

An Overview of Land Tenure in the Near East Region

Part 1

(Part 2: Individual country profiles to follow)

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Introduction

This review of land tenure in West Asia and North Africa (WANA or the Near East region) places contemporary developments in their historical context. Land tenure in the region has its origins in state, customary or religious law, or more often a combination of the three. With the ascendancy of the nation state over the past century, official legal systems has sought to entrench sovereignty over land with the abolition of customary law and the evolution of *Shari'ah* to deal with modern needs of economic development. Often this has meant a degree of secularisation in property rights law with western legal concepts gaining influence across the whole of the region. With rapidly rising human populations across the region, the area of arable land and pasture per capita has decreased in all countries during the past thirty years. These growing pressures has prompted a policy shift in most counties in the region towards finding new, adapted or novel combinations of property rights alternatives to enhance productivity, technology adoption and better resource management practices.

New land tenure reforms must contend with considerable disturbance of landholdings by previous reforms, both those failed and fully implemented. Coupled with an often-chronic cynicism towards reforms amongst supposed beneficiaries, uncertainties in tenure in the steppe and sown are significant barriers to further reform. The current trend is the privatisation of property rights. International donor agencies and governments in the region have modified their objective of promoting equitable access to land, typical through (re)distribution, to that of privatising property rights, rationalising that private ownership of agricultural land facilitates access to factor markets thus increasing agricultural production. Improved agricultural production will eventually result in the efficient allocation of landed resources among producers, including smallholders. This privatisation trend is also reflected in the numerous projects and programs to title and register land rights and to create or activate land markets. Titling and registration programs are often accompanied by legislation that regularises private land rights and more often than not extends individual private property rights for previously public, state, or customary land.

This review examines the recent evolution of land tenure in the WANA region. It does so in three parts. The first section examines broad themes in land tenure for the agricultural areas of the region. It was here where Islamic property rights within the context of the state has had its focus and evolved, and more recently where western concepts have been introduced. The second section deals with the steppe and desert regions where state or settled rule has historically been limited or non-existent. Here, custom prevailed. With the ascendancy of the modern state, customary tenure was initially accommodated before being widely abolished if in official law if not in practice. The final section addresses the changing situations of land tenure within each of the modern states. The diversity of tenure systems across the region in the pre-modern period and the way these have changed within the constructs of colonialism and the nation state, underscores the limitations of generalities and the importance of individual country studies.

As a review of land tenure in the region this study is descriptive rather than prescriptive. Given the review is a product of a desktop study there has been some serious limitations on access to up-to-date information. Indeed, information on the tenure situations for some countries is more generally sparse though efforts have been made to collate what is available. The bibliography found at the end of section three details the sources that have been accessed.

Section 1: Land Tenure in the Settled Areas

INTRODUCTION

Amongst rural populations of the region access to natural resources is not only an important means of generating livelihood security but often also to accumulate wealth and transfer it between generations. For pastoral populations, the latter role is shared or dependent on the herd but here to, access to land-based resources remains a central theme to livelihood strategies. How land rights are perceived therefore will have a significant bearing on the family's ability to meet subsistence, supply income, in cases establish status, make non-observable effort and make investments. Local people live in a complex legal universe and will often derive motivation from a variety of legal sources other than "official" law, such as religious law and customary law. "Locality" and the conceptual framework of "legal pluralism" are key notions of an emerging paradigm adopted here, on the relations between law and social behaviour.

Historically, property rights in official law in the WANA region have coupled Islamic principals and custom with the demands of the state or ruler to secure rights, and extract surpluses. State power tended to dissipate beyond the seat of governments so for a long time the formal legal system of the state, the *qanun*, co-existed with customary law, *`urf*. Whereas the *qanun* was by definition written, the *`urf* was largely unwritten. To some degree the *qanun*¹ often confirmed existing local custom; while it has also been recognised that custom is one of the sources of Islamic law, *shari`ab*², itself a pillar of the *qanun*. With the ascendancy of the nation state, official legal systems sought to entrench sovereignty over land with the abolition of customary law and the evolution of *Shari`ab* to deal with modern needs of economic development. Often this has meant a degree of secularisation in property rights law with western legal concepts gaining influence across much of the region since the 19th

¹ The Ottoman *qanun*, for example, was valid over all provinces of the Empire.

² Heyd, U. (1973: 168-9)

century. To the extent these sources of law have been manifested in modern state law is the subject of this chapter.

At the time of independence for countries of the southern Mediterranean (as well as Iraq and Sudan) and Egypt's revolution led by Nasser, the countries' new leaders inherited rural economies and a property rights system shaped by colonial administrations to serve their interests in coalition with native landlords and merchants. The agricultural sector in all these countries were clearly divided in two between a small economically important and capital-intensive modern sub-sector, and a vast sub-sector of traditional rain-fed agriculture (except Egypt). The inequalities brought about by European commercial penetration precipitated in all countries (par Sudan), redistributive land reforms either of foreign-owned land or more generally throughout the country. In the Gulf countries as well as Afghanistan, European capitalism was less felt, if at all, and here property rights law evolved without major perturbations resulting from western penetration. Nevertheless, hereto-fledgling nationalism sought to centralise control over agricultural and steppe production and adopted western concepts as needed.

