigh Congress (CMA) and the Ouzgan Development Association, hosted an international conference "Amazigh Rights to Their Land and Natural Resources" at Bouizakarn, Morocco. Framing this meeting were initial interventions from the organizers: CMA Vice President Khalid Zirari, Amazigh activist and lawyer Ahmed Barchil, a member of the Agadir Bar specializing in land law, and Abdelaziz El-Wazzani, researcher, activist, member of ALHR and president of Ouzgan Development Association. Attending also were representatives of several business associations, in coordination also with several indigenous Amazigh tribes belonging to the Souss region of Morocco, in addition to the other victims of violations relating to land.

In part of the first intervention, Abdelaziz El-Wazzani spoke on the central importance of the land and its resources to the Amazigh people, while citing violations concerning the land of Imazighen in the region. This he attributed, in particular, to the direct involvement of Moroccan state services in collusion with well-known land mafias. Among these services are: the land registry and certification bureaus; land conservation, water and forest services; and the National Office of Drinking Water in various parts of the provinces of Guelmim and Tiznit Timoulay, Taghijit, Ouzgan, Tagant Lakhsas and Ayt Boufouln.

Mr. Khalid Zirari delivered a letter from CMA President Bilqasim Lounis (see below), addressing the conference and highlighting the existing relationship and historical dialectic linking the land and the Amazigh people. He also cited the work done by the CMA as part of its monitoring of violations concerning the land of the Amazigh people across Morocco, taking inventory of all violations on the ground through Souss, Atlas, Rif, etc., particularly the contact with UN bodies specializing in the problems of indigenous land, the presence on the ground to support victims in all regions.

In his speech, Ahmed Barchil reported on the various international meetings organized in connection with the issue of Amazigh land, including those at Agadir and M'irt, in 2001 and 2006, respectively. He also reviewed the draconian colonial laws that are still in use to take the land of the Amazigh people unjustly. These include the Dahir of 9 1331 Ramadan (12 August 1913) on land registration with its ambiguous procedures, the Dahir of 7 Sha`ban 1332 (1 July 1914), defining public domain, the Dahir 26 Safar 1334 (3 January 1916), determining and state domain over water sources and forests. Despite these laws belong to the era of the French protectorate, he noted, the "nation-state" still uses them today at the expense of the Amazigh people's rights to the land and natural resources.

On the sidelines of the meeting, a session organized public hearings for victims of violations related to land and natural resources, in particular, argan. At the end of this meeting, and after a long discussion, the conference issued the following conclusions and recommendations:

- The importance of creating counseling centers and legal guidance in Amazigh language for victims of land-related violations.
- Cancellation of all the colonial land laws that are still in use (Morocco).
- Conducting a complete inventory of all violations concerning the land of the Amazigh indigenous people.
- The need for an immediate review of all documents submitted to the land registry.
- Employment of positive Amazigh customary laws on land and considering them as a source of legislation in this area.
- The importance of uniting the efforts of victims by creating a coordination of associations and activists concerned with the problems of the land of Imazighen.
- The importance of adopting charters and conventions related to *akal* (land) rights, including ILO Convention No. 169.

*Rachid Najib Sifaw*

Amazigh League of Human Rights.

Bouyzakarn, Morocco, 10 February 2007

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Opening Introduction of Belkacem Lounes, Chairman, Congrès Mondial Amazigh<sup>3</sup>

*Azul ameqran fellawen,*

...The CMA accords the greatest importance to the “akal” (land) question and has agreed to support and participate in this conference, as it has done at M'rirt [in Khénifra Province, Meknès-Tafilalet, Morocco], in June 2006, and at Nador [northeastern Rif region of Morocco] on the mountain issues, in November 2006. I also would like to point out that I was here in Bouyzakarn [southern Morocco Province of Guelmim] with Boubker Ounghir and at Tagant [south-central Mauritania], with Brahim Outalat, where I met many people who were confronted with the problems of dispossession of their land and their natural resources, especially water.

I am very pleased to see that such an organization as Amazigh League of Human Rights is interested in this issue, because it is obvious that the lives of millions of rural inhabitants depends directly on the land and resources it provides. Interest in the *akal* question means “focusing on what is vital to humans, especially when deprivations and violations of the right to land are increasing” [...]. I am also pleased to see the collaboration of a development association, reflecting the fact that we finally have realized that there not a contradiction—but rather complementarity—among the various actors specialized in different fields: culture, socio-economy, environment, tourism, etc. Human development is an integrated whole. [Progress] never will be complete if it lacks any aspect. There will never be development without Tamazight, but [the language] could not survive if people live in poverty.

This meeting is of great utility, first, to denounce the many cases of land grabbing, illegal expropriations, destruction of argan groves, and looting the wealth of Amazigh territories [by extractivist activities] such

as logging, water grabbing and mining without any consideration for the Amazigh owners. These cases reflect the lawlessness and abuse of power in this country. The country's people still live as in the days of the French colonial era; the Makhzen applies colonial laws of France to deny the people's right to their native land. This tells the farmers: The Makhzen is the new colonizer (*isti`amār ajdīd*).

If the army, or an administrative authority decides to acquire a piece of land, they arrive with their gear, raise poles, install fences and they are at home, pretending that the land belonged to no one until then. Sometimes an influential politician or a wealthy character [acquires the land] through bribes. It then becomes a simple writing game, he owns a lot of land and nobody raises the question about who is the rightful owner?

We can also cite the case of arbitrary expropriation with compensation at a ridiculous sum of DH 2 (€0.19) per m<sup>2</sup>, which strips the peasants of their source of life, forever, turning them overnight into proletarians, driven from their land, uprooted and with no choice but to go piling into the slums of large cities.

The Amazigh live in a special relationship with the land to which they are attached, similar to the mother-child relationship. The land feeds and nourishes, and also meets the Amazigh's sentimental and spiritual needs. For the Amazigh, the earth is not an object, it is a being that lives, sometimes joyful, and sometimes suffering. The Amazigh are then present to care for, to protect and to feed it, too. They know that [the land] will be generous, if they prove very attentive to her. That is why we must never separate the Amazigh farmer from her/his land against her/his will. That would be a crime.

A meeting like this is critical and should multiply learning about our rights and identity, bringing together all cases of violations of the fundamental right to the land, in order better to defend ourselves together [not only] at the national level, but also at international levels.

To maintain their image to the outside, governments easily sign international conventions on the protection of human rights on behalf of their state, without any concern for, or without informing the citizens, and without applying these conventions as they have the obligation to do. It then falls to us—NGOs, and human rights and development organizations—to disseminate information and raise awareness about the possibilities of defending those rights.

Of course, on our land, our ancestral territories and natural resources that we have always been able to manage effectively and in a balanced way, according to our own traditions and as our azref (right), legitimacy and law are now on our side. We are simply daring to denounce human rights violations and claim recognition and protection of our fundamental rights, which include the right to land.

This is clearly recognized in the major international instruments such as the Universal Declaration of Human Rights, the conventions for the protection and promotion of human rights, the various instruments in the fight against discrimination, the United Nations Declaration on the Rights of Indigenous Peoples, International Labor Organization (ILO) Convention No. 169, etc. Suffice to say that we have at our disposal a wide range of international legal instruments that we can use to defend our rights to our land and our natural resources.

To this end, and to be concrete, here is what the CMA offers:

1. Identify all cases of infringement of the right to land, territories and natural resources of the Amazigh, and for this you can use the fact sheet prepared by the CMA;
2. Create a National "Akal" Coordination to support the defense of rights to land and natural resources in Morocco;
3. The National Akal Coordination will be a complete record on this issue by including the legal, economic, historical and cultural aspects;
4. Raise the "akal" file with the Moroccan government to demand: the return of lands to their rightful owners dispossessed, indemnification for damages suffered, and provision for local people part of the profits from the exploitation of natural resources (water, forests, mines, etc.);
5. Placing the same file before the United Nations and the European Union as an economic partner of Morocco;
6. Organize public events to support the claims.

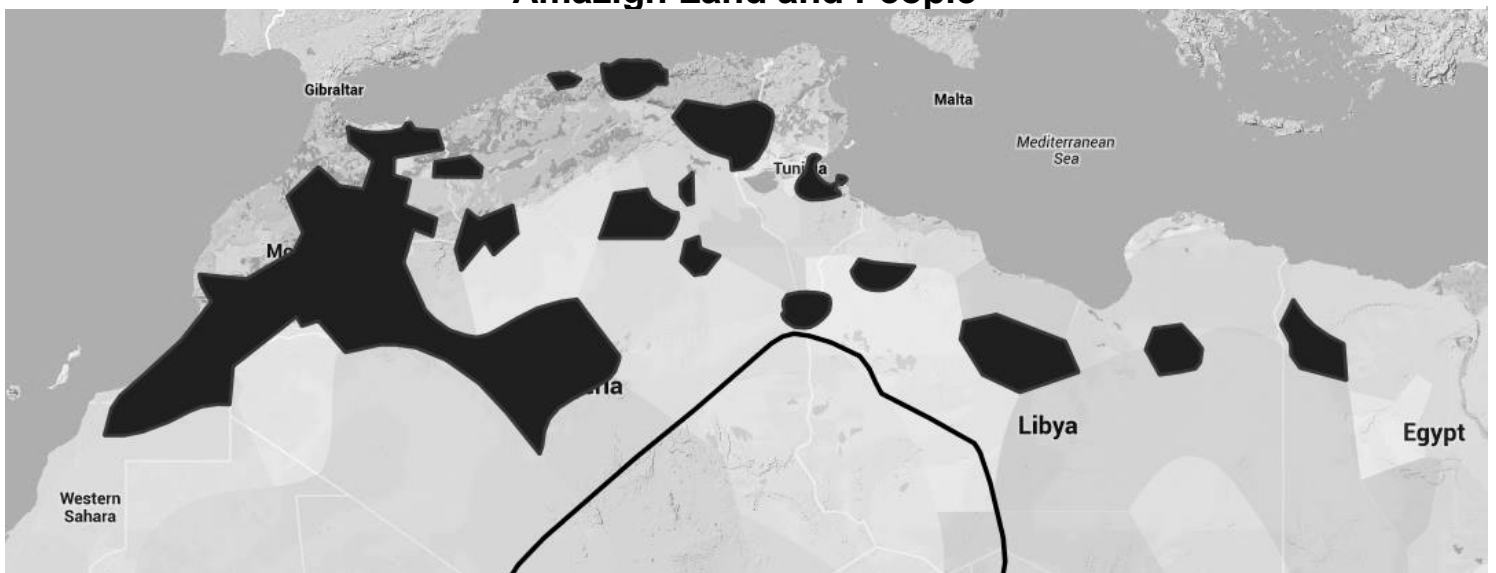
In any event, the CMA remains at the service of the rights of the Amazigh associations to their land, territory and natural resources, to provide support in all areas. In addition to this, the CMA will commit all necessary approaches to international bodies.

I am sure that this conference will be fruitful and that it is an important step that goes in the direction of restoring the rights of Amazigh citizens on their land, the most valuable asset for them.

Another big thank you to all of those who contributed to this wonderful meeting and best wishes for every success in your work.

*Bilqasim Lounes*  
 Chairman, Congrès Mondial Amazigh  
 Bouyzaqarn, Morocco, 10 February 2007

## Amazigh Land and People



Source: Art & Life in Africa: <http://worldmap.harvard.edu/maps/4605/LDM>.

## Good Governance, Rule of Law and Democracy

*Mohamed Handaine<sup>4</sup>*

Throughout their history in North Africa, the Imazighen always have managed their society through what could be called “traditional governance.” It is with this instrument rooted in their culture that the Amazigh also managed natural resources in remarkable harmony with nature. That is why, through its instruments such as the Convention on Biological Diversity (CBD) and the Convention on Climate Change, the United Nations always has appreciated the positive function of indigenous peoples’ traditional knowledge in the field of biodiversity and of environmental protection. However, modern states established in North Africa have not recognized the existence of this people and its civilization in their governance after independence.

Today, the situation has changed notably in Morocco, with a Constitution that recognizes the Amazigh identity and Amazigh language as an official language of the state. The Amazigh Movement and UN bodies have praised Morocco for this historic initiative in the region, and asked the government to adopt implementing legislation to operationalize this achievement in the field. As for the rest of the North African region, particularly in Algeria, good governance gives way to repression against Imazighen claiming their rights to identity, good governance and transparency. This has occurred in the Amazigh regions to Tizi Ouzou and in the M’zab. In Tunisia, the Amazigh demanded their recognition in the constitution, but it seems that such democratic thought and good governance are still far in Tunisia. The same situation [prevails] in Libya and the Sahel countries. And as you rightly said yesterday, Madam Chair, the lack of good governance is one of the roots of all the suffering of Aboriginal Peoples....

In the coming decade, conflicts between indigenous peoples and governments will focus on Aboriginal land and territories.

In North Africa the problem of land and resources of indigenous tribes is a challenge for both governments and for the indigenous population. In Morocco, the organization *Tamaynut* and [confederation] *Tamunt n Iffus* organized 30 workshops about the problems of the associations concerned. This work culminated in an international conference where a charter on land and several recommendations have been signed by hundreds of Amazigh NGOs concerned and sent to the head of state and government. Several tribes are going to be dislodged and driven from their ancestral lands. The population of about 4,000 people from the village of Tadwart, 20 km from Agadir, has received a notice from their territories where they have lived for two centuries. The Amazigh cultural movement will continue to defend the land rights of the Amazigh more than ever.

Seven years have passed to the day since Ms. Daes expert of the Permanent Forum [on Indigenous Issues] sounded the alarm about this problem that can escalate and give way to conflicts that threaten the security of states and global security, and well can foil all the efforts of UN bodies in the field of indigenous issues.

### **Recommendations:**

1. We ask the rulers of Morocco and other governments in the region initiate a dialogue with Amazigh representatives to unblock the situation of the land in the context of free and informed consent.



2. We ask the United Nations to:

- a. Recommend to all states and governments that do not recognize the existence of indigenous peoples and their identities, languages and their collective rights to culture and land and resources, forests to amend their constitutions consistent with the UN Declaration on Indigenous peoples.
- b. Support the World Conference of Indigenous Peoples to be held in September [2014] at the United Nations.
- c. Ask the Permanent Forum to dedicate the next session's theme to problems of indigenous peoples' land and resources.

*Dr. Mohamed Handaine*  
Amazigh Delegation  
North Africa

#### **Endnotes:**

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<sup>1</sup> For more detail from the Land Forum IV, see Rabie Wahba, ed., *Al-Ardh wa Man `Alayha* (Cairo: HIC-HLRN, 2014), at: [http://www.hlrn.org/publication\\_det.php?id=o2lr#.VP90AWfwtjo](http://www.hlrn.org/publication_det.php?id=o2lr#.VP90AWfwtjo).

<sup>2</sup> "Les droits du peuple amazigh relatifs à la terre," *amazighWorld.org*, 11 February 2007, at: [http://www.amazighworld.org/human\\_rights/index\\_show.php?id=956](http://www.amazighworld.org/human_rights/index_show.php?id=956).

<sup>3</sup> Ibid.

<sup>4</sup> Amazigh delegation statement, Permanent Forum on Indigenous Issues, 9<sup>th</sup> session, 19–30 April 2010, at: <http://www.gitpa.org/web/AFN%20AMAZIGH%20HANDAINE%20.pdf>.

## **7. Conflict, Occupation and War**



## The Nexus of Discrimination and Dispossession: Land and Lawfare

“And they covet fields, and seize them; and [they covet] houses, and take them away; thus they oppress a man and his house, even a man and his heritage.”

—“*Woe to the Oppressors*,” The Book of Micah<sup>1</sup>

“The ultimate test of Israel in our generation is not a struggle against hostile forces outside, but a takeover by force of science and pioneering, the wilderness land spaces of the south and the Negev.”

—*David Ben Gurion*<sup>2</sup>

### *Habitat International Coalition-Housing and Land Rights Network*<sup>3</sup>

For centuries, the semi-arid al-Naqab region, in the south of historic Palestine, has been the home of Arab Bedouins. They form part of the indigenous Palestinian people, who continuously live inside Israel, under Israeli occupation in the West Bank, Gaza Strip and Jerusalem, as well as in the Palestinian diaspora.

The Naqab Palestinians traditionally have lived in small clusters of habitation through a spectrum of tenure arrangements, including privately owned plots and collectively held pasturelands. By the 20<sup>th</sup> Century’s midpoint (ca. 1948), an estimated 95% of the Naqab Bedouin were settled agriculturalists, with only 5% exclusively dependent on a pastoral livelihood.<sup>4</sup> However, many of their settlements became villages well before the 20<sup>th</sup> Century began. Their movement—indeed their transfer—over the past century has been the function of Israeli institutions and laws since the founding of the State of Israel.

The long-established Ottoman administration considered much of the Naqab “*mawāt*” (uncultivated).<sup>5</sup> Despite the presumed acquisitive purpose behind such classification,<sup>6</sup> in practice, the Sublime Porte did not assume Naqab land as belonging to the Sultan. It also recognized the Bedouin’s tenure on their tribal territories. Under certain conditions, the Ottomans authorized individual title for the development (cultivation) of such lands, subject to official permission and the payment of taxes.

Ottoman laws, which the interim British Mandate adapted, had brought about several land-registration processes in Palestine, but mainly in the more-fertile north (for taxation purposes). The policy prevailing in the south accepted the traditional occupation and use of collective pastureland without intrusion. However, by 1948, much of the land of the Naqab was under private ownership, with both formal and traditional tenure, with only some 5% of the indigenous population depending on pastoralism on collectively held lands.

Until 1946, the Zionist Movement’s maps omitted the Naqab from its proposed colonial Jewish state in Palestine.<sup>7</sup> However, the World Zionist Organization/Jewish Agency for the Land of Israel (WZO/JA) already had established Jewish settler colonies in the Naqab during World War II, and inaugurated eleven more there on 6 October 1946. That colonization activity presaged the eventual claimed

“borders” of Israel.<sup>8</sup> By late 1947, the JA’s sister organization, Jewish National Fund (JNF), was engaged in financing the “liberation of the Negev.”<sup>9</sup>

The UN mediator’s progress reports toward recommending a negotiated partition of Palestine had considered the “inclusion of the whole or part of the Negev in Arab territory.”<sup>10</sup> Despite its contradiction of the international law principle of *uti possidetis iuris* and the expressed objections of the Palestinians and surrounding states, the UN General Assembly adopted resolution 181 (1947), recommending that the country be partitioned between the proposed Arab and Jewish states.

The residents of the Naqab soon found themselves and their territory completely dominated by Israeli forces. By 1947, Transjordan’s King Abdullah had pledged noninterference in the Naqab,<sup>11</sup> and U.S. President Harry Truman supported World Zionist Organization President Chaim Weizmann’s bid to include the Naqab in the new Jewish state in Palestine.<sup>12</sup>

On 10 March 1948, the Zionist paramilitary Haganah officially had adopted its comprehensive Operational Plan D (Plan Dalet), which sought “the permanent seizure of Arab villages and the expulsion of their inhabitants.”<sup>13</sup> Through a series of battles and military operations variously code-named “Death to the Invader,”<sup>14</sup> “Yoav,”<sup>15</sup> “Moshe,”<sup>16</sup> “Shmone,”<sup>17</sup> “Assaf,”<sup>18</sup> “Horev,”<sup>19</sup> and “Uvda,”<sup>20</sup> Israeli forces consolidated their control of the Naqab in the context of defensive Egyptian military activity and the subsequent armistice.

The eventual ceasefire between Egypt and Israeli forces in 1948 effectively facilitated the Israeli occupation of the Naqab and southern Palestine, disengaging the interstate military confrontation, while providing no protection for the civilian population. That is despite the prohibitions against territorial changes agreed under the terms of the ceasefire. Only the Gaza Strip lay behind the Egyptian side of the 1949 Armistice Line, where, by then, many of the owners of Naqab lands were concentrated among the 130,000 Palestinian refugees.<sup>21</sup> Thus, Israeli forces remained largely unopposed in their military control of the territory at the time of the State of Israel’s 1948 proclamation of independence.

In that year, Zionist forces, with the coordinated support of the WZO/JA and JNF, conquered most of the Naqab, which the emerging State of Israel incorporated *de facto* into its territory, driving out the majority of the Bedouin population. Israel’s military forcibly transferred many of those who remained into a small, well-defined concentration known as the “*siyā*” (Arabic: enclosure) of about 1,100 square kilometers, and imposed an Israeli military government until December 1966.

The eleven Arab tribes that previously had resided outside the arbitrary *siyāj* were not allowed to return to their lands, orchards and villages. That was despite the evicting authorities’ advice that their transfer was only temporary. To this day, they are classified as “internally evacuated,” which status annuls “tribal territory” and dispossesses the original inhabitants of their traditional lands.<sup>22</sup>

Israel has established two further classifications of Bedouins: “landowners” and displaced “landless.” These unprecedented categories corresponded to the terms *sumrān* and *humrān*, respectively, which Israeli linguists and administrators have promoted, but which the Bedouin consider artificially constructed concepts devised to disunite their communities.

Remnants of those communities who took refuge elsewhere outside of al-Naqab took up a marginalized existence where they settled around Arab towns in Israel, in Gaza and the West Bank, or elsewhere. The geographical fragmentation of the Naqab Palestinians has paralleled Israeli administrative

fragmentation that has enabled their further dispossession and displacement. An intricate legal framework ensures the continuous dispossession of the indigenous inhabitants, as generally applied across historic Palestine.

### The Basis for Discrimination

To create an institutional basis for dispossession and other differentiated treatment of the indigenous population, the State of Israel has erected a unique system of dual-tiered civil status. It provides “Israeli citizenship” under the Basic Law: Law of Citizenship (Hebrew: *ezrahūt*), based on four criteria (birth/descent, residency, marriage and immigration), as long as claimants of residency and citizenship are not members of a class of Arab and other neighboring nationalities legally categorized as “enemies of the state.”<sup>23</sup> However, as restricted as access to Israeli citizenship may be, that status alone does not entitle equal treatment with others on the basis of citizenship and, in fact, can be a status that actually proscribes a bundle of the holders’ individual and collective economic, social and cultural rights.

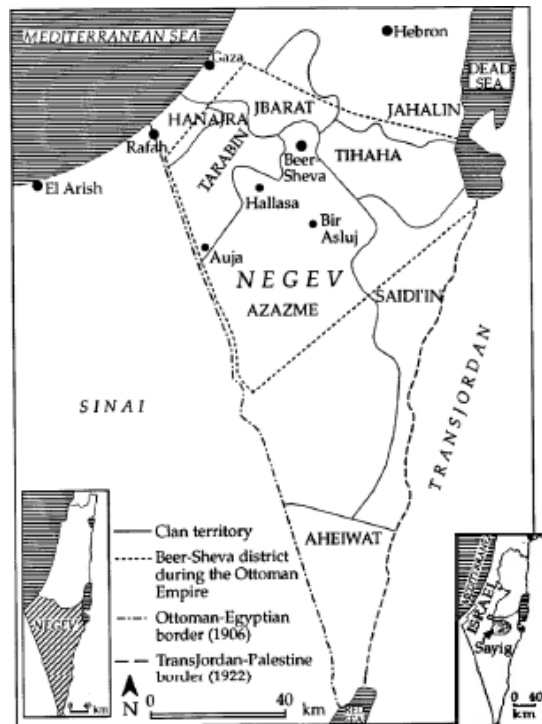


FIGURE 1 Clan, administrative, and international borders in the Negev in the early twentieth century. Source: Meir A., *As Nomadism Ends*, 1997

Israeli law, institutions and practice establish and maintain a civil status superior to Israeli citizenship, constructed as “Jewish nationality.” That status, available by way of descent from a Jewish mother or highly restricted conversion to the Jewish faith, entitles—and variously compels—eligible citizens of other countries to claim “Jewish nationality,” according to the Israeli parastatal organizations’ chartered vision.

What determines who benefits and who loses in Israel’s development model is enshrined in the charters of Israeli state agencies, WZO/JA, JNF and their subsidiaries, and their practice. The WZO/JA and JNF charters’ construct of “Jewish nationality”—that is, belonging to a Jewish “race” or “nation” (*le’om yahūdi*)—as the purposeful criterion required for the colonization of Palestine and benefitting from it.<sup>24</sup> In practice, any valid “Jewish nationality” claimant may enter areas controlled by Israel to enjoy rights and privileges explicitly denied to non-Jewish claimants: in particular, citizens, displaced persons and refugees—indeed, the entire indigenous people—of historic Palestine.

These parastatal institutions, established to mobilize colonization efforts and resources decades before the State of Israel was formed, are organically part of the Israeli state today. This relationship is affirmed in Israel’s Status Law (1952) and Covenant with the Zionist Executive (1953, amended 1976). The Zionist Executive (WZO/JA and JNF) claim to possess and manage 93% of all lands in Israel and Jerusalem (not counting direct and indirect holdings claimed in the other occupied Palestinian territories). Meanwhile, their parochial charters provide the fundamental principles referenced in much Israeli legislation requiring discrimination in favor of “Jewish nationals” in land use, housing, immigration and development.<sup>25</sup>

The Israeli High Court has affirmed this pivotal point of institutionalized discrimination through the maintenance of a distinct “Jewish nationality.” In the case of *Tamarin v. Ministry of Interior* (1970), a petitioner sought to register his nationality as “Israeli,” rather than “Jewish.” However, the Court ruled that “there is no Israeli nation separate from the Jewish nation...composed not only of those residing in Israel but also of Diaspora Jewry.” The President of the Court Justice Shimon Agranat explained that acknowledging a uniform Israeli nationality “would negate the very foundation upon which the State of Israel was formed.”<sup>26</sup>

A more-recent legal challenge involving 38 diverse petitioners claiming an “Israeli nationality” was delayed before the courts from 2004 until 2013. The lengthy procedures deferred a ruling on that petition until ultimately denying the by-then 90-year-old chief petitioner and his 37 prominent fellow Israeli citizens their claim to a common “nationality.”<sup>27</sup>

For many, however, replacing one’s identity with a common and uniform “Israeli nationality” is not a goal. Particularly some of the 107 Israeli Ministry of Interior-recognized “nationalities” would insist on their original identity. Most of the indigenous Palestinians living inside the State of Israel do not aspire to discard their national identity. However, more uniting than one single, constructed “nationality” is the prospect of living in a state that ensures a fair and equal measure of justice for all citizens, in general, and of democratizing Israel, in particular.<sup>28</sup>

Relegating an inferior “nationality” status to indigenous Palestinian citizens is not actually explicit in a single Israeli law, as was the case of South African apartheid’s classification system established in its Population Registry Act (1948). Rather, government functions subordinate to the discriminatory principles of the parastatal “national” institutions carrying out “essential functions of the state.” In the case of the Naqab Palestinians, the institutionally most-disadvantaged category of communities remains “unrecognized” in nationality, as in planning criteria, forming a fundamental obstacle to their sustainability and development.

### **Material Dimensions of Discrimination**

The most fundamental expression of institutionalized discrimination in Israel relates to real property, land tenure and use rights. Already in January 1949, the new *Gol* signed over one million dunams of land seized from refugees and “absentees” during the 1948 war to the parastatal JNF to be held in perpetuity for “the Jewish people.” In October 1950, the new government similarly transferred another 1.2 million dunams to the JNF.<sup>29</sup> Although records for the Beer Sheva District have been less precise than others in Palestine, the best estimate for the scope of titled lands that Israel acquired from refugees during the military operations in the southern region was 14,320,000 dunams (1,432,000 hectares).<sup>30</sup> A JNF spokesman explained in 1951 that it “will redeem the lands and will turn them over to the Jewish people—to the *people* and not the *state*, which in the current composition of population cannot be an adequate guarantor of Jewish ownership.”<sup>31</sup>

The primary beneficiaries of this land bounty are those who have immigrated to Israel under its Basic Law: Law of Return (1950), which establishes immigration for Jews as a “nationality” right not provided in the 1952 Law of Citizenship. The Law of Return and its eligibility criteria effectively exclude the indigenous Palestinians dispossessed since 1947, including those expelled from the Naqab, as well as all non-Jews.

Against this legislative backdrop, between 1951 and 1953, Israel proceeded to destroy 103 indigenous Naqab villages and habitations outside the new *sirāj*.<sup>32</sup> These are in addition to the 531 other Palestinian villages that Israel depopulated and demolished, as well as 11 urban Palestinian neighborhoods emptied, during the 1948 Nakba and its aftermath.<sup>33</sup>

The Basic Law: Israel Lands Law (“The People’s Land”) (1960) establishes that lands will be managed, distributed and developed in accord with the principles of the JNF and, hence, its discriminatory charter. The Israel Land Administration, also established in 1960, rested on four legislative “cornerstones”: Basic Law: Israel Lands, the Lands Law (1960), the Israel Land Administration Law (1960), the Keren Kayemet Le-Israel Law (1953) and the Covenant between the State of Israel and the Zionist Executive [WZO/JA and JNF] (1954, amended 1971).

The Israel Land Council (ILC) determines ILA policy, with the Vice Prime Minister, Minister of Industry, Trade, Labor and Communications as its chairman, while the 22-member Council is comprised of 12 government ministry representatives and ten representing the JNF and its condition of ensuring Jewish-only beneficiaries.

More-recent legislation in the form of the Israel Lands Authority Law, Amendment 7 (2009) and a 2010 amendment of the British Mandate-era Land Ordinance (Acquisition for Public Purposes) (1943) have introduced tactical adjustments to the land tenure system. The 2009 amendment authorizes more powers to the JNF in its special status and role in land management. It also establishes the Israel Lands Authority (ILA) (no longer “Israel Lands Administration”) with increased powers, providing for it to grant private ownership of lands, and sets approval criteria for the transfer of state lands and Development Authority lands to the JNF. The 2010 amendment “makes sure” that lands expropriated for “public use” do not “revert” to original owners, and now facilitates their transfer to a third party (likely the JNF). The 2010 legislation also circumvents the Israeli Supreme Court’s precedent-setting judgment in the 2001 Karsik case,<sup>34</sup> which obliged authorities to return confiscated land in the event it has not been used for the purpose for which it was acquired.

According to the amendments, the JNF will continue to hold large representation in the Israel Lands Authority with six of 13 members (which also can function with just ten members). That ensures JNF’s continued decisive role to ensure its charter-based discrimination against indigenous Palestinians in policies and programs affecting 93% of the land.

These recent amendments also allow the state and the JNF to exchange lands, in order to facilitate “development” through the privatization of lands owned by the JNF in urban areas. Such a swap would have the state receive JNF land in urban areas that could be privatized, while enabling the JNF to receive

“The complete evacuation of the country from its other inhabitants and handing it over to the Jewish people is the answer.”

–JNF director Yosef Weitz (20 March 1941)

[The transfer of Palestinian properties to JNF title] “will redeem the lands and will turn them over to the Jewish people—to the *people* and not the *state*, which in the current composition of population cannot be an adequate guarantor of Jewish ownership” [emphasis in original].

JNF, 23<sup>rd</sup> Congress (August 1951)

“The Jewish National Fund is the caretaker of the land of Israel, on behalf of its owners – Jewish people everywhere.”

–Jewish National Fund mission statement

“What we’ve simply done in the last four to five years is moved that agenda on to the 21<sup>st</sup> century Zionist agenda, strengthening existing communities, building new communities and populating the Negev in a way it needs, fulfilling Ben Gurion’s dream.”

JNF fundraising director <sup>Jeremy Kelly</sup> (2012)



50–60,000 dunams (5–6,000 hectares) to develop in the Galilee and the Naqab, where the indigenous Palestinian citizens of Israel remain most numerous.

As in the past, the JNF agrees that the new Israel Land Authority will manage its lands, whereas ILA is committed to do so consistently with “the principles of the JNF in regards to its lands” (Article 2). In addition, the JNF has committed to contribute 100 million NIS (€20.5 million) from its own sources to further “develop” the Naqab according to its Jewish-only criteria. Both ILA and JNF have asserted that their special status absolves them from the nondiscrimination principles of public administration.<sup>35</sup>

The 2009 amendments have enabled further circumvention of legal oversight and legislate against the equality in land use rights. As the JNF’s charter excludes non-Jews from benefiting from its land or services, any such transfer of public land to the JNF prevents citizens’ equal access to land. In other words, the state will be able more readily to “judaize” more land and discriminate against its non-Jewish citizens in the Naqab and Galilee—and elsewhere—by transferring those lands to the JNF.

The new 2010 law’s purpose appears to prevent—or severely impede—Palestinian citizens of Israel from ever reclaiming their confiscated land. It forecloses such a citizen’s right to demand the return of the confiscated land in the event that it has not been used for the public purpose that premised the original confiscation. It denies restitution rights if ownership has been transferred to a third party, or if more than 25 years have passed since its confiscation. Well over 25 years have passed since the confiscation of the vast majority of Palestinian land, including lands in the Naqab. Meanwhile, the “ownership” of large tracts of land have transferred to third parties, including Zionist institutions chartered to discriminate such as the Jewish National Fund.

The ILA rationalizes its policy of restricting bids for JNF-owned lands to Jews only by citing the Covenant between the state and the JNF (1961). Under that agreement, the ILA is obliged to respect the objectives of the JNF, which include the acquisition of land “for the purpose of settling Jews.”<sup>36</sup> Thus, JNF serves as the state’s subcontractor for discrimination based on a constructed “Jewish nationality,” and not to the favor of mere “citizens.”

### **Development “Blueprints”**

An existential Israeli-development model emerges clear in the Naqab of today. The JNF promotes its “Blueprint Negev”<sup>37</sup> as an exemplary Israeli parastatal program with both Israeli government financing and private (“charitable” and, thus, tax-exempt) contributions. It promotes Jewish settler migration and development in the ancestral lands and properties of the indigenous Naqab population, which is still living marginally among them and sharing mere citizenship status in Israel.

Israeli planning criteria for official recognition of villages are not published, but many long-standing and populous Arab villages in the Naqab remain “unrecognized” Meanwhile, Jewish settlements notably smaller than any minimum population criterion are “recognized” with all services, rights and privileges. With such a double standard operating as criteria for official recognition of a settlement in Israel, their lack of “Jewish nationality” remains the operative criterion denying Arab villages their statutory status and corresponding access to rights, including public services.<sup>38</sup>

The many-layered Israeli plans for the Naqab region have been the subject of contention with the local Palestinian Arab population with each iteration. Some 45 dispersed and “unrecognized” villages form the Israeli planning authorities’ first priority for removal, dispossession and relocation. Symbolic of this

struggle is the unrecognized village of al-Araqib, located north of the so-called *sirāj*. Since its first demolition by Israeli forces to make way for a JNF forest in 2010, villagers have rebuilt their village only to face subsequent demolition over 70 times.

The 1996 Beer Sheva Development Plan shows the sites of the seven planned townships for “concentrating” the Bedouin population between 1968 and 1991,<sup>39</sup> and the 2008 iteration of the plan shows the location (but no planning areas) of 11 additional such townships.<sup>40</sup> These newly planned Bedouin-concentration points were mostly for “recognition” of parts of some hitherto unrecognized villages.

The land issue is central to the claims presented by the Bedouin of the unrecognized villages. Access to land forms an essential part of their livelihood, cultural identity and their history as a distinct population long before the establishment of the State of Israel. The locally representative Regional Council of Unrecognized Villages has placed a solution to the land question at the forefront of their negotiations with the government authorities, as they consider it vital for their survival as a community/people.

In application of a Land Rights Settlement Order, in 1971, the Israeli government required the registration of all lands in the northern Negev in the name of their owners. The Bedouins wanted to submit claims on 1.5 million dunams, but the state refused claims on 600,000 dunams, allowing claims on only 900,000 dunams (90,000 hectares). Agreements so far have been reached on about 250,000 dunams claimed, leaving at least 650,000 still subject to dispute.<sup>41</sup>

Bedouin claims to lands that the state has appropriated to itself actually cover an estimated 776,856 dunams. The yet-unsettled number of claims amount to some 2,749, covering 592,000 dunams.<sup>42</sup> No Israeli court judgment issued to date has upheld the Bedouin claimants’ ownership of their land.

### **Toward a Solution?**

In 2007, an Israeli government commission headed by former Chief Justice Eliezer Goldberg assumed the charge to “resolve the Bedouin settlement in the Negev,” including both the outstanding Bedouin land-ownership claims and development of the “unrecognized” villages.<sup>43</sup> The Goldberg Commission, in principle, marked several significant breakthroughs for the Israeli state.

The Goldberg Commission report and recommendations called for formally acknowledging the forcible removal of the Bedouins to the *siyāj*, and the prior existence of their original villages.<sup>44</sup> The Commission found no democratic justification for treating Bedouin Arabs any differently from other citizens of the state,<sup>45</sup> and asserted that ownership rights should be based on the Bedouins’ historical attachment to, and traditional use of the land,<sup>46</sup> rather than on legal bonds, and without reference to the *mawāt* classification in the Ottoman land law.<sup>47</sup> However, the Goldberg report supported a 1984 court ruling on 16 Bedouin land-claim cases, known also as “the Hawashla precedent,”<sup>48</sup> which effectively “invalidates the possibility that the Bedouin’s historical land claims will be recognized.”<sup>49</sup>

On 11 September 2011, an Israeli government committee headed by Ehud Praver, former deputy chairman of the National Security Council, approved a plan for implementing the Goldberg Committee recommendations for the regulation of settlement of Arab Bedouin citizens of Israel in the unrecognized Naqab villages. The “Praver Plan”<sup>50</sup> was based on the still-pending master plan for Metropolitan Be’er Sheva had two main components:

- (1) Resolving ownership claims and compensation for these claims' with strict enforcement mechanisms and a 5-year timeline to be presented to the Knesset as a law in November 2011;
- (2) Planning arrangements for permanent Arab Bedouin settlement within a clearly demarcated region in the Naqab, based on the Master Plan for Metropolitan Be'er Sheva, that will displace at least 40,000 Arab Bedouin from their homes and villages.

The Praver Plan ignored central Goldberg Commission recommendations, including granting recognition to unrecognized villages and freezing home demolitions, as well as operationalizing the Naqab Arab Bedouin status as equal citizens of the state with historical, ancestral ties to the land. The Praver Plan provided for eligibility to receive "compensation" to be determined by law and not subject to negotiation for lands taken. Eligibility would be based on an unchallenged and/or court-validated "claims memorandum," filed under the 1971 Land Rights Settlement Order before 24 October 1979. Compensations are to cover only 50% of lands claimed, and available only after the claimant relinquished the other 50% of his claimed land to the state. Any previous state-confiscated land would be ineligible for compensation, and all pastureland claims would be excluded. Compensation would apply only to property the claimant currently "held and cultivated," whose slope is less than 13%.<sup>51</sup>

The current version, known as the Praver-Begin Plan,<sup>52</sup> remains vague and arbitrary. It contains no map of the concerned lands and villages, involved no consultations with the affected citizens and forces them to relocate to planned townships and relinquish their relationship to the land. Furthermore, it establishes planning criteria (population density, continuity, size and economic capacity) for Bedouin Arab citizens distinct and inferior to "Jewish nationals." The Plan asserts that its vision for "development of the Negev is one of the most important national tasks in the coming decade."<sup>53</sup>

### **The Naqab's Strategic Importance**

Former head of WZO/JA and Israel's first Prime Minister David Ben-Gurion believed that the sparsely populated and barren Naqab offered a great opportunity for Jewish settlers in Palestine with minimal obstruction of the Arab population. In his retirement, he set a personal example by settling in kibbutz Sde Boker, at the center of the Naqab.<sup>54</sup> However, the region's significance has grown from its ideological and symbolic value to a major strategic investment.

Israel established its infamous nuclear facility at Dimona already in 1958, and relocated its former Sinai military airbase to Naqab Palestinian land at Ramon, Ovda and Nevatim in the 1980s.<sup>55</sup> More recently, the state has relocated and developed major military facilities in the Naqab, including seven training bases moved from Tzrifin, Beit Lid and Masmia.<sup>56</sup> The Intelligence Corps is the largest body to move to the Naqab.<sup>57</sup>

The increased militarization of Naqab lands and the Praver-Begin push to remove the Naqab's indigenous people from its lands are linked by more than mere chronology.<sup>58</sup> The two processes are now also bound with competing land claims by the state bodies and settler opposition. Despite these complications and the global ethical outcry that the JNF recently has faced in recent years,<sup>59</sup> the parastatal Israeli institution remains more sanguine, promoting "the 21st century Zionist agenda, strengthening existing communities, building new communities and populating the Negev in a way it needs, fulfilling Ben Gurion's dream."<sup>60</sup> Symbolically, Israel's Cabinet held a special November 2013 session at Sde Boker to approve the demolition of Umm al-Hirān and Atīr, two Naqab Palestinian villages of al-Qia'an tribe, to make room for a Jewish settlement in their place.<sup>61</sup>

### JNF Forestation against the Villages

The Jewish National Fund for the Land of Israel (JNF) manages land and other properties “redeemed” by Israel for persons of “Jewish race or descendency,” in the words of its charter. Among its methods, forestation ensures that the lands remain under Jewish possession.

Fulfilling part of the functions of state, the JNF has been one of the most powerful parastatal institutions in Israel. Not only does JNF senior staff dominate the board of the ILA, the JNF’s claimed charitable status abroad has allowed it to collect tax-exempt contributions in some 50 countries to fund its activities. The JNF forestation programs across historic Palestine have been central to ensuring that the indigenous inhabitants are prevented from returning to their homes, villages and lands. JNF planting in the Naqab has intensified with time, especially affecting three unrecognized villages just outside the edge of the *siyāj*: Twail Abū Jarwal, al-Araqīb, and Karkūr.

Israeli institutions and authorities forcibly removed residents in the early 1950s to allow for “army manoeuvres,” promising their return six months later, but preventing the residents’ return ever since. After multiple displacements, some families of the Talālqa tribe decided 15 years ago to join the few families remaining on the land of their original village of Twail Abū Jarwal, three miles away. The Government of Israel responded by razing the rebuilt village to the ground “more than thirty times in the past few years.” To impede the resurrection of the village, the JNF now is planting a forest on the village lands, as it has done over the ruins of many Palestinian villages depopulated in the course of the 1948 Nakba. In March 2010, Israeli police threatened the people of Twail Abū Jarwal with more-severe force to evict them for good, without providing any housing solution for them. In the next month, police demolished Twail Abū Jarwal for the 40<sup>th</sup> time.

Israeli police and military forced most of the al-`Uqbi tribe off their traditional lands in al-Araqīb and on to other Bedouin families’ lands within the *siyāj*. Many now live in the unrecognized village of al-Qrain, where all houses remain under demolition orders. The inhabitants possess Ottoman-period documents proving their ownership of the land and aerial photographs from the British Mandate period showing their cultivation of the same land. To prevent the original residents from returning to their lands at al-Araqīb, the JNF has been planting a forest since 1999. Its current project is to expand the “Ambassador’s Forest” to cover the original village.

On 3 March 2010, MK Dov Hanin (Hadash) asked the Minister of Agriculture and Rural Development Shalom Simhon why the JNF is planting trees in the area of al-`Araqīb when the land is not designated as forest land, but for agriculture. Mr. Simhon replied that, despite the land’s designation, the authorities have decided to plant a forest there, because, wherever a forest has been planted, the “national” lands are “protected.”

Inhabitants of al-Qrain risk a third dispossession as this village’s land is planned to become another JNF forest as well.

On 27 July 2010, Israeli authorities demolished the entire village of al-`Araqīb, destroying some 40 homes and leaving approximately 300 Bedouin homeless. In the process, many of the residents’ cattle, trees and belongings were lost. According to police spokesman Mickey Rosenfeld, the homes were considered “illegally built” and “were destroyed in line with a court ruling issued 11 years ago [that] was never implemented.” At 05:00 AM on 10 August 2010, and for the third time in three weeks, the Israeli Land Authority (ILA) demolished the rebuilt homes of the residents of al-`Araqīb. The residents had built temporary shelters after each of the demolitions, but authorities, using overwhelming force, demolished all of these shelters. After all structures were destroyed in the village, Israeli authorities confiscated all building materials and removed them from the site. By the time of this publication, this scenario has played itself out over 70 times.

Sources: Yeela Ranaan, “Bulldozers, Trees and Villas: The Expulsion of the Bedouin Continues,” *Tarabut Hithabrut* (2 November 2009), at: <http://www.tarabut.info/en/article/arakib/>; and “The Role of the Jewish National Fund in Impeding Land Rights for the Bedouin Population in the Naqab,” *Al Majdal* (winter–spring 2010), at: <http://www.badil.org/al-majdal/item/1406-ranaan-int-naqab?Impl=component&print=1>; Nora Barrows-Friedman, “Interview: Ethnic Cleansing inside the Green Line,” *Desertpeace* (25 May 2010), at: <https://desertpeace.wordpress.com/category/land-day/>.

### Endnotes:

<sup>1</sup> “Woe to the Oppressors,” *The Book of Micah*, 2:2 American Standard Version, at: <http://biblehub.com/asv/micah/2.htm>.

<sup>2</sup> David Ben Gurion, at: <http://www.mabat-lanegev.co.il/DAVID-BEN-GURION.html>.

- <sup>3</sup> This article updates an excerpt from the report of The International Fact-finding Mission, *The Goldberg Opportunity: A Chance for Human Rights-based Statecraft in Israel* (Solutions for Applying the Recommendations of the Commission for Regulating Bedouin Settlement in the Naqab/ Negev) (Cairo: HIC-HLRN, 2010).
- <sup>1</sup> *Report of the Commission for Regulating Bedouin Settlement in the Negev*; i.e., Goldberg Commission's Recommendations [GCR], Introduction, para. 2. [References to GCR here are cited from the full English-language translation provided by the Regional Council of Unrecognized Villages, 2009.]
- <sup>2</sup> *Cabinet Communiqué* (communicated by the Cabinet Secretariat) at the weekly Cabinet meeting on Sunday, 18 January 2009, at: [http://www.worldjewishcongress.org/Features/cast\\_lead/090118\\_cabinet.pdf](http://www.worldjewishcongress.org/Features/cast_lead/090118_cabinet.pdf).
- <sup>3</sup> Thabet Abu-Ras, "Land Disputes in Israel: The Case of the Bedouin of the Naqab," *Adalah's Newsletter*, Volume 24 (April 2006), p. 6.
- <sup>4</sup> Habitat International Coalition (HIC) is the global civil movement of organizations in over 100 countries promoting together adequate housing, equitable access to land and practical solutions to problems in human settlements. Its Housing and Land Rights Network (HLRN) constitutes HIC's Member group that promotes the framework of human rights and related principles of international law through monitoring, research, capacity building and advocacy.
- <sup>5</sup> Including the International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Economic, Social and Cultural Rights (1966); International Covenant on Civil and Political Rights (1966); International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1979); International Convention on the Elimination of All Forms of Discrimination against Women (1984).
- <sup>6</sup> GCR (March 2009).
- <sup>4</sup> Penny Maddrell, *The Bedouin of the Negev* (London: Minority Rights Group, 1990), p. 4.
- <sup>5</sup> A juridical term designating dead lands. *Fiqh* makes the practical distinction between dead land (*arḍ mawāt*) and living land. According to Abū Ḥanīfa, dead land is that which is not well cultivated and is without water; for al-Shāfi'ī, it is all that is neither cultivated nor dependent on a cultivated place. Dead land is of two kinds: that which, from time immemorial, has always been in this state, of a kind that bears no mark of cultivation and concerning which no property right has been... Delcambre, A.-M.. "Mawāt." *Encyclopédie de l'Islam*. Brill Online, 2015. Reference 03 January 2015, at: [http://referenceworks.brillonline.com/entries/encyclopedia-de-l-islam/mawa-t-SIM\\_5049](http://referenceworks.brillonline.com/entries/encyclopedia-de-l-islam/mawa-t-SIM_5049).
- <sup>6</sup> According to Abraham Granott, "The object of the law of 1858, which dealt primarily with these three classes of property [viz., *mīrī*, *matrūk* and *mawāt*], was to maintain the rights of the State over them." Abraham Granott, *The Land System in Palestine — History and Structure*, translated by M. Simon, (London: 1952), p. 87. Robert H. Eisenman asserts that the "principle aim" of the Land Code of 1858 "was the reassertion of Government control over State Domain...." (Robert H. Eisenman, *Islamic Law in Palestine and Israel: A History of the Survival of anizmat and Shari'a in the British Mandate and the Jewish State* (Leiden: E.J. Brill, 1978), pp. 56–57.) The concept of state ownership of land was, in fact, an idea in Islamic law that, however central, was, nonetheless, often "ambiguous and unclear." (Ali Abd Al-Kader, "Land Property and Land Tenure in Islam," *Islamic Quarterly*, 5 (1959) pp. 4–11, p. 8; Eisenman, p. 54 and Granott, 1952, p. 80.)
- <sup>7</sup> Nathan Weinstock, *Zionism: False Messiah* (London: Ink Links, 1979), p. 51, citing the Keren Heyesod maps of 1938. See also Yoram Bar-Gal, *Propaganda and Zionist Education - the JNF 1924–1947* (Rochester NY: Rochester University Press, 2003), 144–45, 149; "The Blue Box and JNF Propaganda Maps, 1930-1947," *Israel Studies*, Vol. 8, No. 1 (spring 2003), pp. 1–19.
- <sup>8</sup> George Kirk, *The Middle East 1945–1950* (London and New York: Oxford University Press, 1954), p. 227; Jacob C. Hurewitz, *The Struggle for Palestine* (New York: Norton, 1950), pp. 205–06. However, "borders" of Israel have remained putative, but never have been defined.
- <sup>9</sup> Joseph Weitz, head of the JNF Land and Afforestation Department, "The Negev Commission: A Survey of Its Work," pp. 47–52, cited in Walter Lehn with Uri Davis, *The Jewish National Fund* (London and New York: Kegan Paul, 1988), pp. 82–2.
- <sup>10</sup> "Progress Report of the United Nations Mediator on Palestine Submitted to the Secretary-General for Transmission to the Members of the United Nations, in pursuance of paragraph 2, part II, of resolution 186 (S-2) of the General Assembly of 14 May 1948," A/648, 16 September 1948, p. 14.
- <sup>11</sup> Rony E. Gabbay, *A Political History of the Arab-Jewish Conflict* (Geneva: 1959), p. 145, note 118, cited in Weinstock, op. cit., p. 238; Kirk, op. cit., pp. 296–97; John Bagot Glubb, *A Soldier with the Arabs* (New York: Harper, 1957), pp. 233–37, cited in Weinstock, op. cit., p. 241. See also Elmer Berger, *Peace for Palestine: First Lost Opportunity* (Gainesville FL: University of Florida Press, 1993), pp. 91–143.
- <sup>12</sup> Berger, *Peace for Palestine*, op. cit., pp. 118–19.
- <sup>13</sup> Edward Luttwak and Dan Horowitz, *The Israeli Army, 1948–1973* (New York: Harper and Row, 1975), p. 31 [emphasis in original].
- <sup>14</sup> 16–18 July 1948.
- <sup>15</sup> 15–22 October 1948.
- <sup>16</sup> 21 October 1948.
- <sup>17</sup> 9 November 1948.
- <sup>18</sup> 5–7 December 1948.

- <sup>19</sup> 22 December 1948–7 January 1949.
- <sup>20</sup> 5–10 March 1949, following the Armistice with Egypt, signed 24 February 1949..
- <sup>21</sup> Kirk, op. cit., pp. 294–95, as cited in Weinstock, op. cit., p 240.
- <sup>22</sup> GCR, p. 9, para. 19.
- <sup>23</sup> Law of Citizenship and Entry into Israel, amended by Section 3A in 1980, recognizing ineligible nationalities as Lebanese, Syrian, Palestinian, Jordanian and Iranian.
- <sup>24</sup> The JNF charter also applies the terms “Jewish religion, race or origin/descendency.” Jewish National Fund Articles of Incorporation, Article 3(C).
- <sup>25</sup> Such discriminatory laws include: Law of Return (1950), Law of Citizenship (1952), World Zionist Organization-Jewish Agency (Status) Law (1952), Basic Law: Israel Lands [The People’s Lands] (1960), Covenant with Zionist Executive (1954, 1971), Agricultural Settlement Law (1967), Absentee Property Law (1950), Keren Kayemet Le-Israel Law (1953) and the laws and procedures related to physical planning.
- <sup>26</sup> *Tamarin v. State of Israel* (1970) 26 P.D. 1 197.
- <sup>27</sup> Moshe Gorali, “So this Jew, Arab, Georgian and Samaritan go to court...The state denies there is any such nationality as ‘Israeli’,” *Haaretz* (28 December 2003), at: <http://www.haaretz.com/hasen/objects/pages/PrintArticleEn.jhtml?itemNo=376724>; Uzi Ornan, “Apartheid Laws in Israel - The Art of The Obfuscatory Formulation,” *Ha’aretz* [Hebrew] (17 May 1991), at: <http://cosmos.ucc.ie/cs1064/jabowen/IPSC/php/art.php?aid=1131>; and Jonathan Cook, “Lawsuit Challenges Israel’s Discriminatory Citizenship Definition,” *The National* (Abu Dhabi) (06 April 2010), at: [http://electronicintifada.net/v2/article11187.shtml?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+electronicintifadaPalestine+%28Electronic+Intifada+%3A+Palestine+News%29](http://electronicintifada.net/v2/article11187.shtml?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+electronicintifadaPalestine+%28Electronic+Intifada+%3A+Palestine+News%29).
- <sup>28</sup> “Balad: A country of all its citizens, cultural autonomy for Arabs,” *Haaretz* (23 December 2002), at: <http://www.haaretz.com/news/balad-a-country-of-all-its-citizens-cultural-autonomy-for-arabs-1.24538>; Samah Jabr, “A State for All Its Citizens—One Palestinian’s Dream of Peace,” *Washington Report on Middle East Affairs* (September–October 2002), pp. 10, 74, at: <http://www.wrmea.org/2002-september-october/a-state-for-all-its-citizens-one-palestinian-s-dream-of-peace.html>; Nima Shirazi, “Consensus: Right wing govt minister says Israel is not a state of all its citizens; liberal Zionist icon calls for cantons to avoid bi-nationalism Israel/Palestine,” *Mondoweiss* (2 January 2013), at: <http://mondoweiss.net/2013/01/consensus-citizens-nationalism#sthash.GogoCIM8.dpuf>.
- <sup>29</sup> The first JNF acquisition totalled 1,101,942 dunams: 1,085,607 rural and 16,335 urban; the second amounted to 1,271,734 dunams: 1,269,480 rural and 2,254 urban. Abraham Granott, *Agrarian Reform and the Record of Israel* (London: Eyre & Spottiswoode, 1956), pp. 107–110.
- <sup>30</sup> 12,445 land area, plus 64,000 dunams with refugee/private individual claim forms, in addition to the assumed 1,811,000 dunams assumed to be cultivated by Bedouin Arabs at the time of dispossession. “Working Paper Prepared by the Commission’s Land Expert on the Methods and Techniques of Identification and Valuation of Arab Refugee Immoveable Property Holdings in Israel, A/AC.25/W.84, 24 April 1964, cited in Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (Cairo: American University in Cairo Press, 2004), 272–73.
- <sup>31</sup> Jewish National Fund, *Report to the 23rd Congress*, 32–33, emphasis in original, cited in Lehn and Davis, op. cit., 108.
- <sup>32</sup> [The Goldberg Opportunity: A Chance for Human Rights-based Statecraft in Israel](http://www.hlrn.org/img/publications/Naqab%20FFM%20report%202010.zip) (Cairo: HIC-HLRN, 2010), see Annex I: Villages and Habitations Destroyed in Creation of the Siyāj, p. 78 and map insert “;” at: <http://www.hlrn.org/img/publications/Naqab%20FFM%20report%202010.zip>.
- <sup>33</sup> Ilan Pappé, “Calling a Spade a Spade: The 1948 Ethnic Cleansing of Palestine,” *al-Majdal* (spring 2006), at: <http://www.badil.org/al-majdal/2006/Spring/article03.htm>.
- <sup>34</sup> H.C. 2390/96 *Karsik v. State of Israel* 55(2), P.D. 625.
- <sup>35</sup> “Adalah Submits Position Paper to Committee Charged with Recommending Reforms in the Israel Lands Administration,” *Adalah Newsletter*, Vol. 4 (August 2004), at: [www.adalah.org/newsletter/eng/aug04/5.php](http://www.adalah.org/newsletter/eng/aug04/5.php); and “Excerpts from the Jewish National Fund’s Response to H.C. 9205/04 and H.C. 9010/04,” at: <http://adalah.org/Public/files/English/Publications/Makan/Makan-v1/Makan-Land-Planning-and-Justice-Vol-1-Right-to-City-81-Excerpts-from-Jewish-National-Fund-Response-to-HC-9205-04-and-HC-9010-04.pdf>.
- <sup>36</sup> Jewish National Fund Articles of Incorporation, para. 3(1).
- <sup>37</sup> “Blueprint Negev,” described on the Jewish National Fund website, at: <http://www.jnf.org/work-we-do/blueprint-negev/>.
- <sup>38</sup> Joseph Schechla, “The Invisible People Come to Light: Israel’s ‘Internally Displaced’ and the ‘Unrecognized Villages’,” *Journal of Palestine Studies* (autumn 2001).
- <sup>39</sup> Rahat, 1972; ‘Ar’ara in the Naqab, 1980; Keseifa, 1982; Segev-Shalom, 1982; Hura, 1991; Laqiyya, 1991. Havatzelet Yahel, “*Land Disputes between the Negev Bedouin and Israel*,” *Israel Studies*, Vol. 11, No. 2 (summer 2006), pp. 1–22, at 12–13.
- <sup>40</sup> Swirsky and Hasson explain that current plan indicates nine were decisions that had already been made, and two were proposals of the plan itself.

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- <sup>41</sup> About 571,186 dunams—or somewhat more, according to the Bedouin Administration—are the subject of 2,749, outstanding claims, covering 592,000 dunams. Data submitted to the Goldberg Commission by the Bedouin Administration as of July 2008. GCR, p. 15, paras. 34–35.
- <sup>42</sup> Data submitted to the Goldberg Commission by the Bedouin Administration as of July 2008. GCR, p. 15, paras. 34–35 and following table.
- <sup>43</sup> As stated in the both of the government resolutions. The translation of the government resolution uses the words “new and existing settlements.”
- <sup>44</sup> GCR, Introduction, para. 71.
- <sup>45</sup> GCR, para. 72.
- <sup>46</sup> GCR, paras, 71 and 77.
- <sup>47</sup> GCR, para. 85
- <sup>48</sup> Havatzelet Yahel, “*Land Disputes between the Negev Bedouin and Israel*,” *Israel Studies*, Vol. 11, No. 2 (summer 2006), pp. 1–22, at 12–13.
- <sup>49</sup> “Implications of the Hawashleh Precedent,” GCR, p. 22, para. 4.
- <sup>50</sup> “Confirming the Recommendations for Regulation of the Bedouin Settlement in the Negev,” Government Decision No. 3707, 11 September 2011. Upon approving the plan, the government also accepted amendments by National Security Adviser Yaakov Amidror, whom the state commissioned to review the plan in June 2011.
- <sup>51</sup> Any land that is above a 13% slope automatically becomes state land.
- <sup>52</sup> “Full Text of the Prawer-Begin Plan for Negev Bedouin,” *972 magazine* (19 July 2011), at: <http://972mag.com/resource-full-text-of-prawer-begin-plan-for-negev-bedouin/75958/>. As submitted by former minister Ze’ev (Benny) Begin, who replaced Prawer in the Office of the Prime Minister.
- <sup>53</sup> “B. The National Framework,” *Ibid.*, p. 1.
- <sup>54</sup> David Ben-Gurion, “Significance of the Negev,” speech (Hebrew) 17 January 1955. See excerpts at: <http://www.haluzasmartcity.org/smartcityen-inspired-by-ben-gurion-inspired-by-ben-gurion>.
- <sup>55</sup> Frank N. Schubert, *Building Air Bases in the Negev: The U.S. Army Corps of Engineers in Israel, 1979–1982* (Washington, D.C.: Office of History, U.S. Army Corps of Engineers and Center of Military History, U.S. Army, 1992), at: <http://www.usace.army.mil/About/History/HistoricalVignettes/MilitaryConstructionCombat/123IsraeliAirbases.aspx>.
- <sup>56</sup> Gili Cohen, “Giant IDF complex in Negev due for completion in 2015,” *Haaretz* (8 August 2013), at: <http://www.haaretz.com/news/diplomacy-defense/.premium-1.540356>.
- <sup>57</sup> Gili Cohen, “How to persuade soldiers to move where their base goes? Army hiring PR firm,” *Haaretz* (6 October 2013), at: <http://www.haaretz.com/news/diplomacy-defense/.premium-1.550799>.
- <sup>58</sup> Stuart Winer, “Government Bedouin land plan deemed impossible,” *The Times of Israel* (7 February 2013), at: <http://www.timesofisrael.com/government-bedouin-land-plan-deemed-impossible/>.
- <sup>59</sup> <http://maxblumenthal.com/tag/jewish-national-fund/>.
- <sup>60</sup> “Focus on JNF: Future More Than Bright for JNF,” *Jewish Telegraph* (2012), at: [http://www.jewishtelegraph.com/jnfspec\\_1.html](http://www.jewishtelegraph.com/jnfspec_1.html).
- <sup>61</sup> The new colony is to be called “Hiran.” Noam Sheizaf, “Cabinet OK’s razing Bedouin towns to build Jewish settlement in their place,” *+972* (10 November 2013), at: <http://972mag.com/government-to-confirm-destruction-of-bedouin-village-jewish-town-will-be-built-on-site/81638/>.

## Western Sahara: Denial of Self-determination and Human Rights

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In May 2006, and for the first time since the UN adopted the General Assembly's famous resolution 1514 on decolonization and, in particular, the principle of self-determination,<sup>2</sup> a delegation from the Office of the United Nations High Commissioner for Human rights visited Western Sahara to investigate the human rights situation in this last colony in Africa. The mission recommended that:

As has been stated in various UN fora, the right to self-determination for the people of Western Sahara must be ensured and implemented without any further delay. As underlined above, the delegation concludes that almost all human rights violations and concerns with regard to the people of Western Sahara, whether under the de facto authority of the Government of Morocco or of the Frente Polisario, stem from the nonimplementation of this fundamental human right.<sup>3</sup>

Nevertheless, this report was kept under embargo, because a powerful member in the UN Security Council, France, refused any kind of protection and monitoring of human rights in Western Sahara.

The right to self-determination is enshrined in the UN Charter as one of four pillars of the international legality. It is a sacred principle upon which international law, and particularly, the human rights covenants are built. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights begin with a common Article 1, which establishes all state parties' obligations to uphold this fundamental right, inextricably linked to the people's land and natural resources. Common Article 1 reads:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

This right to self-determination is actually one of the main claims of most historical uprisings and revolutions in the Arab World, where the peoples express what they "want," and where the peoples "demand," and where the peoples ultimately "decide" to take their political fate into own their hands.

On that basis, all relevant UN resolutions, as well as international, regional organizations have confirmed the right of the Sahrawi people to self-determination. These include:

1. Included the region of Western Sahara in the list of the colonies of the UN Special Committee on Decolonization in 1963, as its charter confirmed the right of the colonized peoples to self-determination and independence. This principle become as basic and compulsory law over all to decolonization. Therefore, this principle of the rules of the international law should be apply in the Western Sahara Territory to find durable and just solution, which needs protection by international community as rule of *jus cogens* must be complied with.
2. Spain as the occupying power, recognized the right of the Sahrawi people to self-determination before the General Assembly of the UN in 1963, by accepting to include the region of the



Western Sahara in the list of the non-self-governing territories issued by the Special Committee on Decolonization, then the General Assembly issued 10 resolutions between 1965 and 1975 (including 2229, 3254, 2428, 2983), demanding the Spanish government to apply the right to self-determination.

3. UN Security Council unanimously adopted resolution No. 690 on 29 April 1991, approving the peace proposal presented by the Secretary-General. That plan set forth the arrangements to implement the self-determination referendum in Western Sahara, starting with practical implementation of cease the fire between the parties as of September 1991, completing the referendum in January 1992.<sup>4</sup>
4. The 15<sup>th</sup> session of the African Union Organization's Assembly of Heads of State and Government, held in Khartoum, Sudan, 18–22 July 1978, affirmed the necessity to apply the principle of the self-determination in Western Sahara.<sup>5</sup>

Western Sahara is defined by the international community as a non-self-governing territory,<sup>6</sup> whose people are recognized as “the people of Western Sahara,” or “Sahrawis,” and are entitled according to the different UN resolutions adopted since 1963 to exercise a genuine right to self-determination to chose between independence, self-determination and autonomy with an existing political entity, yet, the people of this territory are still denied their right to decide the future of their country.

As a result to this denial, many anomalies mark the situation and lives of the territory and its people. The principal of which is the Kingdom of Morocco, the occupying power, systematically violating the civil, political, economic, social, cultural and environmental rights of the people of Western Sahara essentially through the denial of the sovereignty of the “people of Western Sahara” on their land. This negation of such a fundamental human right and principle of treaty implementation has far-reaching consequences, exemplifying the character of the land as an accessory right essential to the realization of the range of other human rights.

## Background

Morocco's militarily invaded Western Sahara on 31 October 1975, in flagrant violation of the UN Charter and the Saharawi people's right to their land. Western Sahara was then a Spanish colony and the UN has reached the agreement with the government of Madrid to organsie a referendum for the Saharawi people in 1975. Instead, France and Morocco forced the weak Spanish government of the dying Generalissimo Francisco Franco to sign an illegal tripartite agreement with Morocco and Mauritania, according to which the two Arab countries partitioned the land of Western Sahara and its people in two zones, contrary to the long-established principle of *uti possidetis iuris*, prohibiting the partition or recolonization of territories whose people were entitled to, and undergoing the independence process.<sup>7</sup> Meanwhile, Spain maintained a privilege of retaining 30% in the phosphate exploitation and a priority in the exploitation of the fishing resources in the rich Saharawi waters.

Morocco is one of a community of states that have violated the Saharawi people's right to self-determination. However, since the International Court of Justice Advisory Opinion on the subject in 1975<sup>8</sup> and the United Nations engagement in the peace-keeping and conflict resolution processes, Morocco remains the principal party violating Sahrawis' rights.

## A Pattern of Human Rights Violations

The rights violated under Moroccan occupation form a broad and consistent pattern. The affected rights include the human right to physical integrity and security of person, as well as right to protection from all kinds of discrimination, in addition to their individual rights such as freedoms of thought and conscience, speech and expression, religion, the press, and movement. These Moroccan violations have accompanied a set of crimes against humanity and crimes of war, including population transfer, forced disappearance and systematic practice of torture by the different Moroccan corps.