Despite penetration of western concepts, the starting point for property rights law in the region, is *shari'ah* and custom and it to this that discussion first turns before elaborating more fully current status of property

ISLAMIC 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 covered much of the WANA region till 1918. Given its development in the settled areas of the Islamic world, the perspective taken by Islamic property rights law is from the village out and it has little to say on the regulation of pasture use in the steppe and desert areas.

Land such as permanently irrigated areas, orchards, and house-plots, is generally held privately (*mulk*: 'owned'). *Mulk* comprises to facets: (1) resource ownership or

'neck' (*raqabah*) and (2) usufructuary rights (*tasarruf*). Most agricultural land belonged to the category *miri*, or *amiri*, 'belonging to the Amir'. Here the *raqabah* 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 (*musha`*)³ and by the practice of fallow that involved grazing rights. *Matrukah* ('given over') land was of two types: (1) land left for generally use of the public (i.e. highways) and (2) land for the inhabitants of settlement, village or town. Examples of the latter were communal forests, herding stations and threshing floors. *Waqf* land was dedicated land in perpetuity, the usufruct rights of which were assured to religious or benevolent foundations.

Finally there was *mawat* or 'dead' land not set aside for the use of the public and include much of the steppe and desert areas. Both the Ottoman Land Code and *shari'ah* held *mawat* as 'open access' 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"⁴. Customary summer pastures held by a group or tribe *ab antiquo* near settled areas and markets were formalised under the 1858 land code and designated *miri* though few were ever registered.

Both the *hadiths* and custom are clear on the establishment of rights in *mawat* land, and Islamic jurists all agree that revival of dead land (*ihya' al-mawat*) is desirable and should be encouraged. There are two of ways to secure rights in *mawat* land recognised in the *Shari'ah* (the latter also in custom):

1. *iqta'* [endowment]: the bestowal of land by the Imam. If unutilised after three years it reverts to the Imam (leader). The Sultan of Oman and the King of Saudi Arabia as well as the Monarchs of other Gulf countries maintain, to this day, the right to bestow land.
2. *'ihya al-mawat* [reviving dead land]: The investment and development of land bestows full ownership rights (*mulk*), and is thought to reflect custom in the region

³ Associated with customary practice (see below). Despite its widespread demise at the turn of the 20th century, *musha'* practices are still familiar to some of the more remote parts of the region including Jordan (see Eric Patrick this publication)

prior to Islam. However, jurists of the Hanafis School, note the necessity to acquire authority from the state prior to investment. It will come as little surprise that the Hanafis School has been championed by Islamic governments throughout history (Maktari, 1971). Either way, a three-year limit for the development is set, after which the land reverts to *marwat*.

Prescriptive rights still have a strong customary base and despite state attempts to curb such activity they continue to tax the authorities, notably in peri-urban areas (See country profiles for Saudi Arabia and Jordan). A similar principal of investment applies to water. Where it flows freely it is open to all but from the point it becomes artificially derived, as is the case of wells and cisterns, the developer holds ownership rights to the water.

INHERITANCE

Land other than *marwat*, can be acquired through inheritance, marriage, purchase or work⁵. The most pervasive of these is inheritance. Mulk land was inherited according to the Qur'an and therefore in principle unchangeable. On miri land, perhaps because it was owned by the state, inheritance was slightly different. The latter has been adopted in the civil codes of some WANA countries including Syria, Jordan, and with slight variations in Morocco. The main difference lies in the treatment of the sexes: the *shari'ah* generally gives to women half the share of men, while in the civil law they are equal. Under either system the division of estates will produce either a great extent of joint ownership or excessive fragmentation of property unless counteractive measures are taken (see section: maintaining territorial integrity in this chapter and section on fragmentation in chapter 4).

⁴ Land Code: Art. 104

⁵ A direct way of acquiring land was through the institute of *mugharasah*: a landowner and sharecropper make a contract that the latter shall cultivate land and plant with specific species. When the plants begin to bear fruit the land is divided between the contracting parties according to inputs of each (Wahlin, 1994)

LEASING

Significant tracks of rainfed land in the hinterland of the cities of the region have for a long time been held as private (*mulk*) by city and government notables and leased out typically under sharecropping arrangements. Leasing is recognised in Islamic principals (*ijra*) as a practical arrangement, serving economic needs.

CUSTOM AND AGRICULTURAL LANDS

There are two broad themes in the way agricultural lands are held that run through custom across the region:

1. One is the maintenance of land by ethnic, sectarian or tribal groups through inheritance, marriage, or restrictions on sale.
2. The other is in reference to cultivation in commonly held areas, typically among nomadic and semi-nomadic tribes on the steppe margins.