The Moroccan Royal Consultative Council for Human Rights recognized these crimes in a report to the Committee Equity and Reconciliation in December 2010. Used within the Committee with little publicity, the report acknowledged the Moroccan army's responsibility in the death of some 352 Saharawis. According to the report, they died "because of bad conditions of imprisonment" in different Moroccan secret detention camps. No other measures were undertaken to pursue accountability, since the families of the victims never received information from the state before they accidentally read this report after some organizations spread it around.<sup>9</sup>

The violations have continued since 1975. Hundreds of Saharawis experienced forced disappearance, some for more than 15 years in secret detention. One of the infamous cases of disappearance dates as of 2005, with the case of 15 young Saharawi activists whose families are still demanding the truth about their fate.<sup>10</sup> Another, more-recent case involves the forced disappearance of Muhammad Dihani, whom the Moroccan Directorate for Surveillance of the Territory disappeared and tortured between 28 April and 28 October 2010.<sup>11</sup>

In addition to the phenomenon of disappearance, the Moroccan authorities systematically practice torture against demonstrators, prisoners, arrestees not only in prisons or police stations, but also in streets and outside the cities. Especially since the Sahrawi *intifada* (uprising) in the occupied zone in 2005, Moroccan police have arrested many demonstrators, but never taken to police stations. Instead, the police drive them to the outskirts of the cities, beat them to death, sometimes raping and abandoning in most cases unconscious 40 or 50 km far from the cities.<sup>12</sup>

Demonstrations in Western Sahara are always faced with violent police interventions. Thousands of Saharawis have been injured, arrested, tortured, beaten or even killed after they participated in peaceful demonstrations. Police do not tolerate demonstrators who raise Saharawi flags or chant slogans in favor of their independence in their land.

Saharawi human rights organizations, without exception are considered illegal by the Moroccan authorities and treated as such. Even in the case of the Association of the Victims of Gross Human Rights Violations Committed by the Moroccan State (ASVDH) which was given a high court decision to work legally under Moroccan laws, the Moroccan authorities never recognized its militants' right to monitor the human rights situation. Its president, vice-president and member of its bureau are victims to different human rights abuses.

Another human rights organization, the Saharawi Human Rights Defenders Collective (CODESA), chaired by the eminent human rights defender, Ms. Aminatou Haidar, was not allowed to operate, and is still banned. Morocco is imprisoning currently imprisoning many human rights defenders.<sup>13</sup>

They are simply demanding a fair trial or an immediate release. They have been arrested since November 2010. One year after their detention they still wait for a trial, while Morocco is determined to bring them before its Martial court in Rabat. On 30 September 2014, Sahrawi human rights activist and prisoner of conscience Hasana al-Wali Aleya died under suspicious circumstances in a military hospital in the occupied city of al-Dakhla.<sup>14</sup>

Saharawi prisoners of conscience are denied due process of law such as the right to a fair trial and the right to seek redress or legal remedy. Saharawis, in general, are denied the rights of participation in civil society and politics such as freedom of association, the right to assemble and the right to vote in a referendum on self-determination to decide over the political future of Western Sahara.



### Social and Economic Rights

The pattern of social and economic rights abuses under Moroccan occupation have led to violations of the most fundamental human rights. The Moroccan occupation army has committed such atrocities against the Saharawi population in the first years of the invasion as killing thousands of Saharawi families, especially nomads by poisoning waters in the desert and exterminating livestock, which is the main means of subsistence for many Saharawi people.

Since 1975, Morocco led a systematic policy of plundering of the natural resources of Western Sahara without the consent of its people or their legitimate representative, POLISARIO liberation movement. In 2002, the UN Security Council asked UN Under-Secretary General for Legal Affairs Hans Corell to advise on the legality of the exploitation of the natural resources in Western Sahara. The UN jurist clearly ruled that it is illegal to exploit the resources of the non-self-governing territory as long as the decolonization process is not finished. He considered, however, that the exploitation can only be possible if the people of Western Sahara are fully benefiting from activity, otherwise Morocco must stop such plunder.<sup>15</sup>

In response to the repression of the Sahrawi people under Moroccan occupation, the population rose up in protest across several occupied Sahrawi cities in the month of May 2005.<sup>16</sup> Amid the measures that Moroccan security used were arrests of some 100 persons, beatings and sacking of Sahrawi family homes.<sup>17</sup>

Morocco propaganda always refers to a “process of development and progress of the Sahara.” On 10 October 2010, more than 20,000 Saharawi citizens from all sexes and generations built 8,000 tents in the famous protest camp of “Gdeim Izik” (in the desert 12 km east of El Aaiun, the capital of Western Sahara) “to demand the most rudimentary economic and social rights Morocco is depriving them of,” they said. The protest camp that was described by the U.S. philosopher Noam Chomsky as the starting point of the “Arab Spring,”<sup>18</sup> demanding the people’s right to work, the right to housing, to social

services such as health care and adequate standard of living and their right to profit from the wealth of their country but also their right to dignity and their political rights. The Moroccan response came one month after, on 8 November 2010. The army burnt the 8,000 tents and arrested and beat thousands citizens, detaining hundreds of them for days. The occupation authorities remanded 25 to prison and tried them before military court. The court freed three and one awaits trial, while the rest received various harsh sentences: from 20 years to life imprisonment.<sup>19</sup>

Saharawi organizations assert that Morocco is operationalizing a systematic policy to impoverish the Saharawi citizens in their own country. Saharawis are denied the right to work; they are denied opportunities of investment in many sectors. They are subjected to all kind of economic restrictions if they defend Western Sahara independence. Most of the time, they are dismissed from their work, have their salaries frozen, or are deprived of any kind of promotion in their jobs if they are active in favor of the right to self-determination.

Saharawi students face a lot of restrictions that hinder their enjoyment of the right to education. Students have to travel to the Moroccan cities to study, because the Moroccan authorities did not build a single university or high school in Western Sahara. Secondary schools' students are daily harassed by police. Since 2005, the Moroccan authorities have posted police and soldiers inside primary and secondary schools to stop students from organizing peaceful demonstrations. This armed presence usually generates confrontations and further human rights violations.

### **Cultural Rights**

The first target of Moroccan attack in 1975 was the nomadic lifestyle of the people of Western Sahara. They forced thousands of people to move to the cities, thousands of others were killed during raids, or pushed to flee their country and seek refuge in neighboring Algeria or Mauritania. There some 191,000 still live since 1976 in the Sahrawi refugee camps, relying on international aid.<sup>20</sup>

The Moroccan authorities also attacked the Spanish component of the Saharawi culture. They banned the study and use of Spanish from school since 1977. Hundreds of Saharawi students couldn't finish their studies, because of the change of the curriculums.

Lately, the Moroccans are even attacking the use of the traditional tents or any kind of tent by Saharawis as a reprisal against the population after the use of the tent as a symbol in the Gdeim Izik protest camp in 2010.

Saharawi writers cannot print books about the Saharawi culture, history or politics. Most of them exercise auto-censure because they are forced to find false links between the Saharawi culture and the Moroccan one or their books would be banned. Morocco went further in putting the Hassania language (the Saharawi dialect) in the Moroccan constitution as a Moroccan dialect! The Moroccan authorities organize many cultural festivals to promote the idea that the Saharawi culture and heritage is Moroccan. On another hand Saharawi associations and intellectuals cannot express their own views on these attempts of appropriation of their culture by the colonizing power because they risk detention and oppression.

## **Refugees' Right to Return**

After they were forced to leave their country home as a result of the Moroccan invasion of Sahrawi territory in 1976, around 90,000 Sahrawi refugees continue to reside in refugee camps around the town of Tindouf, Algeria. The refugees suffer a shortage of drinking water and adequate housing, throughout their diaspora.

The Sahrawi refugees in Algeria are largely dependent on aid for food, water, livelihoods and health services. International aid agencies and the POLISARIO Front (as the Sahrawi independence movement and *de facto* Sahrawi government) have created a system of aid and assistance throughout the refugee camps; however, this vulnerable population has existed in isolation for almost 40 years and still lacks a just and viable solution.

Following a fact-finding mission in September 2012, the Robert F. Kennedy Center for Justice and Human Rights (RFK Center) issued a report on the human rights conditions in occupied Western Sahara.<sup>21</sup> That report, while focusing primarily on issues of freedom of expression, bears witness to the enduring grave violations of a range of human rights for people under occupation and foreign domination. It noted that "the failure of the parties to enact a permanent solution to the future of Western Sahara does not limit the international responsibility of the current administrations to abide by international norms regarding respect for the human rights of people under their jurisdiction."<sup>22</sup>

## **Violation of the Ecosystem and the Environment**

Morocco started its invasion of Western Sahara with poisoning the water wells and springs. The Moroccan King Hassan II ordered the Moroccan army to kill anything that moves in the desert to force the Sahrawi nomads to move to cities so as his authority could control the population. Saharawi survivors testify about terrible raids against the livestock. Camels, goats and sheep were the main cattle raised by the Saharawi nomads. Each family of nomads used to own hundreds of animals, in 1976 Saharawis were fleeing for their lives from Moroccan air force raids that used napalm and white phosphorus bombs against them. Thousands of lives were lost far from the eyes of the civilized world that was applauding the Moroccan "Green March." Hundreds of thousands of animals perished, as well.

Further, the Moroccan army built the biggest military walls now existing on earth. Six walls built between 1981 to 1987, around the main Saharawi cities, but also to protect the main natural resources behind a well defended wall so as to plunder the resources without big troubles. Morocco built around 4,000 kms of sand walls, using more than 5 million landmines according to the most modest estimations. Nowadays, only 2,700 km of this wall are operational, though the rest of the walls remain dangerous, because of the arbitrary use of landmines by the Moroccan army during the 1970s and 1980s.

The Moroccan wall does not only sever the Saharawi people in two parts, it also causes a huge problem for the flow of waters (rivers and sources of water), and has caused a serious damage to the Saharawi livestock. It also has destroyed the Saharawi nomadic tradition of free movement and has constituted a constant danger to the lives of individuals and animals because of landmines.

The Moroccan wall also affected has the wild animal life in Western Sahara. The Saharawi gazelle is under threat of extinction, because of landmines and because the wall has deprived it from its natural freedom of movement in the desert. A similar fate is threatening the different species in the once rich Saharawi waters that risk becoming dangerously poor because of the overexploitation.

## **Self-determination and the Future of Peace in the Land**

The Arab uprisings have proved one common trait: That people will struggle and continue fighting for their basic rights, and most importantly for their sacred right to their homeland and its future. No regime and no power can deprive a population indefinitely from its sovereignty over its homeland, its natural resources and its innate right to decide the political future of its country. This is a lesson that the Arab peoples continue to reaffirm to the world, and this is exactly what the Saharawis have been fighting for since the first days of the colonization of Western Sahara in 1884. The Saharawi people fought against the Portuguese, the British, the German, the French and the Spanish, and they were not given a choice but to fight against their own brothers and neighbors, Morocco and Mauritania, when these two countries violated this brotherhood.

The case of the Western Sahara is manifest proof of the failure of the actual international system that is dominated by a few powerful states, the five permanent members of the Security Council, who are making of the UN the largest nondemocratic organization in the world. Western Sahara is recognized by the so-called international community as a non-self-governing territory, the Saharawi people are recognized as the party that has got the legal and legitimate sovereignty over the territory and still the world looks away, while Morocco continues to occupy and plunder Western Sahara illegally and violates human rights in total impunity. Worse, France has opposed any kind of monitoring or protection of human rights in Western Sahara, while it claims to champion the defense of human rights in other parts of the.

On the other hand, the Saharawi people have always been denied an opportunity to communicate their sufferings to the Arab world especially because of the shameful position that the Arab states are adopting since the 1970s. Most of the Arab states had supported the Moroccan invasion in a way or another, especially Saudi Arabia, Egypt, Iraq and the Gulf states, in general. Morocco has also been supported by Israel, the United States, Spain and France, and continues to be supported by the European Union, which has signed a shameful fishing accord with Rabat to exploit the fishing resources of Western Sahara.

## **Conclusion**

The right to self-determination is one of the main pillars of the international law, and is one of the main guarantees for the establishment of peace, democracy and respect of human rights in the world. There are many international attempts to normalize the violation of the right to self-determination by some big powers and through their proxies, such as Morocco, and the aim is always to wreak chaos and destabilize the world so as to profit from possibilities of exploiting natural resources of weaker peoples.

The maintenance of the occupation of Western Sahara and Palestine, the destruction of the political stability of other lands and peoples that have natural reserves of oil, gas and waters are the consequence of the powerful countries to violate the peoples' right to self-determination and sovereignty over their land and resources. Therefore, people must devise methods to defend their rights in greater solidarity. Otherwise, humankind will squander its future and humanity, as we know it, will simply disappear.

## Endnotes:

- <sup>1</sup> This article combines the complementary written contributions of two Land Forum participants in sessions II and IV—*Ed.*
- <sup>2</sup> Declaration on the Granting of Independence to Colonial Countries and Peoples, GA resolution 1514 (XV), 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1961).
- <sup>3</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Report of the OHCHR Mission to Western Sahara and the Refugee Camps in Tindouf 15/23 May and 19 June 2006,” 8 September 2006.
- <sup>4</sup> United Nations Security Council, “The Situation Concerning Western Sahara,” S/RES/690, 29 April 1991, at: <http://www.worldii.org/int/other/UNSC/1991/7.pdf>.
- <sup>5</sup> Organization of African Unity, Assembly of Head of State and Government, 15<sup>th</sup> Session, 81 Plenary Meeting, Resolution AHG/Res.92 (XV), *Resolution of the Question of Western Sahara*, 13 December 1978. at: <http://www.worldii.org/int/other/UNGARsn/1978/45.pdf>.
- <sup>6</sup> United Nations, “Information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter of the United Nations: Report of the Secretary-General,” A/69/69, 17 March 2014.
- <sup>7</sup> See, for example, Emmerich de Vattel, *The Law of Nations or the Principles of Natural Law* (Leiden, 1758); and John Dugard, *International Law: A South African Perspective* (Johannesburg: Juta, 3d ed., 2006).
- <sup>8</sup> International Court of Justice, *Western Sahara Advisory Opinion of 16 October 1975*, at: <http://www.icj-cij.org/docket/files/61/6197.pdf>.
- <sup>9</sup> Excerpts of the report are available in unofficial English translation at: [http://www.arso.org/Report\\_on\\_Human\\_Rights\\_violations\\_in\\_Morocco.pdf](http://www.arso.org/Report_on_Human_Rights_violations_in_Morocco.pdf).
- <sup>10</sup> United States Department of State, Bureau of Democracy, Human Rights, and Labor, “Western Sahara,” 2007, at: <http://www.state.gov/j/drl/rls/hrrpt/2007/102555.htm>; “A Saharawi human rights activist asks for information on the fate of 15 Saharawi victims of disappearance,” *Unión de Periodistas y Escritores Sahraouis* (21 December 2014), at: [http://www.upes.org/bodyindex\\_eng.asp?field=sosio\\_eng&id=1168](http://www.upes.org/bodyindex_eng.asp?field=sosio_eng&id=1168).
- <sup>11</sup> Amnesty International, “Morocco – Western Sahara: Exclude “confessions” obtained under torture in trial of Sahrawi activist,” 15 April 2013, at: <http://www.amnesty.org/es/library/asset/MDE29/003/2013/es/51a8adc5-6065-40ba-8911-0b76de8a1b64/mde290032013en.html>.
- <sup>12</sup> Malainin Lakhali, “Western Sahara: Denial of self-determination and human rights abuses,” *Pambazuka News* (19 January 2012), at: <http://pambazuka.net/en/category/features/79252>.
- <sup>13</sup> “Morocco – Human rights defender Ms Ouafa Charaf imprisoned for reporting assault and Mr Boubker ElKhamlihi acquitted,” *Frontline Defenders* (18 May 2014), at: <http://www.frontlinedefenders.org/node/26880#sthash.s8E46hiD.dpuf>; Malainin Lakhali, “Western Sahara: Denial of self-determination and human rights abuses,” *Pambazuka News*, Issue 566 (19 January 2012), at: <http://www.pambazuka.net/en/category/features/79252>.
- <sup>14</sup> European Parliament, “Parliamentary questions,” 2 October 2014, at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+P-2014-007412+0+DOC+XML+V0//EN&language=en>.
- <sup>15</sup> “Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council,” S/2002/161, 12 February 2002.
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- <sup>18</sup> *Democracy Now*, at: <https://www.youtube.com/watch?v=JTjOtOpzOBQ>.
- <sup>19</sup> “Listes des prisonniers politiques et leurs groupes,” Association de Défense des Droits de l’Homme au Maroc, at: [http://asdhom.org/?page\\_id=83](http://asdhom.org/?page_id=83).
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- <sup>21</sup> *Nowhere to Turn: The Consequences of the Failure to Monitor Human Rights Violations in Western Sahara and Tindouf Refugee Camps* (Washington: RFK Center, 2013), at: <http://rfkcenter.org/images/attachments/article/1884/NowhereToTurnLoRes.pdf>.
- <sup>22</sup> RFK Center, “Preliminary Observations: International Delegation Visit to Morocco Occupied Western Sahara and the Refugee Camps in Algeria,” 3 September 2012, at: [http://ccasps.cat/site/images/manifestos\\_documents/Final091012.pdf](http://ccasps.cat/site/images/manifestos_documents/Final091012.pdf); also HIC-HLRN, “Sahrawi Refugees: Temporary Solutions for a Long-standing Issue,” *Land Times*, Issue No. 4 (October 2012), at: <http://landtimes.landpedia.org/newsdes.php?id=o2hl&catid=ow==&edition=pg==>.

## Cyprus Property Claims and Judgments

*Joseph Schechla*

Since the monumental 1998 judgment of the European Court of Human Rights (ECHR) in the case of *Louizidou vs. Turkey*,<sup>1</sup> the lands and properties of Cypriot refugees and displaced persons have come streaming before European courts. That precedent-setting case resulted in the Turkish government's payment of over \$1 million in compensation to the property owner deprived by prolonged occupation. Turkey also has evacuated her house in order to return it to her; however, Ms. Loizidou has elected not to return, as she claimed that Turkish-occupation troops make her return unsafe. The Court accepted her claim, resulting in Turkey's continuous payment of compensation for denying her the right to enjoy her property.<sup>2</sup>

The accumulated outcomes of this and other Cypriot property claims have raised hope for various forms of reparation for the continuum of gross violations that resulted from the 1974 Turkish invasion and occupation of the island. The military coup in Greece that year, the resurgence of the extreme ethnonationalist Greek *enotist* (unionist) movement on Cyprus and the prospect of a repeat of the 1963 massacres of Turkish Cypriots gave impetus to the Turkish Republic to extend a protective presence in the northern 47% of that independent binational country. However, that 1974 invasion soon transformed into occupation with establishment of Turkey's prolonged military presence and the establishment, in 1983, of the self-proclaimed Turkish Republic of Northern Cyprus (TRNC).<sup>3</sup>

The legal status of the Turkish Republic of Northern Cyprus has been a bone of contention for previous property cases appearing before the European court, since it is not an internationally recognized state. However, it has been established in admissibility decisions<sup>4</sup> that Turkey is the respondent state for property claims.

Hope rose also for Turkish-Cypriot property claimants after decades of real-estate limbo for Turkish Cypriots as the Greek Cypriot government ceded a case in the European Court of Human Rights involving a plaintiff from the northern side of the divided island. In 2010, Greek Cyprus agreed to pay 84-year-old Nezire Sofi compensation worth €500,000 euros, admitting that its laws governing Turkish Cypriot property rights contravened the European Convention on Human Rights.

At the time of the Sofi ruling, January 2010, ten other suits filed with the European court were already waiting. "This is a historic week for us," said Asli Aksu, a lawyer defending a similar case known as the Chakarto case.<sup>5</sup>

The European Court has received numerous applications because of violations related to properties on both sides of the divided island. A 1975 Population Exchange Agreement, enforced by external powers,<sup>6</sup> transferred some 65,000 Turkish Cypriots to the north, while some 160,000 Greek Cypriots were forced to move to the south.

The Turkish-occupation administration distributed abandoned Greek properties to Turkish internally displaced persons (IDPs)/immigrants who agreed to file a disclaimer for their real estate in the south. Meanwhile, the Greek-Cypriot administration established a Turkish-Cypriot property management



department under its Guardian Law, forbidding all Turkish Cypriots to dispose of their estates until the island's reunification, regardless of whether they renounced their rights. The (Turkish) northern Cyprus administration actually disadvantaged future property claimants from the north by forcing the IDPs/immigrants to sign a release in order to obtain new properties.

That practice left only those Turkish Cypriots who rejected the agreement to be eligible to sue the Greek-Cypriot administration for restitution and other forms of reparation. The Chakarto application, seeking €7 million, was supposed to be a test case. However, that bid was not as successful, as the ECHR judges rejected the joined applicants for nonexhaustion of domestic remedies.

Another Greek-Cypriot property claim before the ECHR formed a watershed in addressing the numerous claims of southern claimants following *Loizidou*. Mrs. Myra Xenides-Arestis is a Greek-Cypriot living in Nicosia, the capital of Cyprus. She owns land, houses and a shop in northern Cyprus, but has been prevented from living in her home or using her property since August 1974 as a result of the continuing division of the island. Mrs. Xenides-Arestis presented her application to ECHR on 4 November 1998, and the Court ruled in her favor at the end of 2005.<sup>7</sup> The Court awarded Ms. Xenides-Arestis €65,000 for legal costs and expenses, with damages to be determined in a later proceeding.<sup>8</sup> However, the most significant aspect of the decision was the Court's position requiring Turkey to address the property-claims issue in a more systematic way.<sup>9</sup>

The Court, abiding by the decision taken in 2001 in the *Cyprus vs. Turkey* case,<sup>10</sup> determined that the respondent state must introduce a remedy that secures genuinely effective redress for the European Convention violations. The Court then ordered Turkey to introduce a remedy securing the effective protection of the rights provided in Article 1 (protection of property) of the First Protocol to the European Convention on Human Rights, as well as Article 8xvii of the Convention (right to a home), not only for Ms. Xenides-Arestis, but also for all similarly situated Greek-Cypriot plaintiffs with some 1,400 pending property compensation claims before the ECHR.<sup>11</sup>

### **Immovable Property Commission**

Following the rulings of the ECHR in the cases of *Loizidou v. Turkey* and *Xenides-Arestis v. Turkey*, the European Court decisions led to the Turkish administration in northern Cyprus setting up the Immovable Property Commission (IPC) by the provisions of the new compensation law to deal with Greek-Cypriot complainants, entitled the "Law for the Compensation, Exchange and Restitution of Immovable Properties" (Law no. 67/2005). Subsequently, only those who cannot find a solution via the Commission were able to apply to the ECHR for remedy.

The Greek-Cypriot administration of the Republic of Cyprus is unhappy with its citizens applying to an institution in the north that it regards as illegal and illegitimate under international law. However, as of February 2015, 780 Greek Cypriots have applied to the Commission, and 768 have received compensation.<sup>12</sup>

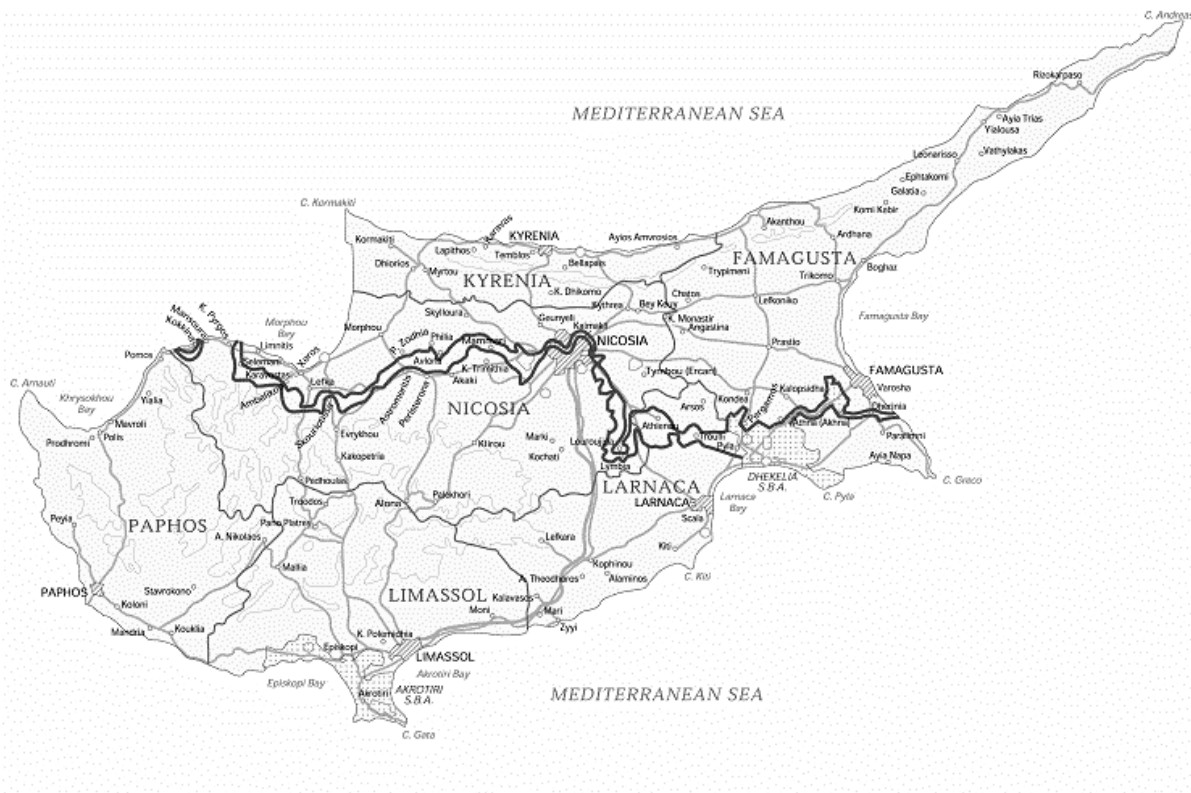
### **Buyers Beware: Third-party Liability**

In 2003, David and Linda Orams an English couple built a "dream retirement holiday home" at Lapithos, near Kyrenia, in occupied northern Cyprus. By so doing, they found themselves embroiled in an international property dispute.

Thirty years after the partition and occupation of Cyprus, and shortly after Cypriots were permitted to cross the island's United Nations-patrolled ceasefire line, British-trained Cypriot architect Meletis Apostolides travelled north and found the Orams living on his property. Thereafter, Mr. Apostolides won an order from the Nicosia District Court, ordering the Orams to demolish their villa and return the illicitly acquired land to Mr. Apostolides. However, since rulings by the Republic of Cyprus courts have no legal force in the TRNC, Mr. Apostolides had the Nicosia rulings registered at the High Court in London under a European Union regulation covering the recognition of foreign judgments. The London Court of Appeal decision required the Orams to demolish their villa in occupied northern Cyprus. That court decision recognized Cypriot refugees' continuous right to ownership and halted the development of Greek Cypriot properties in the occupied north.

In September 2006, the High Court of Justice ruled in favor of the Orams.<sup>13</sup> Mr. Apostolides appealed the decision at the Court of Appeal, which, in turn, referred the case to the European Court of Justice (ECJ), in Luxembourg. The ECJ, in turn, ruled in favor of Mr. Apostolides.

The case was then returned to the Court of Appeal in England, which ruled in favor of the original owner Meletis Apostolides in a final decision on 19 January 2010.<sup>14</sup> Reportedly, in the same year, the Orams' abandoned the property rather than demolish it.<sup>15</sup>



### Rights in Balance

After 1974, the Republic put all Turkish Cypriot properties under the guardianship of the Interior Minister, who prohibits their sale, exchange and transfer during the continuing state of emergency. However, without following proper expropriation procedures, the Republic took large expanses of Turkish Cypriot-owned land for development projects and for refugee estates.

For example, the whole of the old Larnaca Airport and a part of the new one are constructed on Turkish-Cypriot land. The owner of the land is a citizen of the Republic of Cyprus, lives in southern City of Larnaca and has a Cyprus passport and ID card. The government has been paying him a reportedly ample monthly allowance as part of its efforts to persuade him not to claim his property in the courts.<sup>16</sup>

Despite the Law of the Guardian, which froze all transactions of Turkish Cypriot-owned properties and prohibited restitution, part of the settlement reached with Sofi Nezire includes the written undertaking by the Cyprus Republic to amend the Guardian Law, so as to allow all Turkish Cypriots living outside Cyprus or in the unoccupied areas, to reclaim their properties. At least 100,000 Turkish Cypriots are registered citizens of the (unoccupied) Republic of Cyprus. A large number of them live in England, with access to European courts, whose judgment have legal force in the Republic.

The seeming trend of the courts to rule in favor of restitution for gross violations of housing, land and property rights in Cyprus took a more-nuanced direction in March 2010, when the ECHR Grand Chamber decided to reject the applications of seventeen Cypriot citizens against Turkey as inadmissible. The applicants alleged Turkey's violations of the European Convention of Human Rights, in particular, to the right of property, under Article 1 of the First Protocol to the European Convention on Human Rights, as well as the right to the home, under Article 8 of the Convention.

The Court's decision in *Demopoulos and Others v. Turkey* turned on examination of the applicants claims. After 14 years of adjudication on property claims in occupied Cyprus, the Court found the IPC property claims process set up in Turkish-controlled northern Cyprus to constitute an effective domestic remedy. The decision also requires Greek Cypriot applicants to demonstrate that they have exhausted this remedy before making admissible applications to the Court.<sup>17</sup>

The broader significance of the *Demopoulos* decision, however, concerns the issue of property rights in an occupied territory, especially where the occupation is prolonged, in this case lasting several decades. The Grand Chamber declared the case inadmissible, in effect rejecting the claims of the Greek Cypriots, ordering them to exhaust their domestic remedies by using the mechanisms set up in northern Cyprus to adjudicate property claims and award compensation.

In response to the applicants claim that seeking redress through a TRNC institution would be counter to their interests, the Grand Chamber said that it was "not persuaded that the acknowledgement of the existence of a domestic remedy runs counter to the interests of those claiming to be victims of violations." The panel of judges added that it

acknowledges the strength of feeling expressed by some of the applicants. However, the argument that it would be galling to have recourse to authorities in northern Cyprus cannot be given decisive weight against the background of conflict and hostility, similar argument might be raised in respect of any official body or authority on the Turkish mainland, or indeed by any victim of a violation who is faced with the prospect of asking for redress from a State which has been responsible for the injury suffered.<sup>18</sup>

As in the past, the Court's principal reference was the European Convention on Human Rights, as would be within the competence of the Court. It made no reference to the other relevant instruments governing the law of armed conflict, and in particular the Fourth Geneva Convention.<sup>19</sup> It also did not invoke the provisions of the Rome Statute or preceding norms that have codified population transfer, including the implantation of settlers and settlements, as war crimes and crimes against humanity. Given the European Convention-based parameters of the Court's competence, the panel was limited in the scope of its ruling, despite recent clarity on the elements of reparation.<sup>20</sup> The decision states:

Thus, the Court finds itself faced with cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level. This reality, as well as the passage of time and the continuing evolution of the broader political dispute must inform the Court's interpretation and application of the Convention which cannot, if it is to be coherent and meaningful, be either static or blind to concrete factual circumstances.<sup>21</sup>

The Court equivocated on whether those whose lands and properties taken by the occupation are subject to restitution by their pre-occupation owners, or only to receive financial compensation for them. According to the Grand Chamber:

At the present point, many decades after the loss of possession by the then owners, property has in many cases changed hands, by gift, succession or otherwise; those claiming title may have never seen, or ever used the property in question. The issue arises to what extent the notion of legal title, and the expectation of enjoying the full benefits of that title, is realistic in practice. The losses thus claimed become increasingly speculative and hypothetical. There has, it may be recalled, always been a strong legal and factual link between ownership and possession...This is not to say that the applicants in these cases have lost their ownership in any formal sense; the Court would eschew any notion that military occupation should be regarded as a form of adverse possession by which title can be legally transferred to the invading power. Yet it would be unrealistic to expect that, as a result of these cases, the Court should, or could, directly order the Turkish Government to ensure that these applicants obtain access to, and full possession of, their properties, irrespective of who is now living there or whether the property is allegedly in a militarily sensitive zone or used for vital public purposes.<sup>22</sup>

While the Court acknowledged that its case law indicates that, “if the nature of the breach allows *restitutio in integrum*, it is for the respondent State to implement it. However, if it is not possible to restore the position, the Court, as a matter of constant practice, has imposed the alternative requirement on the Contracting State to pay compensation for the value of the property.”<sup>23</sup>

According to the Grand Chamber:

It cannot be within this Court's task in interpreting and applying the provisions of the Convention to impose an unconditional obligation on a Government to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention.<sup>24</sup>

The ruling may bear on many historic claims concerning human rights abuses, particularly if they are taken out of context of other compatible norms and legal regimes. It is also relevant to the law governing occupied territories, although that doctrine, too, invokes liability, third-party responsibility, required “effective measures” and other consequences for grave breaches and codified crimes carried out in the context of war and/or occupation.

Following the *Demopoulos* ruling, external parties have urged the Greek Cypriot Republic of Cyprus to set up a parallel property commission in south Cyprus to help solve one of the most complex aspects of the Cyprus conflict.<sup>25</sup> This would require a significant shift in the Republic's approach to the property issues, as its Guardian Law is premised on the state serving as custodian of Turkish- Cypriot properties until Cyprus is reunited.

At the time of that proposal, hopes across Cyprus remained low for the prospect of a political solution to the Cyprus problem, let alone the island's eventual reunification. A survey published in 2011 found that, of 1,000 Greek Cypriots polled, 50% would not return to their original homes even in the event of a comprehensive solution, with many respondents explaining they did not want to restart their lives. Most

Turkish Cypriots polled were open to a mixture of restitution, exchange and compensation as acceptable remedies to the property problem, with compensation being the most preferred remedy. However, 90% of Greek Cypriots preferred restitution, even where Turkish Cypriots and other third parties lived or used that land for their livelihood. Notably, 61% of those desiring restitution would not move back to North Cyprus if it remained under Turkish administration.<sup>26</sup>

The analogy with other cases of prolonged occupation may be obvious. Comparable polls have found similar ambivalence among refugee populations toward returning to an uncertain political context. The case of Cyprus, among occupations in the Middle East/North Africa region, may compare. However, the Cyprus case remains distinct from Palestine or Western Sahara at least in the fact that the partition of Cyprus, with its complex land and property conundrum, does not involve the denial of self-determination and banishment of refugees from their national territory. Hence, the diverse and case-by-case remedies have produced a rather checkered Cypriot pattern of remedy in recent years, only partly resting on human rights law, while political solutions remain elusive.

## Endnotes:

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- <sup>2</sup> "Turkey compensates Cyprus refugee," *BBC News* (2 December 2003), at: <http://news.bbc.co.uk/2/hi/europe/3257880.stm>.
- <sup>3</sup> Kuzey Kıbrıs Türk Cumhuriyeti unilaterally declared its independence on 15 November 1983.
- <sup>4</sup> For example, *Loizidou v. Turkey*, in 1995, and *Xenides-Arestis v. Turkey*, in 2005.
- <sup>5</sup> *Niazi Kazali and Hakan Kazali against Cyprus* (Application no. 49247/08 and 8 other applications), 6 March 2012, at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109812#{"itemid":\["001-109812"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109812#{).
- <sup>6</sup> For a discussion of the United States and British former colonial power support of the population-transfer Agreement, see Christopher Hitchens, *Hostage to History: Cyprus from the Ottomans to Kissinger* (New York: Verso, 1984).
- <sup>7</sup> *Case of Xenides-Arestis v. Turkey* (Application no. 46347/99), Judgment, 22 December 2005.
- <sup>8</sup> "Turkey Compensates Cyprus Refugee," *BBC News Europe* (2 December 2003), at: <http://news.bbc.co.uk/2/hi/europe/3257880.stm>.
- <sup>9</sup> Ali Nezhmet Bozlu, "Kıbrıs'ta Mülkiyet Sorunu ve Aihm Kriterleri," at: [http://www.turkhukuksitesi.com/makale\\_561.htm](http://www.turkhukuksitesi.com/makale_561.htm); also cited in Derya Özveri, "Cyprus Property Dispute through the Glance of Immovable Property Commission," *Turkish Studies*, Vol. 8/6 (spring 2013), p. 591–602, at: [http://www.turkishstudies.net/Makaleler/1075902759\\_35%c3%96zveri%20Derya-sos-591-602.pdf](http://www.turkishstudies.net/Makaleler/1075902759_35%c3%96zveri%20Derya-sos-591-602.pdf).
- <sup>10</sup> Ordering Turkey to pay €90,000,000 to the Republic of Cyprus. ECHR, *Case of Cyprus v. Turkey* (Application no. 25781/94) Judgment (Just satisfaction), 12 May 2014, at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144151#{"itemid":\["001-144151"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144151#{).
- <sup>11</sup> *Cyprus v. Turkey*, (2002) 35 E.H.R.R.
- <sup>12</sup> Proceedings of the Immovable Property Commission (2006–2015), at: <http://www.tamk.gov.ct.tr/dokuman/Bitenler.pdf>.
- <sup>13</sup> *Orams v. Apostolides* [2006] EWHC 2226 (QB), [2007] 1 WLR 241, [2007] 1 All ER (Comm) 1 (6 September 2006), High Court of Justice (Queen's Bench Division), case no: QB/2005/PTA/0897.
- <sup>14</sup> *Apostolides v Orams & Ors* [2010] EWCA Civ 9, [2010] 1 All ER (Comm) 992, [2010] 4 EG 112, [2010] ILPr 20 (19 January 2010); case No: A2/2006/2114.
- <sup>15</sup> "End of the road for the Orams," *Cyprus Mail* (1 April 2010), at: <http://cyprus-mail.com/cyprus/end-road-orams/20100401>.
- <sup>16</sup> Makarios Droushiotis, "Orams Decision Could Open Pandora's Box," *Cyprus Mail* (14 February 2010), at: <http://www.news.cyprus-property-buyers.com/2010/02/14/orams-decision-could-open-pandoras-box/id=003919>.
- <sup>17</sup> Grand Chamber Decision as to the Admissibility of Application nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 by Takis Demopoulos and Others, Evoulla Chrysostomi, Demetrios Lordos and Ariana Lordou Anastasiadou, Eleni Kanari-Eliadou and Others, Sofia (Pitsa) Thoma Kilara Sotiriou and Nina Thoma Kilara Moushoutta, Yiannis Stylias, Evdokia Charalambou Onoufriou and Others, and Irini (Rena) Chrisostomou against Turkey [*Demopoulos and Others v. Turkey*], 1 March 2010, at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97649#{"itemid":\["001-97649"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97649#{).
- <sup>18</sup> *Ibid.*, para. 98.

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- <sup>19</sup> William A. Schabas, "Property Tribunal in Northern Cyprus is Valid Remedy, Rules European Court of Human Rights, PhD Studies in Human Rights (weblog), 7 March 2010, at: <http://humanrightsdoctorate.blogspot.com/2010/03/property-tribunal-in-northern-cyprus-is.html>.
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- <sup>21</sup> *Demopoulos and Others v. Turkey*, op. cit., para. 85.
- <sup>22</sup> *Ibid.*, paras. 111–12.
- <sup>23</sup> *Ibid.*, para. 114.
- <sup>24</sup> *Ibid.*, para. 116.
- <sup>25</sup> "Greek Cypriots Urged to Set up Parallel Property Commission," *Cyprus News Organisation* (17 March 2010), at: <http://www.cyprus-news.org/2010/03/17/greek-cypriots-urged-to-set-up-parallel-property-commission/> and [http://www.landpedia.org/landdoc/Analytical\\_materials/Cyprus\\_dossier\\_2010.pdf](http://www.landpedia.org/landdoc/Analytical_materials/Cyprus_dossier_2010.pdf).
- <sup>26</sup> Interpeace/'Cyprus 2015' Initiative (2011), "Solving the Cyprus Problem: Hopes and Fears," at: <http://www.interpeace.org/publications/cyprus/22-solving-the-cyprus-problem-hopes-and-fears-english/file>.



## Reconstruction: The Next Struggle in Syria

*Habitat International Coalition – Housing and Land Rights Network*

Since March 2011, the conflict in Syria has resulted in over 200,000 deaths, displaced 9 million<sup>1</sup> persons from their homes and effectively trapped the rest of the population in a situation of incredible violence and insecurity with restricted humanitarian access. The conflict has exacerbated instability in the region and placed deep divides across politics, religion and culture for Syrians inside and outside of the country.

Despite the crippling reality with no end in sight, the ongoing destruction of infrastructure and homes, as well as the rising death toll, the international community has already begun planning for reconstruction. With no end in sight and the consistent state of humanitarian emergency within the country, this could be seen as a premature effort to say the least; however, these efforts will be greatly needed when the conflict comes to a long-awaited end.

Civil society across the region has raised concerns about the actors involved, the proposed plans and the potential exploitation during any reconstruction efforts. This brings to the fore the negative experiences and consequences of postconflict reconstruction in the MENA region, specifically in Iraq, but also including Lebanon.

### **Social and Economic Destruction**

The human cost of the conflict in Syria cannot be overstated. Lives are lost daily, millions of families are living precariously and suffering in camps or devastated towns and villages. For those still inside the country, a lack of access to health care and scarcity of medications have led to health crises in several regions including influenza-like illnesses, diarrhea among children under five, hepatitis A, and leishmaniasis, as well as many instances of polio, a disease that was previously eradicated in Syria.<sup>2</sup> Access to nutrition and adequate food supplies are also a serious concern. Some 3,600 schools in Syria are unusable due to destruction or use as shelter for internally displaced persons, and by the end of 2013, school nonattendance was estimated at 52%.<sup>3</sup> Similar crises, including education, are also found in the camps and daily lives of Syrians living as refugees.<sup>4</sup>

Damage and destruction to infrastructure has indicated direct effort to target residential homes and has made the prospects for return and reintegration difficult to imagine. In 2013, just over 1.5 years into the conflict, the UN Economic and Social Council for Western Asia (ESCWA) reported that one-third of real estate in Syria has been destroyed by shelling: 400,000 homes were completely destroyed, 300,000 partially destroyed, and damages to infrastructure has affected 500,000 others.<sup>5</sup> It can be assumed that this number has increased significantly since then.

The ESCWA report added that the largest share of destruction was concentrated in the informal areas, where the most-impooverished people of Homs, Damascus, Aleppo, Dar`a, Dayr al-Zūr and other cities live. An independent local study has reported on the application of an early mechanism for quantifying losses, while another local report estimated that the number of homes totally destroyed amounted to 535,000, with an average of 1,200 homes destroyed daily.<sup>6</sup> In the first four months of 2013, some 475,000 homes were destroyed in part, mostly in informal and impoverished areas. The newly homeless



from those areas have increased to more than 700,000 families, with no house to, in theory, return to someday.

In January 2014, Human Rights Watch issued a report that documented the targeted destruction of residential buildings and neighborhoods in Damascus and Hama, two of the largest cities in Syria.<sup>7</sup> This report documents seven cases of large-scale demolitions with explosives and bulldozers that violated the laws of war between July 2012 and July 2013. Of course, it is likely that similar operations took place, and continue to take place, in other cities and towns.

In addition to the loss of homes and livelihoods, the economic situation in Syria is bleak, as reflected by a report issued by ESWCA in September 2014 on the effect of the conflict on the macro-economy of Syria.<sup>8</sup> Since 2013, the escalation of the conflict and its spread through most parts of the country, as well as the sanctions put in place has taken a serious toll on the economic situation. Many businesses have been destroyed or were forced to close, increasing unemployment and reducing the amount of goods on the market. The report estimated that, in 2013, exports and imports were reduced by 95% and 93%, respectively, while inflation reached up to 90%. The loss incurred by the Syrian economy from 2011 to 2013 is estimated at \$140 billion.

### **Reconstruction Designs?**

Despite the ongoing conflict and the need to increase humanitarian aid in the country, as well as within the camps hosting Syrian refugees, reconstruction plans are emerging, primarily based in two scenarios. One scenario will rely on international bodies, whether through the United Nations or the European Union. The other has Abdullah al-Dardari, Deputy Executive Secretary of ESCWA and former Syrian planning minister, supervising plans prepared by the Bashār al-Asad regime, in cooperation with Russian and Iranian companies, and with support from China.

France, Spain and Italy have proposed to extend the reconstruction experience in Lebanon for Syria's future reconstruction program.<sup>9</sup> They are poised to promote their own development of construction companies in those plans, not least as a way out of their European recession. On the other hand, the Syrian government has prepared a reconstruction plan premised on regaining control of the cities and neighborhoods, dismantling communities in cities that opposed the al-Asad regime. The Syrian regime has had a history of dispossessing and demolishing the homes of political opponents, as practiced collectively against the Kurds since the early 1960s.<sup>10</sup> (See **Syrian Kurds under Systematic Housing and Land Rights Violations** in this volume.)

The current al-Asad plan seeks to remove all informal areas that represent a threat to his regime. In 2013, Syrian government Resolution No. 18905 confiscated properties in some areas in order to carry out electric power projects.<sup>11</sup> One of the inhabitants of those areas explained, "Now, after [al-Asad] bombed us for several weeks, comes the day to complete the demolition of what has survived of the missiles, our security and livelihood."<sup>12</sup> Meanwhile, the president of the Damascus Governorate stated, in March 2012, that he developed a scheme to replan slums, which would make it impossible for returnees to claim ownership rights to their homes.<sup>13</sup>

Both scenarios raise concerns over the policy consequences of such reconstruction programs, especially since 50% of Syria's residential areas are informal. Those residents do not have legally secure tenure to their original homes and plots, even if a structure remains to go back to. Millions of homeless and

displaced will not be able to return to their neighborhoods in personal security, let alone tenure security.

### **Learning from the Past**

Western governments are posing reconstruction programs along similar neoliberal models implemented in Lebanon and Iraq. These plans have lacked sufficient private contractor accountability and standards of fair competition in contracting, while undermining the role of the state and bypassing community involvement in reconstruction projects.<sup>14</sup>

#### *Iraq*

Since the Second Gulf War (2003–), human settlements in Iraq have undergone drastic transformations. The international-sanctions regime ensured the deterioration of civil infrastructures and scarcity of essential goods, due to strict sanctions on “dual use” imports and vigilant international restriction of the country’s finances, trade and disarmament.<sup>15</sup> During the 1991 attacks alone, an estimated 100,000 Iraqis were left homeless. As the years went on, further displacements occurred, along with targeted attacks and displacements of various minority groups, including Assyrian Christians, Kurds and Turkmen, and, by 2003, at least 400,000 Iraqis were living as refugees, while some 800,000 were internally displaced.<sup>16</sup> By the “end” of the U.S.-led war and occupation, some 2.8 million Iraqis were uprooted from their homes.<sup>17</sup> Rebuilding homes was not an easy task and, in some cases, created further segregation, particularly in Baghdad, where the city has been intentionally reconfigured along sectarian divides, involving security and rights issues as both causal and consequential factors.<sup>18</sup>

With an eye to the prospects for future reconstruction programs in Syria, the U.S. Special Inspector General Stuart Bowen has reported that \$6–8 billion have been wasted in Iraq-reconstruction contracts.<sup>19</sup> The Iraq “reconstruction” process has proffered a model of creating optimum private-sector opportunity through optimum destruction. It has come to exemplify the failures of the neoliberal economic model, and the real risks of imposing it on a social economy, or what David Harvey calls “accumulation by dispossession.”<sup>20</sup>

In brief, U.S. reconstruction efforts prioritized replacing present infrastructure and services, rather than integrating existing structures. By cutting off the former companies that provided infrastructure in Iraq from countries that opposed the occupation (namely Germany, France and Russia), former services and equipment went into disrepair, and the knowledge and technical expertise of Iraqi engineers and other practitioners were made obsolete.<sup>21</sup> Through demobilizing existing Iraqi resources, the country has become far from self-sufficient.

#### *Lebanon*

After many years of civil war, in the 1990s the Lebanese government sought a national plan and process of reconstruction, facilitated by the private sector. As the national treasury was not able to finance the plan, investors developed a joint-stock real-estate company *Solidere* s.a.l., which sought to acquire and develop Beirut’s Central District (BCD).<sup>22</sup> The development “strategy” was “to restore economic confidence in the country by creating a safe, sanitized and politically neutral environment.”<sup>23</sup> Through private investment and the acquisition of property, many former residents of the BCD were pushed out to the peripheries, and relinquished their tenure rights.

The reconstruction focus on the city center of Beirut, rather than the country as a whole, created a large imbalance and neglected the needs of many communities, in particular vulnerable and marginalized populations.<sup>24</sup> Efforts primarily focused on physical infrastructure, rather than social and economic reconstruction, also impeded Lebanon from achieving peace and stability. With a lack of development support, rural areas, in particular, the south of the country, began to rely on parastatal bodies such as the Shià Hizbullah Movement and its *Jihād al-Bina'* projects for reconstruction, especially after Israel's 2006 war on Lebanon. Through the reconstruction process since the withdrawal of Israel's 22-year occupation in 2000, and undertaking political, welfare and security services of the state, Hizbullah was able to gain a large following, creating a "state within a state,"<sup>25</sup> often testing the tenuous peace and unity of the country.

With this oversimplification of very complicated issues, the past is prologue to the risks of urban-focused redevelopment (as is currently in "plans" for Syria). These experiences also indicate the risks of neglecting the social side of reconstruction, which run deeper and are often more difficult to repair than physical infrastructure.

### **Looking Forward**

The current situation in Syria must be met with increased humanitarian support from the international community—for those Syrians both inside and outside the country—rather than plans and financing for premature and misguided reconstruction efforts. However, with the hope that the conflict in Syria will end soon, any reconstruction effort should learn from the mistakes of other analogous efforts across the region.

Any reconstruction plan must seek to improve the situation for those most deeply affected by the conflict, but also those who were neglected prior to the conflict, especially whereas their conditions may have been a driver of conflict. For example, rural peoples, in particular, certain minorities, were marginalized on all fronts as the state neglected support to farmers and agricultural workers, rural education, health and local governance.

Reports indicate that, prior to the conflict, Syria was on its way to achieving the Millennium Development Goals.<sup>26</sup> After the tremendous setbacks of the war in Syria, when reconstruction plans are discussed, drawn and implemented, both those who ruled Syria for many years and those who seek to govern it in the future must not be enabled to further push Syria's marginalized populations further into despair.

Reconstruction plans form a whole new front in the battle of ideas that the Syrians will have to endure. All scenarios, whether provided by external bodies, Syrian opposition or the remnants of the Syrian state, face the challenge to avoid producing more victims among the vulnerable and marginalized groups after a long period of displacement and loss of homes, property and land. State interests in "re-planning" will not only determine the spatial dimension, but also build over a social fabric, newly rent by sectarian division. While external actors are proposing to insert a neoliberal model, likely to produce further economic stress, as well as loss of livelihoods among residents and returnees.

While the global trend is to seek compatibility among, and integrate the urgent humanitarian, longer-term development and normative human rights approaches in response to crises, the case of Syria poses a sterling example whereby physical reconstruction should be part of future transitional justice

processes toward remedy and reparation for victims. However, that explicit discussion and plan has yet to emerge.

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- <sup>22</sup> Schechla, *supra* note 15.
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- <sup>24</sup> Ibid.
- <sup>25</sup> Ibid.
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## **8. Globalization**



## International Investment Law and the [Human Right to] Land

*Kinda Mohamedia*

Social movements and civil society concerned with on the rights to land, sovereignty, water and housing face a priority and challenge to monitor the effects of international trade and investment that are rapidly evolving through agreements concluded on the bilateral, regional and multilateral levels. In many cases, these investment agreements have the purpose and/or effect of hijacking the international human rights system. Trade and investment agreements often erode human rights implementation in direct and indirect ways, because they:

- Are developed within a framework that protects the investor under contract, at the expense of the rights of groups and stakeholders at the local and national level;
- Often lead to reduction in the public space available to reconsider and debate national policy, including land policy and land rights;
- Tend to undermine efforts to support and enhance the role and well-being of farmers;
- Often link many areas within a single policy, depending on the situation at the time of their adoption, and reduce the possibility for sitting or successive governments to change practices afterward in favor of more-enlightened policies implementing human rights;
- Generally lack investor responsibility, especially where local conditionalities are ineffective, unenforced (e.g., symbolic, faulty or otherwise-inadequate environmental-impact assessments);
- Evade existing human rights obligations of the state, despite their enshrinement in Public International Law, customary and preemptory norms on international law.

In the legal theory on the hierarchy of laws,<sup>1</sup> human rights treaties take precedence over trade agreements. By law, trade agreements are supposed to respect the obligations in the field of human rights and other preemptory norms.<sup>2</sup> However, the reality is different.

### Basic Features of Investment Agreements

In the review and monitoring of trade and investment agreements, it is important to note the various forms and types of agreements with states in our region. These affect national laws and jurisprudence related to the protection of investment and foreign investors that evolve through bilateral agreements or chapters within the free trade agreements. These investment-protecting agreements reserve special privileges and extend disproportionate advantages to foreign investors. While bilateral investment agreements may vary from case to case, most usually provide the following rights to the investor:

- They apply broad concepts to identify anyone who is an investor;
- They extend to investor specific rights to:
  - ✓ Full restoration of profits and other funds expended in the investment;
  - ✓ Reciprocity with local investors or investors from other countries (equal or most-favored nation treatment);

<b>Multiplicity of Arab States' Bilateral Investment Agreements</b>	
<b>Egypt</b>	91
<b>Kuwait</b>	40
<b>Lebanon</b>	48
<b>Morocco</b>	40
<b>Sudan</b>	13
<b>Tunisia</b>	54
<b>U.A.E.</b>	21
<b>Yemen</b>	20
<i>Source: UNCTAD.</i>	



- ✓ Compensation in the event of nationalization or expropriation;
- ✓ "Fair and equitable treatment" and/or "full protection and security" (nonspecific concepts subject to interpretation in the context of arbitration between parties).

These trade and investment agreements also give the investor the right to sue the state in international arbitration forums. Therefore, they provide legal protection to foreigners and contracts with investors for investors, raising their standing within and vis-à-vis states. This raises the legal value and status of these contracts as "international agreements," so that investor contracts may even evade the application of national laws. However, in the case of a bilateral agreement between the investor and the host country, the investor benefits from the protections contained in the investment agreements. Bypassing local law, these agreements also allow the investor to take her/his case to an international dispute settlement mechanism, outside the jurisdiction of the territorial state.

While investment agreements impose certain restrictions on the treatment of governments and foreign investors or companies owned by foreign entities, these agreements do not put sufficient or explicit conditions or obligations on the investor.<sup>3</sup> The United Nations review in 2001 for many of the investment agreements and found few examples of obligations imposed on investors.<sup>4</sup>

Some analysts point to the possibility of reading a number of basic and responsibilities imposed on the investor in the framework of the concepts and obligations included in the investment-protection agreements. Professor Peter Muchlinski refers to the "fair and equitable treatment" concept, which guarantees the investment agreements, can be read to mean that the foreign investors also must to refrain from illegal practices such as: lack of transparency in the conduct of business in the host country; or use of (taking or paying) bribes, or corruption.<sup>5</sup>

The legal concept of "pre-incorporation" (pre-establishment) refers terms of the organization, capitalization and management of a future corporation for investments and investors from any party (member state or other party to a trade or investment agreement) entering the territory of another party. Pre-incorporation allows investors of each party to agree to make investments in the other's territory on terms no less favorable than those applicable to any domestic investors (the principle of national treatment), or any investors from other countries (most-favored nation [MFN] principle). A "pre-incorporation" investment agreement bans states from imposing certain performance requirements on investors as a condition for the establishment of investment. The concept of "pre-incorporation" is rarely applied, because every country has sensitive sectors, where foreign investment is not allowed, or only under certain conditions. Usually countries try to include a list of measures (for example, laws and regulations) or entire sectors excepted from the application of the principle "pre-incorporation."

#### Dispute Resolution Mechanisms

Bilateral investment agreements investor granted asylum to a number of mechanisms and dispute arbitration of international disputes, including United Nations Commission on International Trade Law (UNCITRAL)<sup>6</sup> and the International Chambers of Commerce (ICC)/World Chambers Federation,<sup>7</sup> and the International Centre for Dispute Resolution (ICDR).<sup>8</sup> Disputes in the states parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (CSID)<sup>9</sup> may resort to the International Centre for Settlement of Investment Disputes (ICSID),<sup>10</sup> part of the World Bank Group. The majority of Arab countries are members of the Convention and, thus, it is possible for investors protected by bilateral investment agreements to raise the cases against those states before

ICSID.<sup>11</sup> (Several such cases have been brought against Arab countries, including ten against Egypt<sup>12</sup>). The percentage of cases registered in 2013 involving a State Party from MENA considerably exceeds the overall percentage of such cases in ICSID's history (20% in 2013, compared to 11% overall). Those cases involved Egypt (six arbitrations against Egypt, one each against Jordan and Tunisia).<sup>13</sup> ICSID had registered a total of 437 cases (2014) and 497 (2015) under the CSID Convention and Additional Facility Rules. 19% (2014) and 18.3% (2015) investment contracts with host state; 63% (2014) and 61.8% (2015) were BITs. Out of eight regions of the world, MENA had 11% (2014) and 10% (2015) of cases in FY 2014.

In the case of optional arbitration, three parties carry out the arbitration (one chosen by the investor, another by the respondent state and the third is determined by the arbitrators who are selected). Of arbitrators, conciliators and ad hoc committee members appointed in cases, 4% (2014 and 2015) came from MENA, while Europe and North America held 68% (2014) and 69% (2015).<sup>14</sup> All of MENA, Sub-Saharan Africa, Eastern Europe and Central Asia have been under-represented in appointments by both parties in the overall historical ICSID picture.

Transparency is lacking. Decisions and legal analysis in these cases are not disclosed without the consent of the parties in the case (i.e., the investor and the state). Lack of transparency in these forums makes it extremely difficult to track down the legal issues and concepts that form the basis of international law system in the field of investment and the approach of the arbitrators. Therefore, the parties often do not announce the issues and, in many cases, the cases remain unknown to the public.

Land-reform measures affecting the right to the land currently are being influenced by foreign investors in some countries, and violations treaty obligations (e.g., via dispossession and forced eviction) under the bilateral investment agreements. Several other cases were heard, but not announced, and remain unknown.

#### Some Well-known Cases:

1. British investors filed a lawsuit against the Venezuelan government in 2005 after the government-authorized redistribution of investor-claimed land to landless citizens.
2. The Government of Namibia has faced German investors' BIT land claims to end land-redistribution program.<sup>15</sup>
3. A confidential arbitration commenced in 2001 by a Swiss businessman under the terms of the Switzerland-South Africa bilateral investment treaty continued until July 2003. The tribunal found South Africa to have failed to offer sufficient police protection and security to the Swiss owner of a proposed conference center and game farm located in the northeast of the country.<sup>16</sup>
4. The 1992 case of Egypt and the company Southern Pacific Properties (SPP) involved the Hong Kong-based company, company against Egypt through the International Centre for Dispute Resolution (ICSID). The jury approved of the importance of taking into consideration Egypt's obligations UNESCO World Heritage Protection treaties. But this approach does not justify the cancellation of Egypt's investment contract, as it was concluded in advance that SPP was a tourist operation, rather than an enterprise in the cultural heritage field.<sup>17</sup> First, SPP and SPP (ME) commenced an ICC arbitration, and obtained an award of US\$ 12.5 million in damages. However, French courts later annulled that award on jurisdictional grounds. In a subsequent ICSID arbitration, the Tribunal awarded US\$ 27.6 million to the claimants.<sup>18</sup>

In this situation:

- The private sector has the ability to lure states to costly stakes that may affect the state budget.
- The private investor has the right to sue the host country to circumvent legislation or regulations for economic, social or cultural reasons such that shrink the democratic process and the role of the state.
- Some of what are being traded are the prospects of democratic policy making and implementing human rights obligations at the national level.

Human rights organizations must be aware that the international arbitration agreements on investment are the main international channel through which to challenge the reform processes in developing countries (and certain developed ones). They open the way for foreign investors to challenge land reform and other redistributive initiatives, including those designed to support the indigenous peoples and local communities. This process prevails outside the framework of the legal system and the system of national and constitutional courts of the affected states. Consequently, the BITs have the ability dramatically to reduce the political space available to governments and their ability to take measures to fulfill its international human rights obligations.

Human Rights in Arbitration Cases:

In cases that held international arbitration between the foreign investor and the host state issues, the key question is whether those who are not party to the arbitration rights (such as communities or individuals living under the jurisdiction of the state) may be relevant in resolving such disputes and, thus, arbiters must take into account the rights of the arbitration process.

Overall, the arbitrators in disputes relating to investment agreements are not assigned to consider violations related to human rights compliance. Specialized arbitration cases are held to address any violation of investment-protection agreements. However, this does not mean that the legal system of human rights cannot form part of the necessary background, including compliance with commitments contained in the investment agreements.

#### **Recommendations:**

- Clarify the right of the parties to invest to take further steps in the field of public policy and legislation reform in the interest of human rights obligations of CSID, and through the legal protection of this right from within the conventions.
- Clarify the meaning of investors' "legitimate aspiration" (legitimate expectation) for parties to CSID and to determine the rights of both parties to take measures to uphold binding human rights obligations.
- Although most of the bilateral investment agreements do not have sufficient content relating to the responsibility of the investor, several proposals call for introducing treaty obligations and commitments to ILO standards and UN human rights treaties.
- In 2008, the Government of Norway has a model BIT that authorizes arbitrators to interpret investor responsibility, including material related to social responsibility, transparency, accountability and legitimacy, not to engage in corruption. It also enables the arbitrators to take into account both the investor's interests and the state's demand for public interest regulation. Convention encourages compliance with the principles of the OECD Guidelines for Multinational Enterprises.<sup>19</sup> The

Norwegian Model BIT uses generic language, but makes clear that the standard of treatment owed is that already imposed by customary international law.<sup>20</sup>

- Numerous proposals in academic literature on investment agreements give groups of citizens the right to establish a "counter-claims" against foreign investors over human rights violations. The Special Rapporteur on Business and Human Rights reported to the Human Rights Council in 2008 that the rights and protections of the transnationals (multinational) has expanded dramatically, especially through investment agreements bilateral, while the legal framework governing the performance and responsibilities of these companies did not evolve in a similar way.<sup>21</sup>

These legal interpretations take an approach that harmonizes with other prevailing legal regimes. As human rights law is paramount, human rights obligations (e.g., prohibiting forced eviction, protecting livelihoods and effecting reparations for violations) are self-executing and always applicable in trade and investment agreements.

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## Privatizing the Land in Turkey

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In May 2013, what began as a protest to reclaim public space in Istanbul's city center, rippled into massive protests across the country in response to the onward private development of public space. On 27 May around midnight, some 30–40 Right to the City protesters gathered in Taksim Square, as an effort to halt the destruction of adjacent Gezi Park, one of the few remaining public spaces and gardens in Istanbul. The redevelopment of Taksim Square, a central gathering place of Turkey's largest city, was to reassign the space into a "more car-friendly, tourist-accommodating, and sanitized urban center."<sup>2</sup> By 31 May, in response to the violent and harsh response from the police, the numbers of protesters swelled to an estimated 5,000–10,000 in the city center.

The Gezi protests represent a culmination of long-standing grievances against the top down policies of current government in every sphere, in particular, the way in which it has taken to reshape the citizen, in line with its own conservative ideology, and the city, to serve the market and private interests, disenfranchising vulnerable communities.

The active privatization of public assets and public functions together with urban planning projects undertaken by the government and private sector by themselves or in partnerships actually have hindered the realization of habitat rights and led to violations by government commission and omission, including through:

- Regressive laws impeding the realization of housing rights and
- Outright violations of the human right to adequate housing, including by forced evictions

Both of these have led to a process of accumulation by dispossession and displacement triggering socio-spatial segregation.

The neoliberal turn of the Turkish state in all spheres including the urban can be traced back to the serious 2000-2001 economic crisis when the Turkish economy shrank by 10% and the currency lost its value 51% vis-a-vis major currencies. The immediate impact of the crisis showed itself in the economic sphere where policies to be incorporated into the global neoliberal system were enacted with much more resolution than before by the newly governing Justice and Development Party (AKP) which came to power in 2002. The protectionist and welfarist policies of the state were dismantled in favor of a market economy in which all domains of social and economic life were to be commodified.<sup>3</sup>

In line with this neoliberal restructuring, the aspirations to turn 8,000-year-old Istanbul into a "world-class city" by opening its lands for global investors, developers and property markets exerted dramatic pressures on land, leading to the commodification of each and every valuable piece and parcel in the city. This development showed itself most severely in *gecekondu*<sup>4</sup> (informal) neighborhoods and dilapidated historical areas inhabited by low-income populations and the urban poor.<sup>5</sup> The programs of privatization and structural adjustment to relinquish the financial responsibility and public benefits of state economic enterprises have harmed the urban poor, while especially targeting minorities and marginalized segments such as Kurds, trans-sexuals and Roma people for removal in favor of private real-estate investment schemes in greater Istanbul and other cities. Criminalization and stigmatization of these communities by the authorities have been useful tools for constructing legitimacy for

demolition of their neighborhoods or for “cleansing” them, as has been the official jargon. By means of legislation, enacted one law after the other, AKP continued the process, intervening in almost all of the urban space with the sole exception of foreign embassies, sometimes using “blight area,” sometimes “risk of earthquake,” whatever semantic tool is convenient for the particular case. Legislation has been enacted to serve the market, while the rule of law has been reduced to a series of rules upholding private interests.

In contrast to the above picture, Articles 56 and 57 of the Turkish Constitution recognize that Turkish citizens have the right to adequate housing, that the state bears a responsibility to help meet those needs and rights, and to promote mass housing projects.<sup>6</sup> Moreover, Article 90 of the Constitution clearly states that “In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”<sup>7</sup>

### **Legal Tools and the Restructuring of the Mass Housing Administration (TOKİ)**

#### **Failure of Housing Cooperatives**

Turkey has 61,551 housing cooperatives with 2,284,308 individual members formed in 383 unions; the two central unions are Türkkent and Türkkonut. Half of the housing cooperatives are not active, and many of them were dissolved at the end of their area’s construction, as they were formed exclusively for that specific reason.<sup>8</sup>

Since 1970, with the adoption of the Cooperatives Law, housing cooperatives have expanded and developed as the only producers of large-scale housing projects in Turkey. In 1984 with the adoption of the Mass Housing Law, the housing cooperatives have developed and achieved significant increase after the government allocated 5% of the public budget for housing development. The total number of units constructed by cooperatives since 1980 reached to 2,270,843, increasing from 15% to 36% of the total housing industry in 1986.<sup>9</sup>

Following the earthquake in 1999, which resulted in extensive damage and casualties, and the financial crisis in 2000–2001, the share of cooperative housing began to decrease with the state’s reduction of financial support. Additionally, as the government subdivided the many lands for commercial and speculative use, the cooperatives were unable to find suitably sized land for their needs. As the price of land increased, cooperatives were unable to compete with the private sector.<sup>10</sup>

Since 2002, with AKP rule, the government’s new housing policy has excluded housing cooperatives from state financial assistance and public land allocation for development, and the Housing Development Administration stopped providing credit to cooperatives in 2005.<sup>11</sup> That lack of support to housing cooperatives, the free-reign of speculation in the private sector, and the degraded governance relations of cooperatives have rendered housing cooperatives unable to operate effectively.

#### **Transformation of Mass Housing Administration (TOKİ)**

After the devastating 1999 earthquake and subsequent financial crisis, AKP pursued a massive privatization of public lands and eradicated the informal low-income housing that the Party considered as obstacle to the commodification of land and housing. Furthermore, AKP took the task of restructuring the Mass Housing Administration (Toplu Konut İdaresi Başkanlığı—TOKİ) as soon as it came into office in 2002, turning the institution into a tool for intervention into urban space for market interests. TOKİ,

implementing the urban transformation capriciously and without conducting environmental-impact assessments or consultations with the communities, undertakes illegitimate expropriation procedures that contradict the Constitution's protection of property rights. Accountable to no entity but the Prime Minister (PM), exempt from the tender law and the surveillance of Sayıştay (Supreme Court of Public Transactions and Accounts), TOKİ has become the most-powerful institution in the remaking of real-estate markets and the construction sector.

Actually, the institution was established in 1984 to regulate the housing sector, prevent the expansion of unauthorized dwellings (*gecekondu*) and to provide solutions to housing shortages in cities. Between 1984 and 2001, TOKİ has provided cheap credits for around 950,000 family housing units all around Turkey, while also constructing about 45,000 on its own. However, the massive amounts of credits allotted to cooperatives and the extensive building activity instigated have failed to provide any long-lasting solutions to the "housing problem" of the urban poor, mainly because these credits have mostly been used by middle and upper-middle classes.

AKP has restructured TOKİ by means of successive laws, eventually grant it the right to:

- Regulate the zoning and sale of almost all state-owned urban land;
- Form subsidiary construction firms and/or engage in partnerships with existing private firms;
- Construct "for-profit" housing on state land, either through its own subsidiary firms, or through public-private partnerships, in order to raise revenues for public-housing construction;
- Sell its mortgaged claims to private mortgage-brokerage firms;
- Execute "urban renewal" and "*gecekondu*-transformation" projects;
- Revise planning and zoning regulations in "transformation" zones.

Via these legal tools and especially two laws (Dilapidated Historic Assets Law 5366<sup>12</sup> and Municipality Law 5393, Article 73), TOKİ can intervene directly in any urban space it considers "dilapidated" or "obsolete" with a renewal/regeneration project. Inhabitants are evicted while their neighborhoods are "regenerated" and marketed to stronger and wealthier actors.

Between 2003 and 2009, TOKİ has built 354,633 apartment units, 331 trade centers, 414 schools, 42 hospitals, 268 mosques and numerous other structures. A considerable portion of the apartments are "for-profit" units, sold in the market to wealthy consumers. In Istanbul alone, a total of 71,126 apartment units have been constructed, more than half of which are "for-profit" units.

In 2009, TOKİ built almost 282,000 residential houses across the country, but only 20,000 (about 7%) targeted poor and low-income groups. Only 850 of all 64,000 ongoing housing projects in Istanbul are built for poor and low-income groups.<sup>13</sup> This is despite the fact that 10 million out of 55 million urban residents in Turkey live in informal settlements, while the official data indicates that around 52% of the 3.1 million houses in Istanbul are illegal, having no construction permits. Additionally, no accurate or reliable housing census exists for informal settlements.<sup>14</sup>

### **Regressive Urban Laws**

Besides restructuring TOKİ, AKP, enacted a series of urban laws and by-laws to implement its neoliberal agenda on the urban space smoothly. Three of these deserve special attention. In 2005 the government enacted 2 urban renewal laws. The first one was actually an amendment of the Municipality Act of 1984. Through Article 73 of the Municipality Law 5393, local authorities were vested with the right to implement urban renewal/regeneration projects (in partnerships with TOKİ, if desired) in any and every



part of the country, except foreign embassies and military zones (other legislation later included military zones under the scope).

Because this legal tool could not be employed in historical sites and cultural heritage areas due to constrictions stemming from preservation laws, the government needed another instrument to be able to start renewal/regeneration projects in these areas. The “Law on the Protection of Deteriorated Historic and Cultural Heritage through Renewal and Re-use,” better known as Law 5366 was issued in 2005<sup>15</sup>. These 2 laws, created a new era of urban regeneration and new “powers” to local authorities that allow them to implement projects without the consent of the property owners,<sup>16</sup> codifying and systematizing forced eviction without consultations with the affected communities.

In 2011, the Ministry of Public Works and Housing—which had turned into a passive actor under TOKİ—was dissolved. The Ministry of Environment and Urban Affairs (MoEUA) was established, which further added to the centralization of urban polices. MoEUA was vested with all the power of TOKİ—and more—hierarchically above TOKİ.

### **The “Bulldozer Law” under Pretext of Safety from Earthquake: Law 6306**

The UN Commission on Human Rights has affirmed in 1993 “that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing” and “urges governments to undertake immediate measures, at all levels, aimed at eliminating the practice of forced eviction.”<sup>17</sup> Subsequently, the UN Committee on Economic, Social and Cultural Rights (CESCR) also specified the safeguards and remedies required in cases of eviction.<sup>18</sup> However, twenty years later, Articles 5(1) and 5(2) of Turkey’s Law No. 6306 on the Transformation of Areas under Disaster Risk (2012) provides that alternative housing or workplaces “may” be allocated, or rent allowances “may” be paid to the owners, tenants or inhabitants who are evicted or removed under such (coercive) agreements. “May” is an ambiguous word and imposes no obligation to the evictor. The criteria and conditions determining which cases are entitled to compensation or relocation support and the exact terms of such support are not specified in the law. This happens despite international norms guaranteeing the “right to a remedy and reparation “for victims of gross violations of human rights”<sup>19</sup>

Thus, if residents do not reach an “agreement” with developers on the terms of the project (most of the low income residents with title deeds and also those from informal neighborhoods without title deeds cannot become partners to luxurious projects) their shares are expropriated. The Law enables the use of emergency expropriation mechanisms which can only be employed in times of war, civil strife, disaster etc.

According to Article 8(3) of Law No. 6306, any contestation against implementing the law or resistance against demolitions will be treated under the Penal Code, consequently criminalizing all those who resist demolition of their homes and defend their affected human rights. Additionally, when the government declares an area as a disaster-transformation area, it forces inhabitants to demolish their homes by their own means or pay the demolition costs, and vacate their homes within 60 days.

Law No. 6306 can be viewed as the culmination point of the ongoing process of dispossession and displacement. The law is a hegemonic one, concentrating power in the hands of TOKİ and the Ministry. The government, based on its past profitable implementations must have seen that this is a good business for the economy so it has started exploiting “disaster” phenomenon as an excuse to intervene

each and every urban space by means of this legal tool, which eliminates any possible obstructions and even negates the rights secured by national and international human rights mechanisms.

Mass forced evictions, gross violations of the right to property and the right to adequate housing,<sup>20</sup> spike the number of persons rendered homeless, dispossessed and living in extreme poverty, as well as the vulnerable communities expected to face the same outcomes. The above mentioned laws offer no refuge for those who seek their human right to adequate housing, including the process rights of participation, information, fair trial, consent, reparations, and freedom of association as citizens with an equal right to be heard. This is why the ECtHR had to admit claims extraterritorially in the case of Sulukule mentioned above, as meaningful consultations, negotiations or affected communities collective bargaining are domestically foreclosed.

UN Habitat's Advisory Group on Forced Evictions (AGFE) reported from a 2009 mission to Istanbul that urban renewal projects directly affected 80,000 people, and 12,730 people already had lost their homes. AGFE found that the majority of people participating in the urban-renewal projects were being forced into agreement with the public authorities.<sup>21</sup> AGFE reported that many neighborhoods throughout Istanbul are currently under the threat of evictions, and estimated more than 120 sites were going through dramatic transformations, which means that the demolition of houses and evictions are a part of a raft of urban renewal plans in the big cities. These will push some of the hardest-pressed communities further into poverty, while the developers are driven by huge profits. AGFE also underscored that

TOKİ's and Istanbul Municipality officials converging recent declaration stating that they plan to rebuild 1 million buildings in Istanbul gives the scale of the dramatic problem that around 8 to 10 million poor and middle-class residents of Istanbul living in these 1 million buildings are facing and will be facing in the near future if nothing is done to reverse the current trend and the current practices.

With the enactment of Disaster Law and its implementations, AGFE's projection soon will be fulfilled.

## **Urban Renewal Projects**

### ***Informal Neighborhoods (Gecekondü Areas)***

In informal neighborhoods, most inhabitants do not have official titles, although they may have been residing there for at least 20 years or more and with all amenities and infrastructure provided by local authorities. Nevertheless, when regeneration projects are announced for these areas, the communities' rights are violated through eviction in various ways:

- Those recognized as beneficiaries may be relocated to culturally unsuitable Mass Housing Administration (TOKİ) high-rises, kilometers from the center and their source of livelihood and, whereas they cannot afford credit payments to banks, they face foreclosure; the critical issue is that most of them cannot pay the monthly installments, thus sell to third parties with debt and move out;
- Renter households are entitled to no resettlement rights, and face homelessness;
- Shopkeepers and small businesses also enjoy no rights, and lose their businesses and jobs.

Consequently, the relocation, hailed by the central and local governments as moving *gecekondü* inhabitants from "unhealthy, "unsafe" and "filthy" places to "modern" high-rises poses no solution, but only causes problems by creating homelessness in the long run. This form of "development" turns into a latent forced-eviction mechanism, since the relocated populations, unable to pay their installments

either face foreclosures or sell their shares with debt to third parties. Retaining few or no assets, they move out, more impoverished than before, also losing their social networks and solidarity ties, which are vital mechanisms of survival for the urban poor.

Some of these neighborhoods are inhabited by Kurdish communities mostly internally displaced persons (IDPs) who fled to big cities at the end of the 1980s, due to security reasons. So, these communities face a third displacement.

İzmir's Kadifekale community of Kurds was displaced from eastern Anatolia as a result of the conflict between the armed forces and the Kurdistan Workers Party (PKK). The government included this area in the "Konak Renewal project" that it adopted in 2005 by declaring the land upon which their homes were built as a disaster area prone to landslides, relocating the community miles away from the center to Uzundere, the social housing complex of TOKİ where the community faced violations of economic, social and cultural rights. As observed in other relocation sites, not being able to pay the credit installments to the banks, most sold with debt, moving out.

Inhabitants of Ayazma, in the Küçükçekmece District of Istanbul, confronted the same fate after relocation to TOKİ social housing site at Bezirganbahçe. The project impacted about 1,440 households with a population of about 7,500, the biggest relocation so far in Istanbul.<sup>22</sup> Kurdish communities living in historic neighbourhoods such as Süleymaniye, Tarlabası, Fener-Balat and Samatya also have faced, or are expected to face the same violations due to Law 5366.

### **Historic Neighborhoods**

Through top-down planning without consulting affected communities or consideration of the social dimensions and cultural practices, urban-regeneration projects have transformed historical neighborhoods whose residents own legal title, as in Sulukule or Tarlabası. Planners and developers impose unaffordable luxurious projects on these populations, compelling them to leave. If they do not sign a contract and become partners to the project, their properties are expropriated under law. Because inhabitants cannot pay the inflated prices of their properties and those in the development project, they cannot sign the contracts. Thus, they sell to third parties at quite low rates and leave, in order not to face expropriations. They are impoverished, further deprived and, eventually, displaced.

Using this law, Sulukule, a well-known Roma neighborhood since Byzantine times, was demolished and evicted. An expensive housing project for high-income groups now sits on the site. The price of the new properties ranges from TL 3,500 to TL 4,500 (€1,248–1,604) per square meter (m<sup>2</sup>), while the Romani population was forced to sell at TL 500 (€178) per m<sup>2</sup> at most. The court eventually annulled the Sulukule project on grounds that it lacked the acclaimed public purpose. However, the villas had been finished by then and the late decision denied the victims right of return. Former residents lost their property unjustly<sup>23</sup> and were shunted to the fringes of the city.<sup>24</sup>

In 2010, the European Court of Human Rights (ECtHR) accepted the case on an emergency basis. The gravity of the case made this exception possible, even though domestic remedies had not yet been thoroughly exhausted. However, the ECtHR rejected the petitioners' request for an interim measure under Rule 39 of the Rules of Court, as the Court normally only grants such measures in case of risk of death or torture.<sup>25</sup>

After the destruction of Sulukule, Tarlabası, in the Beyoğlu district in Istanbul, a historical low-income neighborhood inhabited mostly by vulnerable groups such as Roma, Kurdish internally displaced persons (IDPs), migrants, LGBTI and refugees followed suit. In order to implement a luxurious housing project in the area, the local government violated the right to property and to adequate housing, as the duty to respect, protect and fulfill the human rights of the vulnerable community, choosing instead to enter into a partnership with Çalık Holding-GAP Construction, which is closely related to Recep Tayyip Erdoğan, the prime minister at the time (currently the President of Turkey).<sup>26</sup>

Tokludede at Ayvansaray on the Golden Horn was another historical area demolished and depopulated to open up space for a luxurious project in 2012.<sup>27</sup> Private projects within the Historical Peninsula include centers such as Süleymaniye (completely evicted), Fener-Balat (a project annulled by the Administrative Court), Samatya Mevlanakapı, Eğrikapı and Yedikule (projects announced, zoning plans on the way). The fate and location of the displaced populations are currently unknown.

With new areas for re-development announced every day all over the country, it would not be an exaggeration to state that 70% of the population is expected to migrate to the periphery, while the center of cities are redesigned for high-income populations and wealthy, transitory tourists and business persons. Apartheid cities are Turkey's future, if housing rights violations continue in such a pattern and at such a pace.

The Roma community tops the list of Turkey's communities most-affected by the current "urban transformation" policy. The Budapest-based European Roma Rights Centre reported that Turkey displaced 10,000 Roma over the past seven years.<sup>28</sup> Sulukule has been the most widely known among these. In December 2013, an Amnesty International Urgent Action appeal warned the Turkish government against forced eviction of 30 Roma families by the municipal authorities for road construction. Municipal authorities had evicted the Roma families from their homes in Küçükbakkalköy District already in 2006, as part of an urban-regeneration project.<sup>29</sup>

### **Neighborhoods Taken under Disaster Law**

Up to now, the Council of Ministers has declared 152 areas as "prone to earthquake risk," comprising 392 thousand independent units, impacting 1 million 100 thousand persons. Besides, 172 areas are being investigated at the Ministry and these are also expected to be declared as risky areas. 40 of these (almost 25%) are in Istanbul, comprising 110,625 hectares of land but expected to be more.<sup>30</sup>

Interestingly, most of these neighborhoods, on the contrary, happen to be in risk-free zones, but in very profitable areas where urban rent is high. Earthquake zones shown in official maps do not overlap with those of neighborhoods declared as risky by the Council of Ministers or municipalities.

Sarıgöl, in Istanbul's Gaziosmanpaşa District, a Romani neighborhood settled in the 1950s, was first taken under renewal by Law 5393, but later was declared as an earthquake risk zone by the Ministry and taken under Law No. 6306 for the Regeneration of Areas under Natural Disaster Risk, which enabled swift expropriation. In 2014, Amnesty International criticized the municipalities that conducted the project for having violated the right to adequate housing through a lack of genuine consultation, transparency and effective remedies for those forcibly evicted.<sup>31</sup>

In May 2012, the UN Special Rapporteur on adequate housing raised concerns over Law No. 6306 for its lack of legal soundness, accountability mechanisms, administrative or judicial recourse for affected

communities. She found that applying the law “may lead to mass forced evictions, infringements on the rights to property and housing, and to an increased number of people made homeless, or in worse housing and living conditions than they were prior to the bill’s implementation.” The law adoption also lacked sufficient consultation with the affected communities and civil society organizations.<sup>32</sup>

The Special Rapporteur also sent a questionnaire to the Turkish government to inquire about housing-financing policies and programs. However, but the government’s response did not reflect the actual situation and the impact of the urban renewal project on housing rights for low-income and minorities, who do not figure in the housing-finance program. The housing supply does not meet the demand and the high prices of urban land plots are not conducive to a stable housing market. Inequitable distribution of fiscal resources and the deficit in strategic planning still form a huge gap between the supply and demands of land for housing, qualifying some and punishing other neighborhoods.<sup>33</sup>

### **Privatization**

Despite internal opposition from affected neighborhoods, the general public and the concerned professional community, the Turkish Privatization Administration announced on 2 May 2014 the privatization of 1,976,776 m<sup>2</sup> of Treasury Lands (state lands) in Antalya, Eskişehir, Gaziantep and İstanbul over the next two years.<sup>34</sup>

Besides, all projects of TOKİ can be viewed as privatizations, since TOKİ turns public land and buildings into the hands of private developers.

In İstanbul, historical urban gardens (*bostanlar*), green areas and parks are rapidly disappearing due to privatization, gentrification and development. Ages-old groves are targeted such as the historical Validebağ Grove, on the Asian side of the Bosphorus, and Emirgan Grove and Belgrad Forest on the European side.

Among the land to be privatized is a prime location on Bağdat Avenue, which some have referred to as Champs-Élysées of Anatolian İstanbul. The historic plot dates back to an endowment founded by Ottoman Empire Sultan Süleyman the Magnificent’s daughter Mihrimah Sultan. Currently, the land is being used as office premises of the Provincial Directorate of Food, Agriculture and Animal Husbandry General Directorate, and remains one of the few green spaces left on Bağdat Avenue<sup>35</sup>

Military zones with their spacious green plots which are allocated to TOKİ by means of the relevant law are also under threat of regeneration projects.

### **Impact of Megaprojects**

The direct consequences of megaprojects are forced evictions and displacements of communities in their path. At request of TOKİ, the Council of Ministers issued an emergency expropriation of six villages from two districts (İmrahor, Tayakadın, Yeniköy, in Arnavutköy District and Ağaçlı, Akpınar and İhsaniye, in Eyüp District) that are located in the area of the third airport project in January 2014. According to law, emergency expropriation is a legal tool only to be used in a state of emergency such as war, civil strife, natural disaster etc. Yet the government has utilized this pretext unlawfully on the grounds that project is for the public good. Villagers have filed cases against the decision.

The third Bosphorus bridge and canal projects, with their corresponding urbanization and highways, pass mainly through İstanbul’s Northern Forests, the lungs of the city, as they are called, destroying eco-

systems across a wide swath. The canal project may remain as a dream of Erdoğan, but, if implemented, millions may be affected across three districts, Küçükçekmece, Basakşehir and Arnavutköy, stretching from the Marmara Sea to the Black Sea.

Moreover, the indirect impacts of these projects are just as critical. Land prices already have soared in areas around these projects, as even the rumors of such projects have been enough to distort markets. Low-income communities in informal housing in Küçükçekmece and Basakşehir districts such as Altintepe, Şahintepe and Güvercintepe are under threat of forced evictions. For developers have started acquiring land in the area. Güvercintepe already has been taken under the pretext of disaster transformation and declared a risk zone by the government. Construction companies have started what may be called as supplementary projects, such as luxury housing, five-star hotels, shopping malls, private parks, in the area of influence of these megaprojects. All of them involve gentrification.

The Bosphorus also will be affected both directly and indirectly. Villages on the northern coast near the Black Sea in Sarıyer and Beykoz Districts, together with informal settlements overlooking Bosphorus, look more like villas in spacious gardens. These, too, may confront evictions in the long run, due to regeneration projects. The Bosphorus Law No. 2960, which protects the waterway and its shoreline, is expected to be amended after general elections to free the hands of developers who have been speculating in land with the expectation to implement their projects soon. Indirectly, luxurious housing projects, five-star hotels and marinas have already entered the area, raising rents and prices, and making life harder for low-income residents.<sup>36</sup>

### **The Disempowerment of Union of Chambers of Turkish Engineers and Architects**

In an effort to silent critics of these schemes, the Turkish Parliament has enacted its vengeance against the country's Union of Chambers of Turkish Engineers and Architects (Türk Mühendis ve Mimar Odaları Birliği—TMMOB) for their opposition to government's privatization policy, top down urban policies and TMMOB's vocal support for the Gezi protestors. In a midnight session on 9–10 July 2013, the Parliament voted to rescind the union's function of certifying construction projects. The surprise measure passed with the votes of PM Erdoğan's ruling party, which holds a majority. Opposition parties referred to this legislative measure as a reprisal for the professional group's opposition to redevelopment plans for Istanbul.<sup>37</sup> TMMOB responded with a sharp denunciation, pledging to sustain all effort to put science and technique to the service of working people, "but not to the service of imperialism and exploiters." TMMOB's statement affirmed that its members never would stand with those who shout: "Long live my Sultan," and "will continue persistently to say instead: 'The emperor has no clothes'."<sup>38</sup>

### **The Right to the City**

Countries across the Middle East and North Africa, as well as other parts of the globe, also have seen popular resistance to urban renewal plans similar to those implemented by the Turkish government, such as Cairo's 2050 plan<sup>39</sup> and Beirut's *Solidere*.<sup>40</sup> Resistance to these models of highly privatized development priorities have even reverberated globally, and have drawn comparison to the Occupy Wall Street movement and coincided with the resistance across Brazil to the disproportionate spending on urban "development" for the recent World Cup and summer Olympics. By analogy, a movement of Istanbulites formally urged the International Olympic Committee to deny their city's 2020 Olympics bid.<sup>41</sup>

A new, popular and more-questioning ideology has been embodied in urban resistance movements across the globe, but has assumed particular form within the MENA region. With concepts articulated in

claim of a Right to the City, resisters increasingly understand the city as a “culturally rich and diversified collective space that pertains to all of its inhabitants,” which includes social justice and access to all human rights.<sup>42</sup> A primary component to this ideology is the social function of the city, which promulgates the notion that “the city must assume the realization of projects and investments to the benefit of the urban community as a whole, within criteria of distributive equity, economic complementarity, respect for culture, and ecological sustainability, to guarantee the well-being of all its inhabitants.” This more social orientation to progress poses that “the formulation and implementation of public policies should promote socially just and environmentally balanced uses of urban space.” Essentially, the right to the city is the marriage of the governance of space and of people in order to maximize access to human rights and social justice in urban spaces.

In Turkey, the Right to the City has become a conceptual rallying point behind Gezi Park and other recent protests, and has spread to question other government-imposed urban development projects. The Right to the City concept has allowed for a non-aligned movement to develop in Turkey. No single political party has been backing the protests and public forums have been held in some 30 parks across Istanbul, as well as in other cities including Ankara, İzmir, Adana, Mersin, and Eskişehir, in order to continue debate and discussion, and further the resistance by maintaining the “**Gezi spirit**.”<sup>43</sup>

After Gezi, initiatives and solidarities have merged, forming new umbrella organizations and fronts. Environmentalists in Istanbul have mobilized under the banner of Northern Forests Defense (NFD) which was established right after Gezi (but was built upon the former resistance against the 3<sup>rd</sup> Bridge) to fight against the megaprojects targeting the Northern Forests of Istanbul. Currently, NFD has turned into an umbrella group for environmentalists struggling against projects that threaten not only the Northern Forests, but green fields, parks and groves elsewhere as well. NFD has merged into Marmara Defense, which comprises environmentalists, grassroots neighborhood associations in the wider Marmara Sea region. Constructing a common front empowers the resistance.

### **Looking Forward**

The enterprise of the ruling AKP Party has deviated from the treaty-bound obligations of the state to uphold the human rights to adequate housing and land by distorting law and contemporary urban development. The Universal Periodic Review mechanism of the UN Human Rights Council and other international mechanisms may be useful forums for raising these contradictions; however, implementing these human rights through sustainable development and social justice remains an essentially local task.

The Turkish government is required under its human rights treaty obligations to undertake measures toward realization the human right to housing and remedying the damage already wrought. This would require also a Turkish government reconciling the legal framework on land, housing and urban renovation/rehabilitation with international human rights standards. In particular, ICESCR and corresponding General Comments, as well as Article 90 of the Turkish Constitution, which outlines the procedure for adopting and integrating international treaties, should be used as a legal tool to restore human rights norms in the development process.

Whether for “urban regeneration,” “renewal,” “transformation,” “disaster transformation,” or any otherwise-termed pretext, projects planned and implemented should respect the economic activities, social make-up and cultural practices of the affected communities, giving utmost provision for security of tenure. A wide undertaking such as urban transformation should prioritize economic and social

transformation to benefit the most needy, which is lacking in the present legislation and government practices. Policy should pursue democratic local government and participatory planning norms—beginning at project and planning inception—to assure a healthy and secure habitat, instead of proffering plans and pretexts that promote forced evictions and related human rights breaches.

The state should recognize and respect the tenure rights of semiformal and informal tenure holders (owners, renters, usufruct, pastoralists, traditional, etc.), with legal guarantees of secure tenure and against forced eviction, immediately suspending all projects that operate under eviction decrees. While working toward improving the situation for vulnerable communities, the government should also reform social housing policy, laws and programs to prioritize the poorest segments of society, regardless of tenure status or ethnic background, applying the principle of nondiscrimination. The state’s obligation to respect, protect and fulfill the right to adequate housing in accordance with Article 11 of ICESCR and related commitments of Habitat II (which UN conference Istanbul hosted in 1996) should include revising the state budget to allocate resources to ensure adequate housing for the poor and people with limited income. Similarly, the state must fulfill its commitment to transparency and set clear standards for privatization human rights-grounded land and housing policies.

#### Endnotes:

<sup>1</sup> The HIC-HLRN team in Cairo cooperated with the author in producing a version of this article as a stakeholder submission to the 2014 Universal Periodic Review of Turkey before the UN Human Rights Council.

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<sup>3</sup> Tuna Kuyucu, *Poverty, Property and Power: Making Markets in Istanbul’s Low Income Informal Settlements* Unpublished PhD thesis, University of Washington, 2009.

<sup>4</sup> *Gecekondu* (plural, *gecekonduklar*), in Turkish, literally means “night roof,” or a home constructed overnight.

<sup>5</sup> For a detailed account of these developments, see UN-Habitat Advisory Group on Forced Evictions, “Mission to Istanbul, Republic of Turkey, June 8 to 11 2009 (Nairobi: UN Habitat, 2009), at: [http://mirror.unhabitat.org/downloads/docs/10008\\_1\\_593995.pdf](http://mirror.unhabitat.org/downloads/docs/10008_1_593995.pdf).

<sup>6</sup> See Article 57: “The State shall take measures to meet the need for housing within the framework of a plan that takes into account the characteristics of cities and environmental conditions, and also support community housing projects.” *Constitution of the Republic of Turkey*, as amended on 23 July 1995; Act No. 4121, at: [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf).

<sup>7</sup> Constitution of the Republic of Turkey, at: [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf)

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Law 5366 on Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable Assets.

<sup>13</sup> Housing Development Administration of Turkey (TOKİ), *Building Turkey’s Future, Corporate Profile 2008–2009* (Ankara: Republic of Turkey Prime Ministry, 2009), at: [http://www.TOKI.gov.tr/docs/yayinlar/TOKI\\_book\\_sec\\_en.pdf](http://www.TOKI.gov.tr/docs/yayinlar/TOKI_book_sec_en.pdf).

<sup>14</sup> Janus Mank, *Tenure Security in Informal Settlements in Istanbul, Institutional Development and Legislation*, thesis in international development studies, Rosekilde University (spring 2014), at: <http://www.hlrn.org/img/documents/Tenure%20Security%20in%20Informal%20Settlements%20in%20Istanbul%20-%20final%20thesis%20-%20janus%20munk.pdf>.

<sup>15</sup> *Law on Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable Assets*, Law No: 5366, 16 June 2005, *Official Gazette*, Issue 25866 (5 July 2005), at: [http://www.migm.gov.tr/en/Laws/Law5366\\_DilapidatedHistoricAssets\\_2010-12-31\\_EN\\_rev01.pdf](http://www.migm.gov.tr/en/Laws/Law5366_DilapidatedHistoricAssets_2010-12-31_EN_rev01.pdf)



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- <sup>18</sup> CESCR, General Comment No. 7 “The right to adequate housing (art. 11.1 of the Covenant): forced evictions” sets out conditions for lawful eviction, requiring: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts; (i) Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.
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# The Right to Water: International and Regional Agreements on the Tigris and Euphrates

*Hazim Luhebe and Abbas Hasan Rahi al-Shamri*

The Republic of Iraq is composed of a multiethnic society distributed over a vast territory of 437,072 km<sup>2</sup> that encompasses the Mesopotamian Alluvial Plain, the northwestern end of the Zagros mountain range, and the eastern part of the Syrian Desert. Two major rivers, the Tigris and Euphrates, run south through the center of Iraq and flow into the Shatt al-Arab in the north of the Persian Gulf. These rivers provide Iraq with significant amounts of fertile land. In the early Islamic period, the term *sawad* referred to the alluvial plain of the Tigris and Euphrates rivers, contrasting it with the arid Arabian Desert.

In a country whose surface area is only 1.1% water, its semi-desert climate makes the access to water in Iraq as one of the greatest challenges facing the country. The prospects of a deeper water crisis grow even larger in light of climate change, the turbulent political situation, internal and regional conflict and the weakness of the Iraqi state. The lack of political parties and movements embodying legal experience and lessons of past mistakes in addressing the water crisis augur dire consequences.

Moreover, the potential for conflict with neighboring countries also looms, because of Iraq's reliance on shared water resources. The Iraqi water crisis emerged prominently in mid-1970s, when Turkey and Syria began to build their hydraulic projects on Tigris and Euphrates rivers. However, the roots of the crisis date back to three main factors before that period:

- **Upstream Countries Hegemonic Water Policies**

More than 89% of Iraqi water resources comes from outside the state's borders, particularly, Turkey by (71%), followed by Iran (6.9%) and Syria (4%). Only the remaining 8% of water arises from domestic resources.<sup>1</sup> Therefore, Iraq cannot control its annual share of water that it receives, specifically as Turkey uses the water resources as political leverage to impose its strategic and political objectives. This negatively impacts the share of water that Iraq relies on for land agriculture irrigation. This vulnerability effects the elements of agriculture development, threatens national food security also as a result of increasing the salinity of the soil and increasing desertification in wide agriculture areas.

Despite the existence of bilateral agreements between Iraq and riparian countries on the coordinated use of the Tigris and Euphrates rivers, political clout is the prevailing determinant in water issue administration. Following the fall of Ottoman empire in 1922, Turkey, Syria and Iraq were founded as independent states and, according to international law, the Tigris and Euphrates became international rivers as they flowing through three countries originating in Turkey and flowing through Syria and Iraq. The international law of transboundary river courses requires the upstream country to notify and coordinate with the downstream countries in the case of hydraulic projects.

Three main regional agreements govern the water policy of Iraq in relation to the river basin countries. The first agreement was the 1920 Franco-British Convention on Certain Points Connected with the Mandates for Syria and the Lebanon, Palestine and Mesopotamia. The Convention's article 3 provided for the regularization of water use of Tigris and Euphrates between Iraq and Syria.<sup>2</sup>

The second relevant agreement was the Treaty of Lausanne (1923), which included in its article 109:

“in default of any provisions to the contrary, when as the result of the fixing of a new frontier the hydraulic system...in a state is dependent on works executed within the territory of another state, or when use is made on the territory of a state...the source of which is on the territory of another state, an agreement shall be made between the states concerned of safeguard the interests and rights acquired by each of them. Failing an agreement, the matter shall be regulated by arbitration.”<sup>3</sup>

The third agreement, the 1946 Treaty of Friendship and Neighborly Relations, was signed by Turkey and Iraq. Article 5 of the protocol provides:

“the government of Turkey agrees to inform Iraq of any projects to protection works it may decide to construct on either river or on its tributaries in order to render such works, as far as possible, serve the interest of Iraq as well as serve the interest of Turkey.”<sup>4</sup>

Additional to these principle agreements, the riparian countries (Turkey, Syria and Iraq) signed bilateral agreements and protocols to address some issues exacerbated by hydraulic projects.

### **Turkey – Iraqi Agreements**

The 1971 protocol between Iraq and Turkey on Economic and Technical Regulations related to construction of the Keban Dam, in Turkey, on Euphrates River. It regulated Turkey’s the coordination with the Iraqi government to ensure Iraq’s water needs. Another agreement between Iraq and Turkey, in 1980, established a technical committee to study issues concerning regional waters. The reports of the technical committee were to be sent to the three governments and followed with high-level governmental meeting to determine the quantity of water required by each country from the shared rivers.<sup>5</sup>

In spite of these agreements, Turkey has ignored these agreements. In 1977, Turkey began to build dams on the Euphrates to generate electricity and increase irrigation through its Southeast Anatolia Project (Güneydoğu Anadolu Projesi, GAP), involving the construction 22 dams and 19 hydropower plants, across the Tigris- Euphrates basin. This drew immediate criticism from Iraq and Syria, because the project inevitably will reduce availability of water resources and increase pollution levels. Iraq also claimed that the reduced flow will diminish the power generated from Saddam and Samara dams, which resulted in significantly heightened tensions between the riparian countries, because Turkey ‘s GAP project will establish regional hegemony through control over the waters of Tigris and Euphrates.<sup>6</sup> Turkey already has built 12 dams and 6 hydropower plants.<sup>7</sup>

In 1990, Turkey became more aggressive in its use of water as political leverage when it cut the flow of the Euphrates for nine days, while filling the reservoir of Atatürk Dam without inform Iraq and Syria of the cut-off. In 2006, Turkish government planned to build the Ilisu Dam on the Tigris River in southeast Turkey, the biggest dam of the GAP mega-project. Turkey did not provide the information the Iraq had requested on the proposed dam prior to approval of financing by export credit agencies. The construction of Ilisu Dam would displace between 50–78,000 people, mainly Kurds, and flood the ancient town of Hasankeyf and other unexplored archaeological sites.<sup>8</sup>

The Ilisu Dam reservoir will accommodate 10.4 billion cubic meters (m<sup>3</sup>) of the Tigris River and support a 1,200 megawatt (MW) power station, which will lead to decrease the downstream flow to Iraq by up to 47% of its annual water income. This will affect about 40% of Iraq’s agriculture lands, causing unemployment and subsequent displacement of Iraqi farmers, as well as significantly increase water pollution and otherwise degrade water quality. This reduction also will impede the revival of Iraqi’s marshes in the south.<sup>9</sup>

## Syria-Iraq Agreements

The negotiation between Iraq and Syria back to 1962 on distributing the water sharing of Euphrates in Damascus when Syria began to develop its irrigation programs 1960 -1970, and Turkey began with the construction of the Keban and Karakaya dam in the upper Euphrates rivers.

In 1970, Syria began to build Tabqa Dam, also known as Euphrates Dam, was designed to meet Syria's primary irrigation and energy needs, creating the largest country water reservoir the Lake Assad which support to irrigate 640,000 hectares of land, while the Baath dam was built in 1987, to regulate the flow from the upstream Tabqa Dam. In 1999, Tishren Dam was built in upstream of Lake Assad to generate the hydropower.<sup>10</sup>

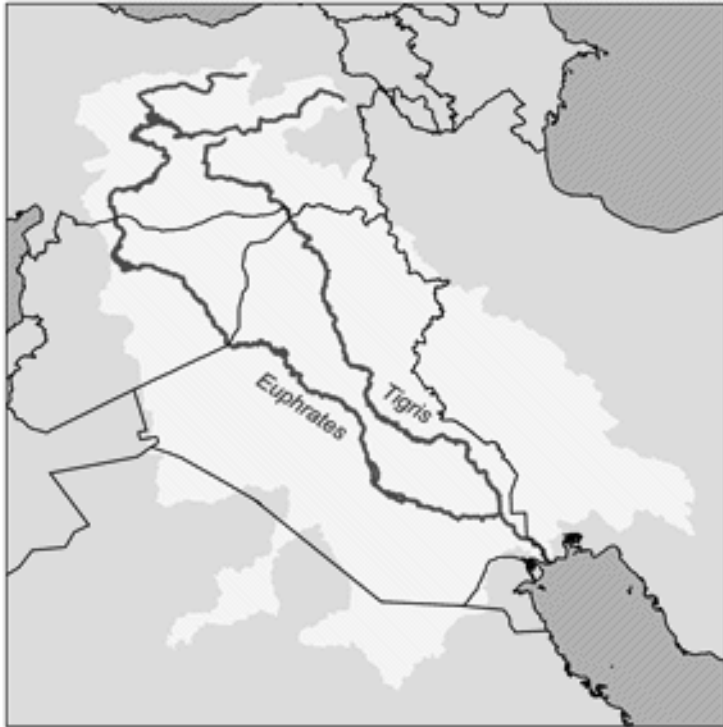
Iraq signed a bilateral agreement with Syria to exchange hydrological and technical information concerning the dams that would be built on the Euphrates in the future and recognize the "Established Rights", of the two countries, establishing permanent coordination committee to observe the Turkish projects on Euphrates river. Several meeting has followed this agreement to discuss the equality of water distribution, determine the actual irrigated lands, however, these meetings did not provide agreements as result of no studies has been conduct on water needs and the irrigated lands that they agreed to be ensured.

After multiple rounds of negotiations over the next four years, the two riparian countries has been meet again in 1967 after they conducted the necessary studies, and Syria claimed its need to 40% of Euphrates river to implement his projects, while Iraq claimed to adjustment the traditional irrigation ways for better usage of water, but the negotiation is failed.

In 1972, Iraq presented two proposals, to adopt basics to ensure the historical acquired rights for both of them and determine the water share for the real irrigated lands, but the Syrian delegation refused these proposals and insisted on their demands that they presented in 1967, in 1974 both of riparian countries agreed to recourse to Soviet arbitration committee, and Syria agreed to the Iraqi request to allow an additional flow of 200 MCM per year, but both of countries did not comply with the committee decision. Iraq asked Arab League intervene and formed a Technical Committee to mediate the conflict, but after mutually hostile statements the disputes reached its peaked in 1975, when Syria closed its airspace to Iraqi flights and both of them transferred their troops to the their mutual borders. The Arab League intervention ended the tension between them, and held an agreement to avert the violence, the terms of the agreement called for Syria to keep 42% of the flow of the Euphrates within its borders, and to allow the remaining 58% through to Iraq.<sup>11</sup>

In 1980, Turkey and Iraq signed a protocol to establish the Joint Economic Committee to determine the methods and procedures which would lead to a definition of the reasonable and appropriate amount of water that each country would need from both rivers.<sup>12</sup> After three years later Syria joined the meetings and participated in 16 meeting were intermittent at best and without adaptation for agreement on equitable distribution of the water shares.

The Iraqi meetings and protocols that signed with the riparian countries did not provide significant progress on equitable water sharing between the riparian countries as these agreements did not address the main issues and not respected by them. With the needs for development projects due to the population growth the main issues related to shared water resources become difficult to find



solutions to be acceptable, specifically with development political situation and the war in Iraq and Turkey attempts to regain its regional hegemony by using the water resources as political leverage tool.

On other hand, Iran attempt to hegemony the water resources that forms the Tigris tributaries and contribute with 40-60% of total Tigris flow in Baghdad. After 1975 agreement in Algeria between Iran and Iraq on using frontier watercourses, Iran built several dams on Karun and el-Wand Rivers, and diverted 22 of 42 tributaries that path from its territory into Iraq, which had a negative impact on the resident provinces overlooking the these rivers such Karun River.<sup>13</sup> As well as, as Iran has been pumping drainage water into several Iraqi rivers, that lead to raise the salinity levels and in turn inflicted a substantial damage on marine life.<sup>14</sup>

- **Poor governance and planning of water resources utilization by Iraq**

The water resources management needs a consistent technical, administrative, legal and media establishments to achieve its objectives in facing the consequences of water scarcity and its pollution and growth the needs of water- based development projects.

Although the practices of the riparian countries with Iraq to hegemony the water resources, the Iraq also have a political and legal responsibility in worsening the water crisis, in generally the war and conflicts over the last three decades affected the system of the water resources administration which caused to reducing the irrigation land, several corps has been eradicated and increasing the peasants left their lands. Also, the traditional and illegal irrigation ways and compel the peasants to by state to grow a particular types of corps contributed in draining the agricultural soil.

The regime of Saddam Hussein during nineties committed violations in damaging Shatt Al-Arab area that no longer able for agriculture and navigation, as a result of the high rate pollution and reducing the water flow. Also, the crime of draining of the marshes has left environmental, social, and economic negative impacts that hundreds of families has displaced and moved to live in the middle provinces of Iraq and the community in marshes lost their livelihoods, while the unemployment increased. Thus, the environmental climate is affected and lead to increase the weather forecast, the desertification covered large areas, the clean water mingled with the sewage and pollution of pesticides and industrial waste.<sup>15</sup>

Recently, the grave violation that committed by armed militant of Islamic State in Iraq and Shame (ISIS), exacerbated the water crisis following they controlled the some of the north cities in Mosul and Tikrit, the militants dominated the dams and reservoirs in these areas, blocked the gate of Fallujah dam on Euphrates river in April 2014, which lead to floods in east and west sides of the dam, displaced 40,000

persons from their homes. Also, according to the UN statements, the militants dominated two –fifth of the agrarian land that produces the wheat. In August 2014, the ISIS militant controlled El-Mosul dam and prevent the water flow in Tigris River and several villages around the dam have been flooded.<sup>16</sup>

- **Climate change and desertification**

since nineties the greenhouse effect become worsen due to the air pollution and imbalance in the gaseous envelope proportions surrounding the earth which lead to global warming causing a negative impacts on the warm temperate regions that Iraq and upstream of Tigris and Euphrates is located in its range. Since 1999 Iraq witnessed waves of drought, rainless and dust storm hit a cross Iraq expanded the desertification areas and increased the range of the annual evaporation in central and south Iraq.

Iraq is losing around 100.000 dunums annually of the arable land as result of the desertification and increasing the soil salinity, 40%-50% of 1970 arable land becomes threatened with the desertification, while 12 of 18 Iraqi provinces suffered from the drought in previous, and they don't have the any procedures or strategic action plan to deal with this issue.<sup>17</sup> Also, the agriculture production decreased to 7.6% in 2011 as a result of climate change and mismanagement of water resources, 92% of total space of Iraq threatened with the desertification.<sup>18</sup>

### **Recommendations**

So, based on the elements that reviewed above and its effects on water crisis in Iraq, the following recommendations and mechanisms should be considered on local, regional and global levels to find solutions to reduce the water crisis in Iraq:

- **the necessary to reconsider the agreements signed between Iraq and the upstream countries "Syria-Turkey", adopting a comprehensive international treaty to redistribute the water shares between the riparian countries of Tigris and Euphrates rivers and its tributaries according the principles of international law of transboundary watercourses such Helsinki Convention on the Protection and use of Transboundary Watercourses and International Lakes 1992, the United Nation Convention on the Law of Non-Navigational Uses of International Watercourses 1997;**
- **Enhance the economic relation and the mutual interests between Iraq and the upstream countries, through provide advantages for turkey in Iraqi petroleum industries;**
- **Adopting legislations and regulations for water resources protection and prompt its maintenance;**
- **provide a protection programs for small peasants to save their lands and establish a loan fund for them on long term and with free interest to combat the consequences and risks of water scarcity and drought;**
- **support the research institutes to find a modern technical tools and development the irrigation methods and plant palm trees to combat the desertification and water scarcity;**
- **development and maintain the groundwater as strategic water resources to develop the agriculture and livestock wealth, and learned other experiences from other countries such Jordan and other gulf countries that they have agriculture growth at the same climate conditions.**



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## **9. Land and Revolution**



## Lands of the Arab Spring

*Joseph Schechla*

Before and since the Arab Spring, much attention has fixed on transforming central government institutions: presidency, legislatures, police, judiciary and key ministries. However, contention at a far more-fundamental level, the “land question,” across MENA promises to be a transitional justice priority for years to come.

Diverse forms of official corruption remain a central theme of the uprisings, and land fraud has emerged as a constant feature. Common are the privatization of public land and related resources and the confiscation of private property to enrich the head of state and his entourage. Other patterns in the denial of land rights in the region have targeted already-marginalized and -disadvantaged groups, taking their source of livelihood and deepening their impoverishment.

### **Yemen: Threat to Social Peace**

Domestic land grabs across Yemen, especially in the provinces of Hudaida and Aden, were a major subject of popular disgust with the regime of former Yemeni President `Ali `Abdallah Sālih.

Already in 2008, Yemen’s parliament investigated confiscations of public and private lands by high-ranking government and military officials. The fact-finding committee’s 500-page report (2008) revealed how 15 military and political figures used their coercive power to appropriate much of the lands in five governorates: Aden, Dhala, Ta`iz, Abyan, and Lahj. That report urged that then-President Sālih decide between patronizing his 15 loyal land-grabbing accomplices, or instead seek legitimacy with Yemen’s 22 million citizens. He chose his entourage.

A second, April 2010 parliamentary committee addressed 400 encroachments on land in Hudaida Province, favoring 148 long-standing political, economic, religious and tribal leaders. There armed gangs reportedly deployed to consolidate the theft of 63% of Hudaida’s agricultural lands were taken from local producers.<sup>1</sup>

In 2012, after Sālih’s fall, parts of the 2008 report’s details were leaked. The excerpts confirmed the looting of 1,357 houses and 63 government properties in Aden alone. The problem gained such severity in the southern region as to spark a secessionist resurgence.

The south Yemen land confiscations alone reportedly amount to an area equal to all of Bahrain. The Yemeni Parliament’s 2010 report warned that unlawful land acquisition would spawn new unrest in Yemen and threaten social peace for years to come.<sup>2</sup>

### **Bahrain: Land is Scarce**

Land grabbing in Bahrain (BH2) is marked by its severity of sheer proportions. BH2 has the smallest land base of any country in the region (760km<sup>2</sup>) and is greatly dependent on food imports. Characteristic, too, is the looting carried out by a single family: the monarchic Āl Khalīfa clan. On an island nation where nearly half of its landed property remains foreclosed to Bahrainis while occupied by United States

military bases serving the U.S. Navy's Fifth Fleet, land is scarce. Estimates place only 10% of BHR2's land for the rest of Bahrainis to live on.

Bahrain's land includes more than 70km of coastline reclaimed over the past thirty years. That increased the landmass by over 10%.<sup>3</sup> Reclaimed land, by law, is public and not to be privatized. However, by 2008, some 94% of the newly created public resource converted to private wealth of the ruling family.<sup>4</sup> With coastal land so commercialized, Bahrain's many traditionally small family fisheries have lost their livelihood and community.<sup>5</sup>

For several years before the wholesale uprising against the Āl Khalīfa family in 2011, youth and regime opponents openly protested the lack of housing and livelihood prospects that result from the "royals" and their supporters' self-enrichment with BHR2's natural resources.<sup>6</sup> The rulers' confiscation of precious lands and all access to the sea have coincided with material discrimination in public goods and services to the favor of minority Sunnis and other loyal expatriates.

The conspicuous royal avarice earlier had compelled the lower house of parliament (Council of Deputies) to investigate. Its March 2010-published study uncovered how the scheme ran, whereby 65km<sup>2</sup>—>US\$40 billion worth—transferred to private hands since 2003 without proper payment to the public treasury.<sup>7</sup> No fewer than 16 techniques emerged, mostly involving the king transferring state property to private hands at the expense of the general citizenry.<sup>8</sup>

The official investigation found the prime minister's advisor receiving bribes of \$2 billion dollars (an amount equivalent to the state's budget for a year).<sup>9,10</sup> In the international bribery scandal over the royal-controlled Alba company (Aluminium Bahrain BSC), the king issued royal pardons for the defendants, while the cases were still before British and U.S. courts.<sup>11</sup>

The byzantine nature of corruption in the management of Bahraini state property is so complex that the 2010 parliamentary report recommended follow-up at the legislative, executive and judiciary levels. That was to include a Committee on Financial and Economic Affairs to manage state property with investigatory and subpoena powers. The lack of access to needed information and documentation has hampered parliament's pursuit of the whole truth till now. (For more on the Bahrain case, see "Royal Land Grabbing: Deepening the Crisis of Scarcity and Political Legitimacy in Bahrain," in this volume.)

### **Egypt: The Discovery of Slowness**

In the land of the pharaohs, deprivation of small-producing farmers has been a policy of state since the adoption of infamous Law 96 (1992), cancelling protected land tenure arrangements. Over three years before the masses converged on Tahrir Square to topple President Hosni Mubarak's regime, People's Assembly deputy Gamal Zahran announced in a 12 November 2007 parliament session that the state had lost some L.E. 800 billion (€98 billion) through illicit privatization benefiting senior officials and businessmen.<sup>12</sup>

Two years after Egypt's 25 January uprising, court cases assume pre-climate change glacial pace, although some high-profile land fraud convictions have resulted. In March 2011, Egypt's Central Bank issued a letter, revealing the names of 138 persons alleged of corruption and influence peddling.<sup>13</sup> The Attorney General ordered their monies frozen, and some of them still await trial.

In December 2011, the auditors of the Urban Communities Authority issued report No. 755 about

former President Husni Mubārak, Prime Minister Ahmad Nazīf and other ministers taking state property, granting lands and villas to senior officials, select companies and elites of other Arab states. All such operations had the backing of the president, his ministers and premiers `Atif `Ubaid, Ahmad Nazif (serving 1999–2004 and 2004–11, respectively).<sup>14</sup>

In late December 2012, current Prime Minister Hishīm Qandīl decreed to form a committee to investigate land fraud by the deposed regime. This new body, headed by Cairo Court of Appeals President Ahmad Idris, is joined by 15 men of administrative, military and agricultural expertise.<sup>15</sup> Emblematic among land fraud cases is the 1,950-feddan (819-hectare) transfer to businessman Ahmad Bahgat for a pittance, the subject of a separate investigation.<sup>16</sup> The depth and breadth of official corruption is sure to keep Egyptian investigators and revolutionaries busy for years to come.

### **Tunisia: Monopolistic Matrix**

In a final act, Tunisia's falling President Zineddine Ben `Ali formed three committees to manage the crisis. Among them was a National Commission to Establish the Facts about Corruption and Embezzlement. Its November 2011 report explained how the corruption regime gradually spread and tightened its grip on all state institutions, distorting economy, judiciary, political institutions and social development.

The Commission received over 10,000 files, investigated 5,000+ and referred some 300 cases to the judiciary. Certain administrative institutions (e.g., Ministry of Justice) declined to cooperate. The Central Bank refused to provide information for the crucial 2006–10 period.

With available information, including victim accounts, the Commission ascertained that most corruption took place where administrative authorities and economic institutions intersect, and fraudulent land deals were at the forefront. It uncovered the mechanisms of corruption to shed light on just how the executive profited by rezoning agricultural or fallow land for construction, or from one type of built-up land to another. They thus multiplied the economic value of the land for the land-holding members of the former president's extended family and close associates. The Real Estate Bureau is implicated in forging titles to land as suitable for construction, and illegally turned over state land for privatization at cheap prices, and sometimes for a symbolic one dinar. Such was the case with farms handed over to ministers and others close to the former president. That also arbitrarily annulled long-standing state contracts with local peasants.<sup>17</sup>

Much essential food production in Tunisia came under the direct control of the ruling clique not only by land grabbing. Distribution and importation also formed part of a monopolistic matrix involving most economic fields within the state and encompassing trade in everything from wheat to second-hand clothing.

### **Morocco: Below the Radar**

Maneuvering barely under the Arab Spring radar is Morocco's King Mohamed VI. Despite the global economic and financial downturn, this monarch actually doubled his personal wealth in the last five years. Mohammed VI ranks seventh richest of royals overall, with an estimated \$2.5 billion, six times the fortunes of either the Qatari or Kuwaiti monarchs.<sup>18</sup>

The state (land, people and institutions) subsidizes the king with a monthly salary of \$40,000, while the public pays "the king and his court" \$31 million annually<sup>19</sup> (18 times maintenance costs of Queen

Elizabeth II<sup>20</sup> and 60 times the French president's budget<sup>21</sup>). Locally, the palace's annual fund exceeds the combined budgets of four Moroccan ministries: Transportation & Public Works, Justice & Freedom, Culture, and Agriculture & Fisheries.<sup>22</sup> One calculation equates the king's official expenditures with that of 375,000 average Moroccan breadwinner.<sup>23</sup>

Controlling the production and distribution of energy and food, as well as much of the communication sector, M-VI is described as Morocco's principle banker, insurer, exporter and cultivator. That moniker follows his 1999 enthronement as the touted "king of the poor."<sup>24</sup>

His royal *Omnium norde afrique* (ONA) holding company and dozens of subsidiaries in those strategic sectors dominate land and real estate, housing, mining and banking. While many of its companies were officially privatized in favor of the monarch, ONA continues to tap the state budget through subsidies that ensure its expansion with huge profits that further enrich the royal family.

In a country where most farmers eke out a living on less than five hectares, the king's massive land holdings allow him not only to enrich himself with disproportionate advantage, but also to distort the agricultural system and sector.

The land administration in Morocco suffers from some of the same distortions as the entire region. The land information system remains opaque and conceals the facts of who actually owns much of the country's land.

Official data can be misleading. In fact, some 400–450,000 hectares (4–4,500 km<sup>2</sup>) disappeared from the land registry at independence in 1956, and even after "moroccanization" of former colonial lands in the 1970s. Assumptions point to a royal "land grab,"<sup>25</sup> but the lack of transparent data obscures the record.

### Struggles Yet To Come

The story of land in the Arab Spring countries continues to unfold under our feet. The revelations of usurping the people's land, the essence of sovereignty, echo across the region. They shed new light on the nexus between authoritarian governance and the mismanagement of the people's land.

In building a new phase of governance aligned with popular will, one can imagine the contours of social struggles yet to come. They are the products of the past. The transitional justice processes that emerge reflect the understandable umbrage of a people who choose now to stand their ground.

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1. Creating chaos in the inventory of state property;
  2. Encroachment on private lands re-registered to Khalifa family members at no charge;
  3. In the north around al-Manama, most land grants were distributed free of charge, of which just 12 grabs comprised an area of 37km<sup>2</sup>;
  4. Public land granted to the Āl Khaīfa-controlled Stone Co. before their registration as state land;
  5. Issuing replacement title deeds on the claim that the original was lost, without requesting the replacement deed, which violates the Land Registration Law;
  6. Granting constitutionally nationalized reclaimed lands for private investment;
  7. The Land Survey and Registration Authority unilaterally dissolving state ownership;
  8. Land reclaimed from the sea with state funds, such as Jufair and the Diplomatic Area, illegally excluded from state property, with some title deeds having disappeared from the Ministry of Finance with changes in the file numbering sequence to hide the missing files;
  9. The lack of an accurate inventory of state land;
1. Poor planning and management of the stock of state land, whereas many important public projects have been carried out on lands without proper ownership documents (e.g., the University of Bahrain campus);
  2. Forfeiting valuable archaeological sites by failing to register them in the name of the state;
  3. Land acquired for public purpose over some 22 years, but not registered as public, as in the case of Dilmun Paradise Water Park;
  4. The absence of strategic planning of housing projects, exacerbating the scarcity of land;
  5. Ambiguity and withholding of information relating to land-use and planning;
  6. Shortcomings in the Ministry of Finance’s maintenance of state lands, validating royal orders to amend land records;
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## Land and Transitional Justice in Yemen

*Habitat International Coalition - Housing and Land Rights Network*

The land issue in the countries of the Arab Spring remains one of the most controversial topics in the process toward national reconciliation by the previous ruling parties. This legacy is still the subject of heated debate and ongoing conflict, and much work remains to be done to address that particular issue in Yemen.

Land has been a central component to the ongoing conflict and power struggles throughout Yemen, particularly in the provinces of al-Hudayda (west), Lahij (south) and Sa'da (north). From a lack of a transparent land registry, conflicting systems of tenure, tribal claims, land grabbing and corruption, reaching national reconciliation requires redress of land disputes. The current transitional justice process underway in Yemen is at a critical juncture in development and implementation. The Transitional Justice Law<sup>1</sup> correlates positively with international human rights obligations, including provisions for compensation and restitution of property (Article 7.C). However, despite these provisions, transitional justice processes generally, including the present process in Yemen, tend to lack proper attention to economic, social and cultural rights and lack sufficient precedents for operationalizing these rights.

*Transitional justice processes, land, and economic, social and cultural rights*

Transitional justice processes are particular from country to country and within each post-conflict situation or transition from crisis. A wide body of literature exists on transitional justice, national reconciliation and related processes such as truth commissions; however, what is largely lacking is proper attention and guidance on how to integrate economic, social and cultural rights into these processes.

Research suggests that the typical approach to transitional justice is to compartmentalize abuses into their respective and confining categories, usually consisting of those defined as associated with mass war crimes, crimes against humanity and a limited set of gross human rights violations (usually killings and torture) and those associated with economic crimes and corruption.<sup>2</sup> When these separations are made, human rights violations become separated from the systematic contest of abuse and vulnerabilities.<sup>3</sup> The root causes of conflict are often engrained in structural violence, and inevitably violations of economic social and cultural rights, particularly economic violence.<sup>4</sup>

While the importance of integrating economic, social and cultural rights into transitional justice processes is acknowledged in research, it often lacks examples of best practices. While, on the other hand, examples abound of how governments and external implementers of these processes have failed to integrate the economic, social and cultural rights dimension,<sup>5</sup> to the detriment of an actual solution and lasting peace.

Disputes over land and its use are often a root cause of conflict.<sup>6</sup> Transitional justice typically engages with one aspect of land rights; i.e., property rights, specifically property restitution, or issues related to persons denied property.<sup>7</sup> These issues, while already complex, become more so when overlapping systems of tenure and customary systems enter the discussion. In many societies throughout the Global

South, customary and local systems of tenure are applied in conjunction with—or in place of—formal, modernized tenure systems. These overlapping systems typically lack coordination and, thus, leave room for corruption, removal and general insecure tenure for communities. While engaging with property rights is an important component that must be addressed in the transitional or reform process,<sup>8</sup> this sole focus ignores core issues that often plague tenure systems as a whole, which are often at the core of conflict.

#### *Yemeni lands and the conflicts of reparations*

In 2013, following the completion of the outcome recommendations of Yemen's comprehensive national dialogue, in which the issues related to grievances from southern Yemen dominated the discussion, the members of the Transitional Justice Team failed to vote on the final report. This was due to fundamental differences with the Conference Party on aspects of transitional justice relating to political dismissals, immunity, reparations, truth telling and contrition to the victims, which also impeded the full adoption of the transitional justice law.

The report included two important points regarding land grabbing, namely (1) that no statute of limitations applies to the cases of land and property dispossession, and (2) the establishment of an independent national body to recover public and private land and properties, with extraordinary powers to enable them to conduct their work in various institutions of the state.<sup>9</sup> However, the interim Yemeni president issued Decision No. 2/2013, in January 2013, creating two committees to address the issue of land and staff dismissals in the south, as well as Decision No. 6/2014, in February 2014, establishing a committee to address the land takings in al-Hudayda Governorate.<sup>10</sup>

According to the Decision, both Commissions addressing land and property issues were to finish their work within a period not exceeding one year from the effective date of the Decision. As of May 2014, the Committees received 100,000 cases in the south, the largest share of them located in the Aden Abyan Governorate, and 2,025 grievances from Hudayda.<sup>11</sup> In November 2013, the interim President of Yemen issued a decree adopting the recommendations of the Commission, in October–November 2013, addressing more than 11,000 land-grabbing cases of the southern provinces;<sup>12</sup> there will be a compensatory land exchange for 11,157 civilians and military persons from the southern provinces who lost their lands after the war in the summer of 1994. The first batch of land and property restitutions will cover 360 cases. Despite these important steps to resolve the issue of South and promote stability, these measures represent less than 4% of the total number of cases related to the looting of land. Meanwhile, the Commission actually has recorded a number of 221,000 cases of land theft in the south.

Some believe that this is only a partial step and lacks clear mechanisms for implementation and any comprehensive vision to resolve systematically looted lands. This has given rise to the fear that the Commission's recommendations will share the fate of the recommendations of the Basr-Hilal Committee, formed during the reign of Ali Saleh, which froze the cases without taking any action, after it had identified the names of influential people who looted lands south.<sup>13</sup>

Moreover, the Commission did not address some of the most-problematic aspects in the land administration, which includes the issue of land investment and the land that was to resolve their dispute by Islamist insurgents in the province of Abyan through the imposition of strict Islamic law. This caused an issue as the Commission did not specify the legal bases upon which to treat the lands of the south, whether constitutional or Islamic law references, such as land endowments, or customary law, are to prevail in land tenure conflicts.<sup>14</sup>

Al-Hudayda also faces the same factors related to the mechanism of implementing the recommendations, and the extent of its powers vis-à-vis the state institutions. This is especially true in the treatment of lands in the Port of Hudayda, as well as the lands of the Tihama region, where the general manager of the General Authority for Lands, Survey and Planning rejected to authorize the Commission to address them.<sup>15</sup>

Recently, military forces under the 10<sup>th</sup> Brigade (the former Republican Guard) broke into the governorate building with the purpose of forcing Governor `Atiyya to sign over land with drinking water wells in al-Baidha.<sup>16</sup> The water would be for residential facilities for the Brigade, against a ministerial decree allocating the area for urban or industrial use. This development has created conflict between citizens and the forces of the 10<sup>th</sup> Brigade. The judge of the Committee on Hudayda lands affirmed that some parties have misused legislation to spread the phenomenon of land grabbing in the name of residential compounds and industrial cities do not exist at all.<sup>17</sup>

### *Next steps for Yemen*

Reparations, including restitution, are transitional justice processes that are indispensable to reconciling torn communities and restoring livelihood-sustaining rights integrated through law, policy and institutional reform processes. The phenomenon of land as a component to various conflicts and national reconciliation is abundant globally, but remains understudied, underanalyzed and sporadically applied. Land issues permeate all human rights of affected communities, and this analysis will advance the dialogue and practice on reconciliation and resolving protracted crises. In current transition in Yemen, much attention focuses on central institutions and civil/political rights, rather than fully integrating economic, social and cultural rights.

There is a large gap in the actual applied knowledge and information around land policy, and thus a lack of guidelines and information toward conflict resolution on the same subject. It is critical that human rights knowledge and methods for future conflict avoidance and dispute resolution. HIC-HLRN is currently its “Loss Matrix” (eviction impact assessment [EVI] tool), which is utilized to quantify actual costs, losses and damages of force evictions, dispossession and destruction of land and housing within the UN Basic Principles and Guidelines (A/HRC/4/18) and the reparations framework (A/RES/60/147), and will provide critical inputs to this ongoing process in Yemen.<sup>18</sup>

Issues of land and property in Yemen are a core cause of conflict within in society and between various communities. Addressing issues of land and offering solutions requires seriously re-examining and implementing the principles of transitional justice. This includes by applying legal norms and accountability, as well as integrating human rights mechanisms with focus on economic, social and cultural rights into the process in order to find durable solutions to the issues of land to be carried out by the parties concerned.

### **Endnotes:**

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<sup>2</sup> Ruben Carranza, Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?,” *International Journal of Transitional Justice*, 2 (2008), 310.

<sup>3</sup> Susan Marks, “Human Rights and Root Causes,” *The Modern Law Review* 74, no. 1 (2011): 75, 77.

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- <sup>5</sup> See, for example, Evelyn Schmid, "Liberia's Truth Commission Report: Economic, Social, and Cultural Rights in Transitional Justice" *PRAXIS: The Fletcher Journal of Human Security*, XXIV, (2009): 5–28; and Tafadzwa Pasipanodya, "A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal," *International Journal of Transitional Justice*, 2 (2008): 378–97.
- <sup>6</sup> Chris Huggins, "Linking Broad Constellations of Ideas: Transitional Justice, Land Tenure Reform, and Development," in Pablo de Greiff and Roger Duthie, eds., *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council, 2009), 336.
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- <sup>8</sup> See Bernadette Atuahene, "Property and Transitional Justice," *UCLA Law Review Discourse* 58 (2010), pp. 65–93.
- <sup>9</sup> "Referring the Transitional Justice Report to the Yemeni President," *Yeni Şafak*, 19 December 2013, at: <http://arabic.yenisafak.com/arap-dunyasi-haber/21.12.2013-11070>
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- <sup>16</sup> "A Detailed Report on the Events and Causes of the Military Raid in Hudayda Governorate Building," 28 January 2014, at: <http://hournews.net/news-26661.htm>
- <sup>17</sup> Tehama Movement Delivers Vision for the Commission to Address the Territory of Hudayda and Confirms that the Commission should take into Account the Historical Judgments," *Yemanaat*, 25 May 2014, at: <http://www.yemenat.net/news46669.html>
- <sup>18</sup> This project began in 2014; updates and outputs will be posted on [www.hic-mena.org](http://www.hic-mena.org)

## **10. Land in Constitution and Policy Reform**





# Operationalizing Food Sovereignty in the Egyptian Constitution

*Basheer Saqr and Emily Mattheisen*

Food sovereignty has emerged as a political, social and economic framework that counters neoliberalism. As a policy, only a few countries have worked to integrate this concept into their national legal framework, including Bolivia, Ecuador, Venezuela, Mali, Nepal, Senegal, and as of January 2014, Egypt.<sup>1</sup> However, committing to food sovereignty or any rights-based concept and acting on it via policy changes and implementation are two different things.

The agricultural history of Egypt is long and complicated, and goes beyond the scope of this paper. However, recent history has held a series of policies and practices that disenfranchise small food producers, through restricted access to land and agriculture inputs, and political suppression. Although Egypt's new constitution offers progressive commitments to food sovereignty and other rights, it must undertake extensive policy reforms to achieve this framework.

## Food Sovereignty

With the onset of the 2008 food crisis and the global food supply dwindling and prices soaring, agribusinesses and related corporations with related interests were quick to offer "solutions" to 'feed the hungry': more genetically modified crops and more free trade.<sup>2</sup> Simultaneously, an alternate response emerged from this crisis: food sovereignty. Broadly defined, food sovereignty is "the right of nations and peoples to control their own food systems, including their own markets, production modes, food culture and environments" and "restoring control over food access back to individual nations/tribes/peoples."<sup>3</sup> Food sovereignty goes beyond mere "food security" (i.e., the reliable availability of food)<sup>4</sup> and incorporates social control of the food systems, supported by six guiding principles: In operative terms, food security (1) focuses on food for people,(2) values food providers, (3) localizes food systems, (4) localizes control, (5) builds knowledge and skills, and (6) harmonizes with nature.

The concept of food sovereignty has evolved from the experiences of farming people who have been affected by the changes in international and national agricultural policies introduced throughout the late 1980s and 1990s. These changes accompanied the inclusion of agriculture in the General Agreement on Tariffs and Trade (GATT), resulting in a "widespread loss of control over food markets, environments, land and rural cultures."<sup>5</sup> At the 1996 World Food Summit, the international peasant organization La Via Campesina first introduced the concept of food sovereignty as distinct and superior to food security. That organization, along with the international community supporting food sovereignty, takes the position that food sovereignty is a logical precondition for food security to exist; i.e., without a dialogue on of internal political arrangements, food security can have no substance.<sup>6</sup>

Through the principles of food sovereignty, it is evident of how the concept of food sovereignty is integrally linked to other issues that affect rural and global society.<sup>7</sup> Raj Patel argues,

one of the most radical moments in the definition of food sovereignty is the layering of different jurisdictions over which rights can be exercised. When the call is for, variously, nations, peoples, regions, and states to craft their own agrarian policy, there is a concomitant call for spaces of sovereignty....to demand a space of food sovereignty is to demand specific arrangements to govern territory and space.<sup>8</sup>

Implementing food sovereignty also necessitates an open dialogue and participation on all levels.

### **Land and Peasants in Egypt**

Through civil society pressure on the constitutional drafting process, the concept of food sovereignty was written into the 2014 Egyptian Constitution. Article 79 states:

Each citizen has the right to healthy and sufficient food and clean water. The state shall ensure food resources to all citizens. The state shall also ensure sustainable food sovereignty and maintain agricultural biological diversity and types of local plants in order to safeguard the rights of future generations

In Egypt, principles of food sovereignty, let alone the concept itself, never were realized previously in national policies or practice. Nor was the concurrent right to land or protections for small-scale food producers. Like other postcolonial countries across the global South, land ownership or use rights are multilayered and very complicated in Egypt, and rife with corruption and disenfranchisement of peasants.

#### *Land (re)distribution*

Over 90% of the land in Egypt is desert. With little rain water, most agriculture endeavors rely on the Nile River; a small percentage of arable land is rain fed or located in oases. Presently, most agricultural land is concentrated in the Nile Basin and Delta, with about 2,268,000 ha “old lands” and 1,008,000 ha new reclaimed lands.<sup>9</sup>

Since the 1952 revolution, the Free Officers government began a series of land reforms that aimed to redistribute land “ownership,” or tenancy rights, among the land tenants, landless workers and rural poor, reversing land-ownership monopolies. Prior to the 1952 revolution, control over arable land was concentrated among a small amount of wealthy elite, with approximately 0.1% of landowners controlling one-fifth of the land, and 0.4% controlling one-third. Meanwhile, 35% of the arable lands were controlled by 95% of the smallholders and 44% of the rural inhabitants were completely landless.<sup>10</sup>

Additionally, high on the government’s agenda was to cultivate “new lands,” or reclaim lands in the desert for agriculture and rural settlements. The methods used to distribute this land are complex, and changed over the years. Of more than 1.2 million *feddans* (1 feddan equals 0.42 ha) reclaimed between 1952 and 1982, peasant farmers received more than 400,000 *feddans*, graduates from the technical schools received more than 300,000 *feddans*, and the remainder was unaccounted for.<sup>11</sup>

In 1952, Law No. 178 was implemented, which limited maximum land holdings to 200 *feddans* (84 ha) per person and, in 1961, another law was implemented that further reduced this amount to 100 *feddans* per person and 200 *feddans* per household.<sup>12</sup> The law also fixed rents, set tenancy duration at a minimum of three years, and established a minimum wage. Many lands were redistributed to families, increasing the rate of smallholders, with many owning small plots (between one and five *feddans*). However, although this law was effective and socially oriented, it did not fully realize its objectives, as many large landowners managed, often illegally, to possess estates that exceeded the legal limits.<sup>13</sup> While conditions were not perfect, living and working standards improved for those who benefited from this scheme. However, as leadership changed, the weaknesses in land protections grew.

The 1971 Constitution, under President Anwar Sadat, established many problematic principles; however, it did support moderate land ownership and protection of small-scale food producers,

something that clearly was not respected with reforms implemented soon after. Article 37 of the 1971 Egyptian Constitution states:

The law shall fix the maximum limit of land ownership with a view to protecting the farmer and the agricultural laborer from exploitation and asserting the authority of the alliance of the people's working forces in villages.

However, during this period Sadat's open-door economic policy (*infitāh*) paved the way for market-led policies, with land and agriculture at the core. Starting in 1974, laws, land "reforms" and economic policies were enacted that disenfranchised small-scale food producers, in particular peasant farmers. The most devastating legislative act was Law 96 (1992), passed under the President Husni Mubarak government. That law, passed in 1992, overturned many Nasser-era land reforms, including rent control in the agricultural sector. The new law created a significant and immediate rent increase and, after a five-year transitional period, previous rental agreements that facilitated low-rent access for landless and impoverished peasants were cancelled.<sup>14</sup> Once the contracts were cancelled, land users were able to re-enter an agreement, but with free-market prices. In 2006, the Ministry of Agriculture counted the number of tenants dispossessed under Law 96 at approximately 904,000 (30% of farmers in Egypt).<sup>15</sup> Those tenants and their families totalled approximately 5.3 million people who had lost their sole source of income. This number is estimated to be much higher, although no census of dispossessed farmers has been taken after 2006.<sup>16</sup>

The Egyptian authorities did not follow through on the promise, stipulated in Law No. 96, to grant the evicted tenants alternative plots in newly reclaimed lands. Many peasants remain landless and have had to find new sources of livelihood, with many working as farm labor on the lands they once cultivated. This law essentially allowed the previous feudal land owners to reclaim large plots of land, at the expense of the dispossession of the large rural peasant class. What is particularly worrying is that amongst all land reform processes, peasant voices are not present.

### *Peasant organizing*

With this many rural families affected by these reforms, unrest has manifested in protest and organized social movements around protections for peasant farmers. Beginning in the Sadat era, many moves were taken that reduced the voice of small-scale producers. During this period central union of cooperatives was eliminated and its properties and headquarters were confiscated; the public body of agriculture cooperation was eliminated, while the agricultural lending bank transformed into a commercial bank.

In Egypt, peasants are the only group that is legally deprived of the right to establishing independent unions, and the government continues to intervene in the establishment, formation and management of peasant associations and cooperatives. These interventions and undemocratic processes have stripped cooperatives of the vast majority of membership (approximately 75%), which primarily constitute the poor, small-scale farmers. The government does not consider peasants cultivating fewer than three hectares of land as a "farmer," and expels them from cooperatives. Thus, peasants are often unable to access extensions services and agricultural inputs provided to other, medium- and large-scale farmers. These actions and interference increase vulnerability, as peasants lack collective-bargaining structures and tools to defend their interests and livelihoods.

Similarly, the Ministry of Agriculture has violated agricultural policies, in order to grant agriculture supplies to land owners who are not engaged in agricultural activities, while depriving those small

producers who actually cultivate the land. With the state refusing to market peasant crops, the local market-value for these products decreased and, without a union, peasants are unable to export or trade the products. Concurrently, the agricultural ministers stripped the cooperatives from the small-scale farmers and transferred them to the union of the agricultural laborers, preventing them from accessing agricultural supplies and equipment, and rather provided these inputs to the large-scale farmers to support intensive agriculture and large farms.

### **Moving Forward: How to Realize Food Sovereignty in Egypt**

For Egypt to follow its constitutional commitment to food sovereignty, actions must be taken to support small-scale food producers via policies that reflect equity, sustainability and direct democracy. First and foremost, peasants must be able to organize freely and without interference or threats from the government. Recent protests and conflicts with farmers have resulted in casualties and further suppression of peasant voices in Egypt, which inherently violates the rights of small-food producers, a core principle of food sovereignty. Attempts to restrict peasants from collective organization violates international legal obligations to respect, protect and fulfill the human right to freedom of association found in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights (both of which Covenants Egypt ratified in 1982), among other International Labour Organisation Conventions.<sup>17</sup>

Land generally, and specifically agricultural land, should be first and foremost subjected to principles of the social function of property. In practice, the social function is “use or application to the benefit of the greater society, in particular, prioritizing those with the greatest need.”<sup>18</sup> This is particularly true in Egypt, where arable land is limited and continues to decrease with population growth. Arable lands must be dedicated to agriculture, and the government should adopt political, legal and technical procedures to reclaim the arable lands in North Coast, Western Desert and Sinai Peninsula. These policies should adopt two systems: the first one is related to land property or titling lands for tenure access for the poor peasants in these areas; the second is that the state should cultivate these lands and distribute them to peasants. A core demand of Egypt’s Peasant Solidarity Committee is to distribute any “new” or reclaimed lands to landless peasants.

It is critical that “owners” and “tenure holders” constitute a wide range of actors, including individuals, collectives, the state (not to be confused with governments) and corporations, some of which operate extraterritorially. Therefore, to apply the social function of landed property, the complications of dealing with these different actors must be considered in the national interest and the general welfare of the national population, not only as sources of cash.<sup>19</sup> The international Guidelines on the on the Responsible Governance of Land, Fisheries and Forests,<sup>20</sup> the development of which the Government of Egypt supported, should serve as a framework to support peasants rights and equal land access.

The role of peasants and peasant organizations should be central to decisions on land policy and allocation, as well as on the changing policies for agricultural inputs and use of natural resources, specifically chemicals/fertilizers and the use of water. Egyptian villagers and rural workers are suffering public health crises, such as hepatitis and various types of cancers, with the use of internationally banned pesticides that poison lands and crops.<sup>21</sup> What is worrying is that many of these chemicals are highly dangerous, and farmers are not given safety precautions or proper instruction in handling them. Supporting rural education and technical training should be a priority of the government and be administered through community-based unions and cooperatives. This education would increase the

political and professional awareness of the peasants and support the advancement and improvement sustainable agricultural practices.

Significant issues related to the (mis)use of water resources have arisen in recent years, as water for agriculture has been diverted for maintaining resorts, golf courses and swimming pools. Meanwhile the peasants are often without adequate resources, or are forced to use waste water to irrigate their lands, which leads to several public health problems.

As stated previously, most arable land is irrigated from the Nile River. It is imperative that the government maintain the Nile River and improve Egypt's sustainable use of its limited resources through coordination with the Nile Basin countries. It must also take measures to prevent water waste that happen through evaporation, wasteful irrigation or water-intensive crops, as well as reduce water consumption in the resorts, tourism facilities, golf courses and swimming pools.

Ensuring that water resources are managed sustainably, shared and governed by the people aligns with the constitutional commitment to food sovereignty, but also Article 32, which states “The state’s natural resources belong to the people. The state shall commit to protecting these resources, using them well, not depleting them and respecting the right of future generations to their use.” Working with nature, and ensuring that farming practices preserve land and water resources is not just an environment and social policy, but also an economic function, as it will protect resources from overuse and eventual reduction of productivity.

Similarly, the government should prevent natural resource degradation and deprivation of small-scale producers from external investors, specifically international financial institutions. One such example is the construction of the North Giza power plant in Abu Ghālib village with funding from the World Bank and European Investment Bank. Among other issues, local farmers are now suffering the diversion of the Nile flow, unanticipated loss of ground water sources, salinization of wells and soil, and the desiccation of crops and trees upon which their livelihood depends.<sup>22</sup>

Small-scale famers, including those with less than three ha per person, should be given their full rights to freedom of association, to form independent syndicates. This right is also enshrined in the constitution, which states in Article 32:

The law shall guarantee the right to establish syndicates and unions on a democratic basis. Syndicates and unions shall be legal entities that practice their activities freely and contribute to raising the level of their members' professionalism, as well as protect their rights and defending their interests. The state shall guarantee the independence of syndicates and unions...

Farmers displaced by Law 96 should be given their full rights to new/reclaimed land, rather than the current practice of favoring private investors. This is also reinforced by Article 29 of the Constitution, which states that “The state shall also commit to allocating a portion of reclaimed lands to small farmers and recent graduates, and protecting farmers and agricultural workers from abuse.” To facilitate this process and ensure access to legal aid, the government should support the establishment of new cooperatives in the new “reclaimed” lands (mentioned above) for peasants, with emphasis on those who have small land plots, and prohibit land leases for nonagricultural uses. Facilitating access for small-scale producers to cooperatives also should create access to agriculture inputs (fertilizers, seeds, fodder, machinery, vaccines, etc.) and the price of these supplies should be subsidized by the government, as they are with larger farming unions and cooperatives. These peasant cooperatives shall oversee all stages of production—planting, harvesting, marketing and export—with focus on providing for the local

Egyptian market, creating better access to the right to food and nutrition in rural communities and nationally.

Peasant organizations and movements should have a critical role in empowering their communities to take part in decision-making processes in Egypt. The idea of food sovereignty has “come alive in a historical moment where many others are recognizing that the current food system is not only part of, but actually perpetuating...social and political dynamics.”<sup>23</sup> Egypt has a long way to go, in order to meet the needs of its peasants, primarily to facilitate access to land and allow them to practice their livelihoods. In a country that is going through many political transitions, a priority must be to ensure support for the most vulnerable populations, and those that have been the most deeply affected by the previous regime’s failed economic policies.

## Endnotes:

- <sup>1</sup> For more information on the national food sovereignty policies of other countries, see: Sadie Beauregard, “Food Policy for People: Incorporating Food Sovereignty Principles into State Governance,” *Urban and Environmental Policy Department*, Occidental College, Los Angeles, (2009).
- <sup>2</sup> Christina Schiavoni, “The Global Struggle for Food Sovereignty: From Nyéléni to New York,” *Journal of Peasant Studies*, Vol. 36, No. 1, (2009), pp. 682–89.
- <sup>3</sup> *Declaration of Nyéléni*, Nyéléni Village, Sélingué, Mali, 27 February 2007, at: <http://nyeleni.org/spip.php?article290>
- <sup>4</sup> The Food and Agricultural Organization of the United Nations as existing “when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active healthy life.
- <sup>5</sup> Hannah Wittman, Annette Desmarais and Nettie Wiebe, “The Origins & Potential of Food Sovereignty,” *Food Sovereignty: Reconnecting food, nature and community* (Nairobi, Cape Town, Dakar and Oxford: Pambazuka Press, 2010) .
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- <sup>15</sup> Karam Saber, “Agrarian policy, legislation and violations of Human Rights in Egypt: Land privatization and farmers evictions in Egyptian countryside,” *Dialogues, Proposals, Stories for Global Citizenship* (2006), at: <http://base.d-p-h.info/en/fiches/dph/fiche-dph-6922.html>.
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## Land and Natural Resource Rights in the Constitutions of Transitional Countries: Examples for Arab Reformers

*Joseph Schechla*

Tunisia and Egypt already have emerged from the transition since 2011 with new national constitutions. Yemen is on its way toward a new constitution amid many contentions over territorial administration and power sharing. Morocco tweaked its constitution in 2011, affirming another royal adjustment to ensure monarchic sustainability. Other Arab citizenries look on with varying levels of anticipation of these fundamental reforms promising ultimately to usher in more-democratic change.

Meanwhile, deeply entrenched ideology, identity politics and interpretations of history still intervene to affect material priorities, accountability issues, victims' rights to remedy, questions of participatory decision making, and national reconciliation. Among these transitional-justice challenges, the rewriting of the constitution has loomed as a common priority as a strategy potentially providing the region a chance at real reform. However, these efforts pre-empt the overdue civic education needed to exercise full citizenship and develop a new vanguard to prevent future abuses of power.

To the extent that constitutional reform engages broad national consultation, it would provide the opportunity for citizens to re-envision their state in their own image, giving citizenship greater meaning and citizens a true stake in its conception. In all cases, such processes toward meaningful change remain to be seen, and much work remains to be done to address vital issues of land and natural resource governance. Despite missed national-consultation opportunities, reformers with a democratic approach to statecraft are not without useful models from recent good-practice transitions beyond their region. This paper attempts to collect the innovative good practice examples from transitional countries as a guide to those practicing the art of the possible in the Arab transitions.

Many serious constitutional proposals in transitional experiences relate to the economic, social and cultural rights (ESCRs) of citizens and others within the state and aid in reforming statecraft. They demonstrate the art of leading and managing the state as comprised of (1) the land, (2) its peoples and (3) its institutions, including government. Enshrining human rights to regulate public and private property, including housing, water and land, in recent transitional country experiences has resulted in constitutions that articulate a national-consensus that constituents see as vital to the long-term success of the state.

Enshrining ESCRs forms a cornerstone of a stable and sustainable and democracy in the state. That ensures that the state respects, protects and fulfills the indivisible bundle of rights of all people in the country with corresponding state obligations that, in practical terms, apply to all law and bind the government—the legislature, the executive, the judiciary—and all other organs of state, including local authorities and military structures. In ethical terms, ESCRs are indispensable to affirming the values of human dignity, equality and freedom, with the state as mediator of constituent interests.

Examples from the resulting new generation of constitutions in transitional states are instructive as to how to enshrine state obligations to respect, protect and fulfill ESCRs, as made explicit, for example, in

the South African Constitution's Article 7. However, constitutions do not often stipulate how this will take place in practice. That detailed task is reserved for legislators, policy makers and the judiciary.

In applying the methodology of ESCRs, the International Covenant on Economic, Social and Cultural Rights (ICESCR), which 18 states in the Middle East/North Africa region have ratified, provides the framework of state obligations corresponding to each right.<sup>1</sup> Constitutional reformers and legislators in those countries can benefit from their state's binding adherence to the Covenant, as well as the authoritative interpretations and jurisprudence of the Covenant's monitoring body, the Committee on Economic, Social and Cultural Rights, for guidance as to *how* the rights are to be enshrined. Correspondingly, those legal instruments also instruct public bodies and civil servants at all levels on how to discharge their duties to respect, protect and fulfill those human rights.

In order to maintain integrity of the state's framing documents and policies of implementation, the Covenant sets out the requirements of state parties to apply seven over-riding principles in their respect, protection and fulfilment of each of the rights enshrined in ICESCR. These are:

- Self-determination (Art. 1.1)
- Nondiscrimination (Art. 2.2)
- Gender equality (Art. 3)
- Rule of law (Art. 2.1)
- Progressive realization (Arts. 2.1, 11)
- Maximum of available resources (Art. 2.1)
- International cooperation (Arts. 2.1, 22).

Each of these over-riding principles of implementation of states' ESCR obligations is explained in complementary instruments and international norms. However, as these principles are indispensable in the implementation each ESCR, this comparative exercise will explore examples of how provisions from the current generation in transitional constitutions of Bolivia (2009), Brazil (1988), Colombia (1991), Ecuador (2008), Kenya (2010), and South Africa (1994) have localized these universal norms.<sup>2</sup>

### **Specific ESCRs: Property, Housing, Land, Water and Environment**

A review of the constitutions of these transitional situations provides lessons as to how drafters have positioned and articulated specific ESCRs within the principled implementation framework. For such a review, we will explore how transitional states have treated a bundled of conceptually inter-related rights having largely material and habitat consequences for people. Thus, this exercise focuses on the human rights dimensions of property, adequate housing, land water and environment.

#### **Property**

In recent history, with the resurgence of absolutist private property rights,<sup>3</sup> property has often been "disembedded" from its social and cultural context. The provisions of recently reformed constitutions have attempted to correct this anomaly by providing for the "social function of property," and ensuring that this function is carried out under law. However, the constitutions largely defer to legislation and policy making to give specific meaning to this function and ensure that it is implemented in practice.

A key consideration is the function of property, both public and private, as a value having a social function. Notably, constitutional provisions recognizing that property must fulfill its social function are found in numerous constitutions. This establishes the rights and obligations of possessors of property,

including owners, to ensure that property is managed in the context of the wider community needs. The objective is such that the social function should strike a balance between acquired private property rights and the rights of all to housing, livelihood and essential public goods such as water, environment and land as habitat. Enshrining the social function of property also would harmonize with the deepest ethical traditions of the region, including Islamic and pre-Islamic ethical systems.

Constitutions of other newly reformed states provide valuable examples as to how this could be done. The social function of property is preserved in the constitutions of Bolivian, Brazil, Columbia, Ecuador, Kenya and South African.

Notably, the social function of property is enshrined in the Egyptian Constitution (Articles 30 and 32), despite the stripping of socially relevant provisions led by former President Muhammad Husni Mubarak. For certain historical reasons, the social function of property is absent from the Tunisian Constitution, and the subject remains controversial.<sup>4</sup> The new Egyptian Constitution of January 2014 omitted this provision, despite its enshrinement in the national constitutions over the foregoing 69 years. Although explanations of this omission are not the subject of record, it is assumed that the concept did not survive at least in part because it was little understood and even less applied in Egyptian intellectual and jurisprudential experience over the previous decades. Arab constitutional law experts still can learn from the Latin American experience in this regard.

The Columbian Constitution (1991) obliges governments to “promote” many positive state obligations, as well as embodies the negative provisions to protect human rights, such as prohibiting the arbitrary confiscation of property. Article 58 states explicitly that property has an inherent social and ecological function that implies corresponding state obligations. Concerning public interest, Article 58 states that this value always precedes (trumps) private interests. It provides, in Article 58, that

“Private property and the other rights acquired in accordance with civil laws may not be ignored or infringed upon by subsequent laws. When, in the application of a law passed on account of public necessity or social interest and recognized as essential, a conflict should occur about the rights of individuals, the private interest will yield to the public or social interest. Property has a social function that implies obligations. As such, an ecological function is inherent in it.”

“The state will protect and promote associational and collective forms of property.”<sup>5</sup>

Bolivia’s constitution asserts the principle of the social function of property. It provides that “Properties must be used to serve a social function or a social economic function, in order to safeguard the right to them, depending on the nature of the property.”<sup>6</sup>

Brazil’s 1988 Constitution also asserts the social function of property in eight iterations. For instance, “Chapter I - Individual and Collective Rights and Duties” stipulates that “property shall observe its social function.” Article 156 recognizes that municipal taxes may be progressive, under the terms of a municipal law, in order to ensure achievement of the social function of the property.

Brazil’s constitutional Article 170 stresses that the economic order should treat private property with regard to its social function. The Constitution of Brazil guarantees compensation of loss or damage of property acquired for public purpose and establishes a tax to discourage the retention of unproductive real property, particularly conferring corresponding authority on local municipalities (50% of proceeds from tax on unproductive real estate), which “may be progressive...to ensure achievement of the social function of property.”<sup>7</sup>

A similar principle is adopted in separate legislation in Colombia, as Land Development Law 388 (1997), recovering “socially created” values (*plusvalía*, or “land-value capture”) to benefit the public and the poor. Such local self-determination with democratic participation would be indeed revolutionary for local governance in the MENA region.

The Brazilian Constitution bears an important chapter on Urban Policy (Chapter II). According to Article 182, urban development policy is carried out by the municipal government, according to general guidelines set forth in the law, and is aimed at “ordaining the full development of the social functions of the city and ensuring the well-being of its inhabitants.” Paragraph 2 stipulates that urban property performs its social function “when it meets the fundamental requirements for the ordainment of the city as set forth in the master plan.”

Chapter III deals with agricultural and land policy and agrarian reform. Article 184 recognizes that “it is within the power of the state to expropriate on account of social interest, for purposes of agrarian reform, the rural property that is not performing its social function.”

According to Article 186, the social function is met when the rural property complies simultaneously with, according to the criteria and standards prescribed by law, the following requirements:

1. rational and adequate use;
2. adequate use of available natural resources and preservation of the environment;
3. compliance with the provisions that regulate labor relations;
4. exploitation that favors the well-being of the owners [of it] and laborers [on it].

In Ecuador’s constitutions, Article 66 establishes rights and freedoms. Paragraph 26. The right to property in all of its forms, with social and environmental function and responsibility. The right to have access to property shall be enforced by the adoption of public policies, among other measures.

In the urban context, Article 31 provides that:

“Persons have the right to fully enjoy the city and its public spaces, on the basis of principles of sustainability, social justice, respect for different urban cultures and a balance between the urban and rural sectors. Exercising the right to the city is based on the democratic management of the city, with respect to the social and environmental function of property and the city and with the full exercise of citizenship.”

South Africa’s constitutional provisions on property rights (Article 25) subjects restrictions on property rights (not limited to land) to public interest. (More under **Land** below.)

The other non-Arab African constitutions cited here make no explicit mention of the “social function of property,” but instead recognize “the right to accessible and adequate housing,” stipulated in both the South African and Kenyan constitutions. (More under **Human Right to Adequate Housing** below.) Additionally, they prohibit arbitrary deprivation of property. These countries’ strong constitutional provision of ESCRs has enabled progressive jurisprudence to redress and deter forced eviction and uphold victims’ right to reparations.

## **Land**

Bolivia’s constitution obliges the state to recognize, protect and guarantee a range of tenure options, specifically citing “individual and communitarian or collective property of land, as long as it fulfills a

social purpose or social economic purposes, as the case may be.”<sup>8</sup> The constitution also protects small-holding family farms and collective tenure. Article 394(II) refers to such property as “indivisible,” recognizing that it constitutes a family asset that cannot be attached, and it is not subject to agrarian property taxes. The indivisibility does not affect the right of hereditary succession under conditions established by law. The Constitution also requires the state to establish legal mechanisms to prevent the fragmentation of small properties.<sup>9</sup>

The Bolivian Constitution also establishes an affirmative-action policy of the state with specific provisions for the redistribution of land acquisitions to the benefit of communities recognized for their historical disadvantage, and with a specific right of women to land. This is in addition to a commitment to promoting policies aimed at eliminating all forms of discrimination against women in the access to, ownership and inheritance of land.<sup>10</sup> Article 395(I) states:

The lands that are taken over shall be given to rural native indigenous peoples, intercultural indigenous communities, Afro-Bolivian and rural communities, which do not possess them or have insufficient lands, in accordance with state policy concerned with the ecological and geographic realities, as well as the population, social, cultural and economic necessities. The endowment shall be carried out according to the policies of sustainable rural development and the right of women to access, distribution and redistribution of land, without discrimination based on civil status or marital union.

These lands are to be subject to collective/communal tenure. Article 395 continues to circumscribe individual self-interest on such lands, prohibiting “double endowment, the purchase and sale, and exchange and donation of lands delivered by endowment” as contrary to the collective interest. Therefore, the constitution also prohibits latifundist forms of land tenure and modes of production,<sup>11</sup> as well as land holding exceed five thousand hectares and obtaining income generated by the speculative use of the land.<sup>12</sup>

The constitution provides for the expropriation of land for reasons of public necessity and utility with upon prior payment of fair indemnification. Article 402 provides that cases in which a latifundist landholding fails to fulfill its social economic function “shall result in the reversion of the land, and the land shall pass into the domain and property of the Bolivian people.”

In a more general article pertaining to the exchange in lands, the Constitution guarantees that “The State shall regulate the land market, preventing the accumulation of surface areas greater than that recognized by law, as well as its division into surfaces areas less than that established for small property.”<sup>13</sup> The constitution also guarantees Bolivian sovereignty over state lands, establishing that “Foreigners may not acquire lands of the State under any title whatsoever.”<sup>14</sup>

The Bolivian Constitution protects tenure for producers on the land, rather than unproductive private ownership. It recognizes work as the fundamental means by which agrarian property is acquired and maintained.”<sup>15</sup>

With regard to the social function of landed property, the Constitution provides a legal definition for legislators and policy makers to follow and apply:

Social function shall be understood to mean the sustainable exploitation of the land by peoples and rural native indigenous communities, as well as that carried out in small properties, and it constitutes the source of subsistence and welfare and socio-cultural development of its owners. The norms of the communities are recognized in the fulfillment of social purpose.

The social economic function must be understood as the sustainable use of the land in the development of productive activities, in accordance with its capacity for extended use, for the benefit of the society, the collective interest and its owner. The corporate property is subject to review in accordance with the statute, to verify the compliance with the social economic function.<sup>16</sup>

The new Constitution of Ecuador has been heralded by many for its progressive provisions regarding the rights of indigenous peoples, Afro-Ecuadorians, and even of Mother Earth (*Pacha Mama*).

Its Article 64 establishes the State “duty” to promote the “gradual access of agricultural workers to landed property in individual or associational form,” and to related and enabling services with the purpose of improving the incomes and quality of life of the peasants.

The Ecuadoran Constitution provides the ways and means for the state to regulate uses of land. It specifically empowers municipalities to acquire, appropriate, reserve and control land for “development” in accordance with law (Article 376), for example, through the prevention of gain through speculative land practices and changing uses of land from rural to urban, or public to private (Article 376). Similarly, Article 282 “forbids” large estate farming and land concentration.

This measure evokes findings of Tunisia’s post-revolution National Commission to Establish the Facts about Corruption and Embezzlement. The Commission has reported practices of the former government illegally turning over State land for privatization at cheap prices, sometimes for a symbolic one dinar, as has been the case with farms turned over to ministers and others close to the former president.<sup>17</sup> This practice arbitrarily annulled standing contracts between the State and local peasants who had cultivated the land for many years.<sup>18</sup>

Ecuador’s Constitution recognizes certain inalienable land rights for particular communities in Ecuador. Article 329 establishes that the indigenous peoples’ territories be governed by councils formed and regulated according to the customs of their communities, and simultaneously manage land and natural resources in accordance with a National Development Plan. In order to mitigate the potential dilemma posed by these two conditions, it also provides that the exploitation of natural resources in the indigenous territories will be done without impairing the cultural, social, and economic integrity of the indigenous communities. In case of acquisition of land, the Constitution follows closely the language of the ILO Convention 169 mandating free, prior and informed consent.

In Provisional Article 55, the Constitution has obliged Ecuador’s Congress to adopt a law that recognizes the right to collective property of the Black (Afrodescendant) communities on uncultivated rural lands adjoining the rivers of the Pacific Basin, in accordance with their traditional cultivation practices.<sup>19</sup>

The Constitution of the Unified Plurinational Social State of Bolivia devolves exclusive rights to benefit from the land to its local constituent communities. Article 388 provides that “the original indigenous rural communities located within forest areas will hold the exclusive right of exploitation and its management in accordance with the law.”

Because of its high environmental sensitivity, however, the Bolivian Amazon is recognized as a territorial area of tropical rain forests, where the Constitution provides that the extraction and harvesting of resources “shall be governed by a special law to the benefit of the region and the country.”<sup>20</sup>

With regard to land, the South African and Kenyan constitutions contain more specific articles to guide legislation. The Kenyan Constitution, like Brazil's, with its emphasis on state planning, stresses that principles of land management should be compatible with national land policy. The Kenya Constitution's Article 62.2 provides that:

“Public land shall vest in, and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission.”

The Constitution stipulates also that “Public land shall not be disposed of, or otherwise used except [by] an Act of Parliament specifying the nature and terms of that disposal or use” (Article 62.4).

The Constitution of Kenya devotes an entire chapter (5) to “Land and Environment.” Under Article 61(1), all land in Kenya “belongs to the people of Kenya collectively as a nation, as communities and as individuals.” Article 60 (1) stipulates that:

“Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—

- (a) equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecologically sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land;
- and
- (g) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.

The Kenyan Constitution also establishes the functions of the National Land Commission to include initiating investigations and recommending appropriate redress for “present or historic land injustices” (Article 67.2[e]).

In Article 63 (1) Community land shall vest in, and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held. (Article 63 (3)).

Community land shall not be disposed of, or otherwise used except [by] legislation specifying the nature and extent of the rights of members of each community individually and collectively (Article 63 (3)).

South Africa's constitutional provisions on property rights (Article 25) subject restrictions on property rights (not limited to land) to public interest, which includes the nation's commitment to land reform, and to reforms to bring about equitable access to all of South Africa's natural resources.

South Africa's constitution

Article 25: Subject property rights (not limited to land) to the public interest, including the nation's commitment to land reform, restitution, and equitable access to all natural resources.

This commitment to affirmative action is explicit in Article 25 (5), which obliges the state to “take reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis.” In particular, this applies to:

“A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure that is legally secure or to comparable redress” (25:6).

The Constitution specifies this governance principle further to mean a person or community dispossessed of property after 19 June 1913 as a result of such past racially discriminatory laws or practices as “entitled, to the extent provided by an Act of Parliament, either to restitution of that property, or to equitable redress.”<sup>21</sup>

The section goes on to ensure that “No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination” (Article 24:7). The Constitution followed South Africa’s Restitution of Land Rights Act, 1994 and called for further legislation to implement the remedy guaranteed under Article 25(6).<sup>22</sup>

### **Right to Adequate Housing**

The Constitution of Ecuador also states in Article 30 that “Persons shall have the right to a safe and healthy habitat and adequate and decent housing, regardless of their social and economic status” This right is also guaranteed in separate articles specifically for elderly and disabled persons.

In the Kenyan Constitution’s section on ESCR recognized the right to accessible and adequate housing, and to reasonable standards of sanitation (Article 43(b)).

Although South Africa is not presently a party to ICESCR, its constitution exceeds in some detail the laconic guarantee of HRAH in the Covenant. The South African Constitution’s Article 26 establishes that:

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

The Bolivian Constitution recognizes the state’s obligation to “encourage plans for human settlement to achieve rational demographic distribution and better exploitation of the land and natural resources...” It specifies part of the normative content of the human right to adequate housing in international law, expressing the right more broadly such that “Every person has the right to an adequate habitat and home that dignifies family and community life.”<sup>23</sup>

The same article establishes this right and its corresponding state obligations to “at all levels of the government [as] responsible for promoting the development of housing for social benefit, using adequate financing systems, based on principles of solidarity and equity.” It sets out the priorities of housing policies so that “These plans shall be directed preferentially to families with scarce resources, to disadvantaged groups and to rural areas. Article 402 also sets out the state and constituent government institutions’ duty of “granting to new settlements the facilities to have access to education, health, food security and production, within the framework of the Territorial Organization of the State and the conservation of the environment.”



## **Right to water**

Ecuador's Constitution, in Article 12, "The human right to water is essential and cannot be waived. Water constitutes a national strategic asset for use by the public and it is unalienable, not subject to a statute of limitations, immune from seizure and essential for life."

Article 282 forbids "the monopolization or privatization of water and sources thereof." The article also establishes that the State "shall regulate the use and management of irrigation water for food production, abiding by the principles of equity, efficiency and environmental sustainability."

Under Article 318, water is defined as "part of the country's strategic heritage for public use" and is the inalienable property of the State. The same article reiterates the ban on "any form of water privatization."

As related to Tunisia, its African regional obligations also prohibit typical privatization of such natural resources by transnational corporations,<sup>24</sup> as do Islamic ethical principles of longer standing strictly limit privatization by any party.<sup>25</sup>

These articles guide policy in water management and sanitation, obliging the state to encourage and strengthen community water management initiatives. They provide that water management, whether for human consumption or irrigation, is to guarantee food sovereignty, ecological wealth and productive activities, in that order of priority.

Article 65 establishes that:

"The production of food crops will benefit from the special protection of the state. For that purpose, priority will be given to the integrated development of agriculture, animal husbandry, fishing, forestry and agroindustrial activities, as well as to the building of physical infrastructural projects and to land improvement."

The Kenyan Constitution, in its Article 43(d), enshrines the right "to clean and safe water in adequate quantities."

## **Right to Environment**

In South Africa's Constitution, Article 24 enshrines everyone's right

- a. to an environment that is not harmful to their health or well-being; and
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
  - i. prevent pollution and ecological degradation;
  - ii. promote conservation; and
  - iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The Kenyan Constitution provides, in Article 42, that:

"Every person has the right to a clean and healthy environment, which includes the right—

(a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and (b) to have obligations relating to the environment fulfilled under Article 70.

Article 69 obliges the state to:

- (a) ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
- (b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
- (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- (d) encourage public participation in the management, protection and conservation of the environment;
- (e) protect genetic resources and biological diversity;
- (f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
- (g) eliminate processes and activities that are likely to endanger the environment; and
- (h) utilise the environment and natural resources for the benefit of the people of Kenya.

The rights of future generations form a consistent principle in the context of the new generation of constitutions' environmental provisions. Bolivia's constitution also recognizes that

"Everyone has the right to a healthy, protected, and balanced environment. The exercise of this right must be granted to individuals and collectives of present and future generations, as well as to other living things, so they may develop in a normal and permanent way."

Uniquely, Ecuador's constitution recognizes "nature" as a rights holder. Its Article 72 establishes that "Nature has the right to be restored." (See *Pacha mama* reference above.) The same article recognizes the corresponding duty holders to include the state, as well natural persons or legal entities as bearing an obligation to compensate individuals and communities that depend on affected natural systems in case of environmental damage. Article 397 sets out the state's duty to

"act immediately and with a subsidiary approach to guarantee the health and restoration of ecosystems...[impose] corresponding sanction...against the operator of the activity that produced the damage proceedings for the obligations, entailing integral reparation..."

## Conclusion

True to the indivisibility of rights and principles of democratic governance, rights to information, education, capacity building (capabilities), freedom of peaceful assembly, freedom of association and effective participation are specific cross-cutting provisions of the new generation of constitutions. For instance, the Bolivian Constitution provides for its citizens many of the principles enshrined in the United Nations norms on indigenous peoples' rights.<sup>26</sup> Namely, the constitution establishes the principle of free, prior and informed consent as a requisite for development of rural native indigenous territory. Article 403 guarantees

"prior and informed consultation, to participation in the benefits of the exploitation of the nonrenewable natural resources that are found in their territory, to the authority to apply their own norms, administered by their structures of representation, and to define their development pursuant to their own cultural criteria and principles of harmonious coexistence with nature."

The rewriting of the Arab transitional constitutions is currently overshadowed by questions of representation to include all segments of the population and reconstitution central institutions of governance. Under that shadow, the present stage foretells little about the consideration for ESCs, the demand for which lie at the heart of the people's revolution.

The principle difference between those countries and the Arab Spring processes is the depth of civic education preceding their constitutional changes, wherein such concepts as the social function of property, the human right to adequate housing and land rights already have been long debated with the assertive participation of broad social movements.

When considering the habitat and related ESC rights and the social function of property, their articulation in the constitution and its application, global experience instructs us that certain indispensable tasks for drafters and constituents remain:

- (1) To consider the multidimensional use of land, water, environment and housing, and how property should provide a set of social entitlements and corresponding obligations, instead of simply being an economic consideration. This should be done by focusing on how people use the land and other public resources in question, as well as public services, including urban planning, in everyday life and livelihoods.
- (2) This determination needs to be carried out by local communities and through intercommunity participation, not solely by engaging with formal centralized or local formal power structures such as centrally controlled governorates and municipalities. Engagement with the community must not simply rest on self-elected representatives or all-too-familiar patriarchy, nepotism and cronyism, but in effective partnership with minorities, women, youth and land-dependent communities as full decision-making partners. Women are particularly important to alternative planning, both as guardians of the home and simultaneously as persons vulnerable to spatial control (in public places and in the home).

Although the state and successive governments have a large role to play in regulation and setting the conditions to ensure the social function of property to be realized (by progressive taxation, regulation, adverse property rights, etc.), the social function ultimately must be realized by the participation of those who will use the property productively for social benefit (e.g., food production for domestic consumption), by actively seeking out disused land and making it more socially productive. This can be achieved, in practice, through techniques of social production of habitat.<sup>27</sup>

- (3) Recognize that the issue of land and housing policy inevitably cause conflicts of interest and trade-offs, and are not issues of neutral consensus. Constitutional drafters must be scrupulously honest in disclosing their position and their property holdings. The social function of property as a constitutional provision is potentially a good basis for requiring subsequent governments to formulate more-specific housing and land policies.
- (4) Recognize informal human settlements as an integral part of the society, polity and economy, while possessing their own dynamics. The complex interaction between the internal economy of "slums" and the external influence of government policy must be weighed with a bundle of human rights considerations, such as those touched on here, plus the process rights of participation, information and security of person, etc.

(5) Agricultural land also must be seen as having a social function in the context of the local community, as well as a strategic value for the nation and food sovereignty. Constitutional articles that forbid foreign investors buying land are not enough to prevent land grabbing and deprivation of indigenous small producers who are the principal feeders of the nation's population. Allowing investors of all categories to lease large plots of land for prolonged periods can have as much a hemorrhaging effect on agricultural and food sovereignty as granting large-scale freehold land tenure to external "owners" or lessees. (The legacy of colonialism and settler colonialism is never sufficiently far away from this consideration in the region's countries.)

(6) It must be considered that "owners" and "tenure holders" constitute a wide range of actors, from individuals, to collectives, to the state (not to be misconstrued as government, as governments ethically hold no freehold property rights), to corporations, some of which operate extraterritorially. Therefore, to apply the social function of landed property, the complications of dealing with these different actors must be considered in the national interest and the general welfare of the national population, not only as sources of cash.

Most indispensable of all considerations in this unique constitutional-reform process is national consultation on these vital matters in a way that creates a culture of citizenship. No single pundit or patriarchal process confined to the capital city will successfully supplant the true reciprocity and mutuality at the national level that is to be reflected in the new constitution's text. Consultation on the habitat issues involved and the values at stake among the major constituents of the nation (or nations) within the state will help the countries of the region catch up with the rest of the democratizing world, in particular, the examples mentioned above. The ensuing process promises to develop the participatory democracy concept of common citizenship as the bases for the enjoyment of rights and fulfillment of responsibilities, and of the people as the owners and beneficiaries of the state.

## ANNEX I

Ratification Status of MENA States Parties to the International Covenant on Economic, Social and Cultural Rights <sup>28</sup>				
Country	Signature	Ratification/Accession	Acceptance of individual communications procedure	Acceptance of inquiry procedure
Algeria	10/12/68	12/09/89		
Bahrain		27/09/07	-	-
Comoros	25/09/08		-	-
Djibouti		05/11/02	-	-
Egypt	04/08/67	14/01/82	-	-
Iraq	18/02/69	25/01/71	-	-
Israel	19/12/66	03/10/91	-	-
Jordan	30/06/72	28/05/75	-	-
Kuwait		21/05/96	-	-
Lebanon		03/11/72	-	-
Libya		15/05/70	-	-
Mauritania		17/11/04	-	-
Morocco	19/01/77	03/05/79	-	-
Oman			-	-
Palestine, State of		02/04/14	-	-
Qatar			-	-
Saudi Arabia			-	-
Somalia		24/01/90	-	-
Sudan		18/03/86	-	-
Syrian Arab Republic		21/04/69	-	-
Tunisia	30/04/68	18/03/69	-	-
United Arab Emirates			-	-
Western Sahara (SADR)			-	-
Yemen		09/02/87	-	-

## Endnotes:

<sup>1</sup> See Annex I for Ratification Status of MENA States Parties to the International Covenant on Economic, Social and Cultural Rights.

<sup>2</sup> The constitutional provisions of the transitional constitutions related to these over-riding principles are discussed in the expanded version of this paper found in *Landpedia*.

<sup>3</sup> In the corresponding legal debate, see Lior Jacob Strahilevitz, "Information Asymmetries and the Rights to Exclude," *MICHIGAN LAW REVIEW* Vol. 104, No. 8 (August 2006), 1835–98; Lior Strahilevitz, "Privacy versus Antidiscrimination," *University of Chicago Law Review*, Vol. 75 (2007); and, as an opposing view, Joseph W. Singer, "No right to exclude: Public accommodations and private property," *Northwestern University Law Review*, Vol. 90, No. 4 (1996), 1283–1497.

<sup>4</sup> Habib Bourguiba, *La propriété, fonction sociale* (Tunis: Secrétariat d'État aux Affaires Culturelles, 1967).

<sup>5</sup> The article goes on to provide that "Due to public necessity or social interest as defined by the legislator, expropriation will be possible pursuant to a judicial determination and prior indemnification. The latter will be determined in consultation with the

- 
- interests of the community and of the affected party. In cases determined by the legislator, such expropriation may occur by administrative means, subject to a subsequent administrative legal challenge, including with respect to price.”
- <sup>6</sup> Article 397(I).
- <sup>7</sup> Title VII - The Economic and Financial Order, Chapter I - The General Principles of the Economic Activity.
- <sup>8</sup> Which includes rural native indigenous territory, native, intercultural communities and rural communities. Articles 393(I) and 393(III).
- <sup>9</sup> Article 400.
- <sup>10</sup> Article 402(2).
- <sup>11</sup> Article 398. The article defines a *latifundio* as: “the nonproductive holding of land; the land that does not fulfill a social economic function; the exploitation of land that applies a system of servitude, quasi-slavery and slavery in labor relations; or the property that surpasses the maximum surface area established in the law.
- <sup>12</sup> Article 395(II) and 395(III).
- <sup>13</sup> Article 396(I).
- <sup>14</sup> Article 396(II).
- <sup>15</sup> Article 397(I).
- <sup>16</sup> Article 397(II) and (III).
- <sup>17</sup> National Commission to Establish the Facts about Corruption and Embezzlement, “National Fact-finding Commission Report” [Arabic] (Tunis: 22 November 2011), p. 56, at: [www.hlrn.org/img/documents/RapportCorruption\\_CICM.pdf](http://www.hlrn.org/img/documents/RapportCorruption_CICM.pdf).
- <sup>18</sup> Ibid, p. 12.
- <sup>19</sup> Update and citation.
- <sup>20</sup> Article 390.
- <sup>21</sup> This provision alone is not sufficient to effect reparations as defined in *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 21 March 2006.
- <sup>22</sup> Update and citation.
- <sup>23</sup> Article 19.
- <sup>24</sup> *African Charter on Human and Peoples Rights*, Article 21.4.1, obliges: “State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.”
- <sup>25</sup> 2472–2473. ستن اين ماجه، الأحكام، وثمنه حرام... الماء والكلا والنار المسلمون شركاء في ثلاثة : في
- <sup>26</sup> “United Nations Declaration on the Rights of Indigenous Peoples,” A/RES/61/295, 2 October 2007.
- <sup>27</sup> See examples of [social production of habitat](#) on HIC-HLRN’s Middle East/North Africa website. [Arabic]
- <sup>28</sup> States members of the League of Arab States, plus regional countries of Israel and the Sahrawi Arab Democratic Republic (Western Sahara).

## A Constitutional Approach to Urban Egypt

*Cairo Coalition*

*This document is the product of a collective effort in 2013 among Cairo-based organizations concerned with human rights and development, including participants in the successive MENA Land Forums. The organizations collaborating on this initiative include: Egyptian Center for Civil and Legislative Reform, Egyptian Center for Economic and Social Rights, Egyptian Initiative for Personal Rights, Habitat International Coalition – Housing and Land Rights Network, Shehab Center for Comprehensive Development, The Tadamun Initiative and Takween Integrated Community Development.*

During the past four decades, the Arab Republic of Egypt has evaded its state obligation to respect, protect, and fulfill the human right to adequate housing for the poor and those with limited income. Concurrently, Egypt has also suffered from the complex effects of real estate speculation, declining public housing standards, reductions in food and fuel subsidies, inflation and other pressures that bear heavily upon those households struggling to achieve adequate housing. One consequence is the predominance of informal housing areas that the government unjustly labels as *`ashwā'iyāt* (slums). Official sources estimate that Egypt has approximately 1,125 informal areas, populated by 20 million people, or around 23% of the Egyptian population.

The State of Egypt has not met its social and legal obligation to ensure the well-being and living conditions of its residents, particularly the poor, improve the quality of their lives, and meet their basic human needs. Accordingly, the State of Egypt has lost its sense of purpose in resolving essential problems of urbanization and the environment. For decades, the state has handled urban and environmental issues without vision and without comprehensive, sustainable, and equitable policies to regulate the conditions that affect the daily lives of its residents. In Egypt's current transitional phase, civil society offers the following constitutional principles to guide policy, legislation, and municipal government and to pose solutions to the failed governance of Egypt's habitat.

This document is the result of collaborative efforts among several organizations and individuals dedicated and eager to champion remedial change in the governance of Egypt's habitat, based on principles of social justice, sustainability, and equality. The first step toward this end is to add a comprehensive set of interdependent economic, social, cultural, urban, rural and environmental rights to the new Egyptian Constitution. These are basic rights that are enshrined in international minimum norms, and which the public should enjoy freely, without discrimination. We present this document to constitutional drafters in the Committee of 50 as a sectoral proposal that includes critical articles that we believe must be included in the Constitution and inform other provisions related to habitat and local governance. We likewise present this proposal to all urban and rural inhabitants of Egypt so that we can collaborate together to realize these provisions within a framework of common citizenship and human rights.

## **Content**

- The Human Right to the City and All Human Settlements
- The Right to Participate in Urban Management, Planning Processes and Equitable and Sustainable Urban Development
- The Human Right to Adequate Housing
- Social Production of Habitat
- The Right to Security of Housing Tenure and Private and Cooperative Property
- The Right to Public Space
- The Right to Access Public Services
- The Right to Access Public Information
- The Right to Cultural Heritage
- The Right to a Sustainable Environment
- The Right to Public Transportation

### **The Human Right to the City and All Human Settlements**

The state shall recognize “the Right to the City” for all residents. Similarly, everyone has the right to enjoy the city and its public spaces, based on the principles of social justice, solidarity, sustainability, respect for cultural diversity and a balance between urban and rural areas. This right is practiced on the basis of the democratic management of the built environment, respect for the social and environmental functions of all properties and urbanism, in general, according to the following considerations:

- Provision of quality public services and utilities, while ensuring their quality and equitable provision and distribution; seeking to achieve welfare for all inhabitants, particularly those most in need; and continuously improving the quality of their lives and satisfying their basic needs and corresponding human rights, all of which are an essential part of the social purpose of the state, as social justice should be the basis of the urban environment, human settlements and governance. To this end, the state should prioritize social spending in the allocation of funds in public budgeting and planning.
- The government should help realize the social function of urban areas so that all inhabitants benefit from available resources to ensure the constant improvement of their living conditions. The state must direct public projects and investment to improve the public well-being, giving priority to the neediest members of society. The State of Egypt must formulate and enforce urban policies that require that land be used in accordance with the principles of social justice, equality and respect for the environment, as already defined in the minimal standards of international human rights instruments. In order to realize the social function of property, laws must guarantee the optimal usage of under-utilized, unused, or vacant public and private property for public benefit.
- The decentralization of local governance must strengthen the practice of citizenship and corresponding human rights, encouraging the democratic management of human settlements, and increasing local government’s responsiveness to local needs, the collective well-being of inhabitants, and the social production and management of their habitat.
- The state commits to materially and politically supporting all local municipal districts to build their technical, administrative, and financial capabilities to respect, protect and fulfill all human rights of citizens and residents. The state also shall authorize elected representatives of local districts to adopt local ordinances consistent with the Constitution and national legislation and to levy local taxes and fees needed to augment the national budget allotments and provide, improve, and efficiently manage local public services and utilities.
- The people own the state’s natural resources, including land, water, mineral wealth and environmental assets and endowments, and have the equal right to benefit from the natural wealth,



dividends, and revenues derived from these national resources. The state commits itself to safeguarding these assets and their equitable use, and to respect, protect and fulfill the rights of future generations dependent upon them. The disposition of state resources and properties shall be prohibited, except through their use toward the benefit and fulfillment of codified rights of inhabitants of the State of Egypt. The law shall regulate the Egyptian government's obligation to regulate and dispose of state property, according to the principles enshrined above and in the following Constitutional proposal.

### **The Right to Participate in Urban Management, Planning Processes and Equitable and Sustainable Urban Development**

The State of Egypt commits to urban planning and development within the framework of the principles of solidarity and social justice, as well as environmental, social, and economic sustainability. It shall prioritize the needs of people with lower incomes and those from vulnerable and marginalized groups, while ensuring balanced development between rural and urban areas according to the extent of deprivation in each area. The state also commits to the following conditions in all urban development policies:

- All residents have the right to participate collectively and freely in decision making related to preparing urban and development plans, urban management (managing cities and villages), and public service provision, as well as in other related aspects of public administration that directly affect the lives of residents. Individuals and organizations have the right to access information that enables them to participate in decision making and hold governmental bodies accountable.
- The state shall inhibit real estate speculation through the adoption of urban norms that ensure just distribution of the burdens and benefits generated by the urbanization process, and the adaptation of economic, tributary, financial, and public expenditure policy instruments to the objectives of equitable and sustainable urban and rural development.
- Urban policies shall prioritize the social interest and collective rights to culture and heritage over private property rights or the interests of speculators.
- The state shall prioritize formulation and implementation of public urban policies in the collective social and cultural interest over individual property rights and speculative private interests.
- The state shall prohibit the disposition of any public property or private land that has been seized for public benefit if it obstructs, or is inconsistent with benefitting and serving the public interest in any way.
- The state shall give priority to the original inhabitants of areas undergoing physical development or rehabilitation to remain in their neighborhoods, guaranteeing their right to adequate housing with all its elements. If, in the absence of any other alternative, it is necessary to relocate these residents to guarantee their safety or well-being, the relocation should be voluntary and transparent, based on free, prior, and informed consent and with equal or improved living conditions upon resettlement.
- The state shall apply financial returns resulting from public investment or urban redevelopment for the renovation of the same areas in a way that will benefit their original residents, with all excess returns allocated to funding social programs that guarantee the human right to adequate housing and provide a dignified living conditions to the population groups living in substandard and unsafe conditions.

### **The Human Right to Adequate Housing**

The state guarantees the human right to adequate housing for all, which includes legal security of tenure; availability of, and access to essential public and environmental goods, services and basic

infrastructure, affordability, habitability, and physical accessibility, including to disadvantaged and marginalized groups and persons with special needs. Adequate housing also must be in an adequate location that allows access to adequate transportation links and places of employment, and is free of environmental hazards. Adequate housing shall be culturally appropriate and respect the inhabitants' cultural diversity. Adequate housing also involve the state's respect, protection and fulfillment of the indispensable human rights of meaningful participation, freedom of expression, association and peaceful assembly, information, privacy and security of person. All residents in Egypt shall enjoy this right regardless of their social or economic status. This commitment extends to all new and already-established residential areas.

### **Social Production of Habitat**

The state shall provide an adequate institutional environment and sufficient resources to support the social production of habitat, which encompasses nonmarket processes carried out under inhabitants' initiative, management, and control that generate and/or improve adequate living spaces, housing and other elements of physical and social development, without undue impediments posed by the state or other formal structure or authority. The state shall support the social production of habitat by ensuring access to legal, financial, technical, and administrative tools, as well as making land, technical assistance, urban planning and basic building materials at affordable prices for low-income individuals. The state shall recognize and support such nonmarket, self-help, and cooperative initiatives applying principles of solidarity and social justice, whether by individual residents, families, or organized communal efforts. The state shall combat abusive and exploitative landlord-tenant relationships as part of a framework to guarantee the right to adequate housing for marginalized and vulnerable groups.

### **The Right to Security of Housing Tenure and Private and Cooperative Property**

The state guarantees the security of housing tenure to all residents without discrimination, and recognizing the continuum of tenure arrangements, ranging from customary and collective forms of tenure to individual ownership and in association with others. The law shall regulate the mechanism for adjudicating adverse possession of state land. The state shall protect the historical rights of indigenous people to manage land and natural resources in their communities, and preserve their identity and cultural heritage. The state and its institutions are prohibited from seizing private property, except for the public interest, which has to be authorized by a final court verdict, and after fulfilling the following conditions:

- Obtaining prior, free, and informed consent of inhabitants before the seizure of property, and fully disclosing the purpose of the seizure of property and its impact on the area's development.
- Conducting an effective assessment of the environmental, social, and material impacts of the proposed use of eminent domain. The findings of this assessment should be announced and explained publicly.
- In the case of eminent domain, the state shall offer residents adequate, fair and timely reparation, including restitution of properties and conditions preceding the action; consensual return, when physically possible; just compensation for losses and damages not subject to restitution; resettlement; rehabilitation; satisfaction and guarantees of non-repetition.

The state shall prohibit and criminalize forced evictions and the demolition of houses without a final court order that applies, *ad minimum*, the norms and conditions consistent with the human right to adequate housing and internationally recognized safeguards that apply in cases of lawful eviction. The state shall not draft laws that allow forced evictions or displacement, except in the case of a disaster and

subsequent eminent damages for the protection of affected residents human rights and well-being. In case of disaster, evictions or displacement shall be enforced only by a temporary administrative decree after conducting a census that surveys residents and types of tenure with the purpose of upholding corresponding rights and entitlements. In such cases, the state shall abide by the following conditions:

- Prior true deliberation with the affected party or parties; officially notifying them in advance of the eviction date, as well as providing them with an adequate alternative, including alternative housing.
- Eviction shall be prohibited during the night, during inclement weather, during or immediately preceding school examinations, against households with pregnant women, infants, or the infirm. In the case of disaster-related evacuations, the state shall ensure sufficient conditions and remedial measures that respect, protect, and fulfill such affected persons human rights.
- Government employees or their representatives must be present and accountable during the process, which includes stages before, during, and after the eviction or evacuation.
- Legal support and mechanisms of redress should be provided for the affected parties before, during and after an eviction or evacuation.

### **The Right to Public Space**

The state shall make public space accessible to all individuals without discrimination. Persons have the right to participate in the peaceful use and enjoyment of public spaces as a sphere for discussion and deliberation, peaceful assembly, freedom of expression, cultural activity and as a means to develop social cohesiveness, and to promote and exercise diverse and harmonious social, cultural, economic, and political relations.

The right to disseminate information in public spaces about one's own cultural manifestations and political opinions shall be exercised without any constraint other than those provided for by this constitution and compatible legislation. Persons have the right to organize public meetings, processions and peaceful, non-inciting, and unarmed demonstrations upon notifying the responsible authorities and local residents according to the law.

The state commits to respecting, protecting, and fulfilling the right of individuals to use and benefit from public space, and shall accommodate individuals and groups with disabilities and special needs.

The state shall maintain public space to serve the common public interest. The public interest takes precedence over private ends.

### **The Right to Access Public Services**

The state shall provide public services, maintenance and utilities, including clean drinking water, sanitation, energy, waste management, communication, transportation and other public utilities to all residents without discrimination. The state also guarantees the efficiency, reliability, quality, and continuity of these services and utilities. It shall also guarantee the accessibility and adequacy of these services and utilities to all residents.

The state shall ensure the equitable distribution of resources, services, and public utilities among the residents of various neighborhoods without discrimination, while considering residential population densities and prioritizing the needs of the most-vulnerable groups who lack basic services, according to standards regulated by law.

The state shall ensure that the fees and prices of services and utilities be fair and affordable to all, even in the exceptional case of the privatization of these services and utilities. The state shall adopt regulations to ensure community monitoring of the quality and pricing of services provided by public and private bodies, and strengthen residents' capacity and agency to plan and monitor mechanisms of service provision.

The state shall encourage the participation of residents – whether as individuals or through cooperatives and collaborative organized efforts – in managing services and public utilities, according to a legal framework committed to internationally recognized rights and minimum standards. These services shall remain public goods under the rule of law. The management of these services, guided by democratic principles of solidarity and social justice, shall ensure quality, transparency, accountability and social responsibility.

### **The Right to Access Public Information**

The state shall guarantee citizens' right to free and unfettered access to information, reports, statistics, and documents in a transparent, complete, adequate, timely affordable and reliable manner. This right may be denied if it jeopardizes the sanctity of personal privacy or national security. The law regulates the procedures for accessing, filing, and preserving public documents. In cases where access to information is denied, the law shall regulate an appeals process that facilitates the disclosure of public information.

### **The Right to Cultural Heritage**

The ancient and contemporary heritage of all Egyptian peoples and cultures; including its tangible aspects (such as archeological sites, monuments, artifacts, and historic and traditional buildings and areas), intangible aspects (such as linguistic, literary, cultural, scientific, artistic and artisanal heritage), and natural heritage (such as natural areas, landscapes and protectorates); are all guaranteed rights to all Egyptians and their future generations.

The state shall protect all elements and forms of heritage regardless of their legal status or their tenure status. The state shall adopt necessary measures to document this heritage and continuously restore it and maintain it according to established scientific standards, binding treaties, and other international commitments. The state shall redress any encroachments or offenses to national heritage, and work toward recovering any seized or damaged property designated by law and/or international acknowledgment as national heritage.

The state shall promote the norms of preserving cultural heritage within society. It shall formulate and implement plans to preserve this heritage, manage it efficiently and provide resources to these ends. This heritage shall be accessible to all people without discrimination, in order to promote the common good of society today and for future generations, and to preserve the diversity of Egyptian identity. The law shall provide measures to regulate private ownership of heritage properties and shall impose appropriate penalties for corresponding offenses. The law also shall stipulate the mechanism and methodology for compensating owners of heritage properties, or other individuals who are adversely affected by state efforts to protect these properties.

### **The Right to a Sustainable Environment**

Every person has the right to a balanced and healthy environment. The state shall preserve the environment from pollution, protect ecological systems, preserve and promote biological diversity, and responsibly manage natural resources, prohibiting any transgression or abuse of nature reserves and protected areas.

The state shall adopt comprehensive, sustainable, and participatory policies for urban development and land use. These policies should regulate urban growth and protect, preserve, increase, and extend green areas in urban spaces, including the promotion of urban agriculture.

The state shall promote and implement the norms of environmental protection and sustainability, take necessary measures to devise environmental protection and management policies, programs, projects and plans, and avail resources required for their effective implementation. The state also shall take necessary measures to rationalize the consumption of water and energy, promote renewable energy and explore other energy sources. It also will take necessary measures to manage and recycle waste so as to limit environmental degradation and ensure the rights of future generations to a safe and clean environment.

### **The Right to Public Transportation**

The state shall guarantee the right to mobility and transportation for all residents within and outside urban areas, without discrimination, through a safe, accessible, affordable and integrated system of public transportation that serves social, economic and environmental needs. The state also shall take necessary measures to promote environmentally friendly transportation and appropriate areas for the use of pedestrians and cyclists.



## Afterword

As explained in the “Welcome” to this volume, the issues raised in the HIC-HLRN’s serial Land Forums presented here form part of an ongoing process. With this diagnostic exercise, we draw a chapter to a close, and we open another.

As is common in the Habitat Agenda, generally, the critical civil-society voices often raise most urgent—if sometime painful—priorities. On the vital question of land and natural resources in the Middle East and North Africa, civil society is no exception to this rule. The indispensable questions and recommendations compiled in the documentation of the MENA Land Forum give witness to the indispensable role of civil society actors in redirecting to focus of public policy toward social justice and well-being for all. As demonstrated in these pages, however, domestic, regional and global policies have a long row to hoe before reaching such objectives.

The contradictions are many and the challenges are daunting, but the will and the growing capacity combine to form here a body of regionally minded problem solvers fit to the task and filling the deficits in both the discourse and the practical initiatives needed.

As noted in the foregoing introduction, in the various Land Forum reports and throughout these pages, the next chapter calls for more concerted action on the part of the Land Forum participants. The regional identity—with its remarkable diversity and glaring commonalities—has emerged in response to the land, water and other natural-resources crises to consolidate an unprecedented MENA regional approach to the issues. The issues and Land Forum participants have met at the very convergence of the human rights, development, social, environment and governance agendas that, as practice instructs, can no longer be viably separated.

The time has come—if it is not too late—to take the deliberate next steps to transform diagnosis into treatment. With a little help from its friends, HIC-HLRN has managed to maintain the Land Forum as a regular feature of its program and the regional calendar through five successive rounds. This experiment has yielded many products and lessons that now lend themselves to consolidation in the Land Forum-proposed Social Land Watch for the MENA region’s civil society to demonstrate and develop further the expertise, methods and critical problem solving approaches to the challenges raised in *The Land and Its People*, the most pressing threats to human well-being in our region and time. The Social Land Watch proposals seeks to consolidate these assets in a regular program of policy analysis and practical application of international norms of law and best practice to the benefit of our region and those affected by it.

As we opened this volume in a spirit of welcome, so, too, we close with an invitation to you, the reader, to join and support this vital effort to contribute to the MENA Social Land Watch and bring human rights methods to the compatible fields of development, environment and governance to give practical expression to an emerging culture of positive reform in this troubled region. That remedial process must involve the combined agency of both local and extraterritorial actors, as many of the root causes of the region’s related crises historically also have done. This task we must do for the land...for its people.





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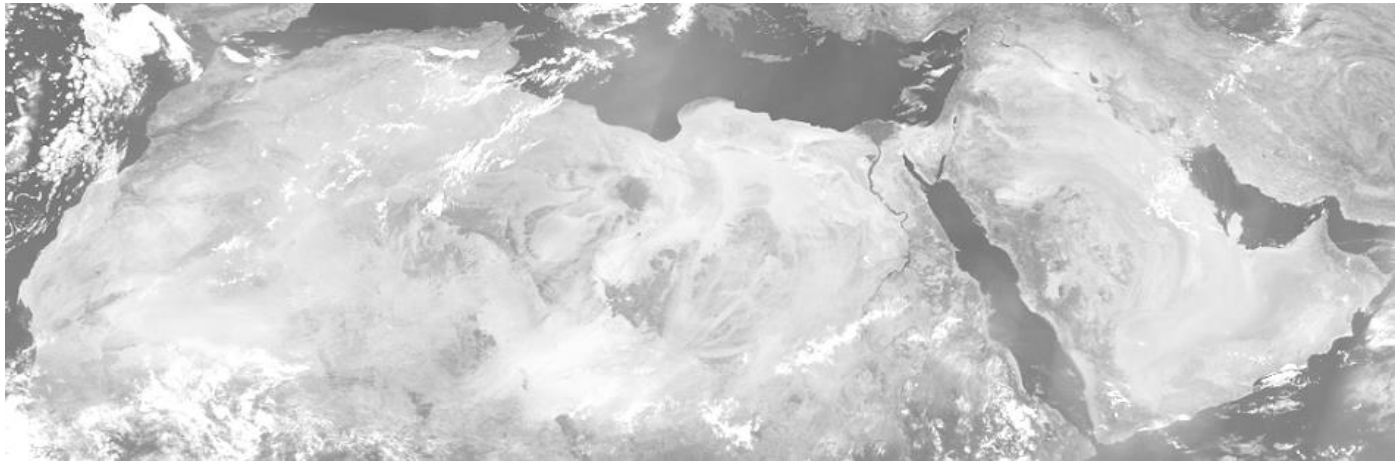
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## **HIC-HLRN Middle East/North Africa Program**

The Middle East/North Africa regional program of Habitat International Coalition's Housing and Land Rights Network addresses the need for civil society participation in public affairs by applying the criteria and methodology of human rights and corresponding state obligations as a defining framework for civil discourse. The ultimate objective of this program is to operationalize human rights by developing civil society actors' knowledge and capacity that enable direct engagement with decision makers at all levels to address complex policy issues and pose practical solutions to governance dilemmas related to habitat and related public resources.

HLRN's MENA program combines diverse strategies to upholding housing and land rights, ranging from popular and legal initiatives to posing alternatives to the privatization of public and environmental goods and services, which affect housing and land rights. Activities promote adequate housing, land and water management as public goods and services; land and water as indispensable resources related to food sovereignty; as well as all relevant technologies, ethical principles and other culturally specific values for guiding equitable management of land and natural resources.

The MENA region is exceptionally suitable as a focus for this discussion, with its conspicuous features of foreign occupation, and land and water scarcity and dispossession that affect livelihoods and development. The land, water and other resource dimensions of self-determination threaten indigenous peoples in the region, and people's sovereignty in general.

The MENA Program promotes the development of economic, social and cultural rights (ESCR) culture in the region and builds capacity by providing training, appropriate methodologies for housing rights monitoring and legal defense, access to international forums, tools and techniques for monitoring ESCR; and related opportunities for cooperation with the UN human rights system and other multilateral forums. Thus, HLRN's MENA program contributes to the region's discourse on ESC-rights and globalization, and organizes regional and inter-regional exchanges of expertise. HLRN seeks to help create the context for MENA communities and housing rights defenders to develop practical skills, to work cooperatively and develop solidarity regionally and with social movements elsewhere. HIC-MENA's on-line resources also provide self-service databases and archives with unique Arabic-language resources on the human right to adequate housing and related human rights.

**For more information on the MENA Program and HIC-HLRN membership, go to: [www.hic-mena.org](http://www.hic-mena.org).**