RIGHTS IN AGRICULTURAL LAND

A characteristic feature of customary tenure systems is the absence of any distinction between community ownership of land and the right of an individual or group to occupy and use a piece of land at any given point within the framework of the community. Here, tribal members are free to cultivate an equitable share of the common rainfed land either through prescriptive rights or allocation. At sites where continuous agriculture is feasible, such as where irrigation is possible or economic trees planted, heirs can inherit the land. These rights were wide spread throughout rural areas. Communal rights in subsistent communities reflected an egalitarian ethos and were used as a mechanism to spread risk across the population. Some have The periodic redistribution of land or the practice of shifting cultivation, was a response generally to:

- (1) locally diverse soils and topography;
- (2) low and infrequent precipitation; and
- (3) a tax burden levied on a community as a whole. This reason has been used to explain the existence of *musha'* arrangements that persisted under the tax-

farming structures of the Ottomans and other rulers of the region. Others suggest that *musba'* was an outcome of settling tribes maintaining traditional practices. The continuing existence of *musba'* in parts of Jordan is put down to an equitable tribal ethos and the limited spread of titling in the country (see Jordan country profile).

Where fertile agricultural areas exist on common land such lands are frequently held under perpetual rights (given that cultivation, or more precisely investment persists). This is particular evident along watercourses, either perennial rivers or wadi flood plains, or where investment in terracing or irrigation is made. Kirk (1996) notes the practice in customary systems among the Baqqarah of western Sudan. In Iraq, prior to titling, similar perpetual rights (*lazma*) were recognised practice in areas of permanent cultivation though these were few and generally the privilege of tribal leaders (Battau, 1986). This is close to the western concept of private property.

MAINTAINING

TERRITORIAL INTEGRITY

The maintenance of land within a descent group, clan or tribe through inheritance and marriage is pervasive across the region.

It results both in

fragmentation and in an

inherent bias against the operation of a free land market. Fragmentation of farm holdings (or multiple owners of the one plot) has always been a feature in rural society. To an extent, there are local mechanisms that have been perennially employed to offset the affect of this, most especially through purchases, exchanges, and by judicious choice of marriage partners (see Box 1). In certain instances, the father prior to his death may gift the land to a son who shows an interest in land and so avoid the problems of fragmentation (Wahlin 1994). But it will often become the case that

**Box 1: The Maintenance of Territorial Integrity, 'Allun District, Jordan
(Wahlin 1994)**

In one of the most intensive studies ever carried out on the subject, Wahlin examined the history of landholdings of the 'Allun mountainous district of Jordan. His study of land ownership showed that many tribes are strongly connected with particular locations and have been since settlement of the area more than a century earlier. He identified so-called tribal plates, which are both compact territories owned by members of one tribe and that members of that tribe live on their land and cultivate it (see map below). Ownership of the plates is "jealously guarded" in much the same way as has been described by Dresch for tribes in Yemen (Dresch 1993). Between the

families will have insufficient land for their subsistence or income. Over the past century this problem has been absorbed, to an extent by the creation of vast new labour markets and livelihood opportunities. Given the trend right across the WANA region of declining agricultural land per-capita and rising off-farm incomes, a household strategy of income diversification if not necessarily new, is a strong one. Such a strategy makes the household economy less vulnerable to economic and climatic swings and facilitates social and economic development.

Studies from across the region attest to the long-term geographical stability of tribal, sectarian and ethnic groups, in the settled (and steppe) areas⁶ of the region. Rural land is frequently organised in compact areas that are owned and used by members of the same grouping. According to widespread customary ethos amongst such groups but particularly tribes, such land should not be alienated to members of other tribes, and indeed opportunities to extend the holding of a group are generally welcome. Land lying at the interface of these tribal "plates", what one researcher termed "crush zones" (Wahlin 1994), typically shows chequered ownership where the sale of land to others is less loaded with emotions. A similar pattern of territorial plates has been noted in Syria (Rae 1999). In general some land continually changes group ownership, but the process is slow and gradual. However, the urge to maintain land within a group gives rise to important sub-processes by which to attain this goal. Strategies to acquire and consolidate land through marriage are important. Land is frequently bought and sold, most often within a tribe with rights of first refusal usually held by close kin and in instances by neighbours (the latter was noted by Parkes (1987) in Afghanistan). But it is the prevailing practice of partible inheritance that works at all times to distribute land.

TENURE IN THE MODERN ERA

Land rights have evolved over many centuries, incorporating laws of many cultures and countries most recently from the west. The growing influence of western legal

systems and practices over much of the region's varied land tenure was first internalised by the Ottoman authorities in the Land Code of 1858. The Code attempted to impose order and clarity by establishing categories of land and by requiring surveys and the registration of land holdings. The Code was originally derived from *Shari'ah* but was reformed twice in ways to hold Moslem and non-Moslem institutions together, and was developed along lines of secular European models to make it more adaptable to actual Imperial needs. Present day modern states that share a history of Ottoman rule inherited a dual legacy as regarding land-holding laws, first the customary and Islamic-based system, the second the bureaucratic codification of the Ottomans. As is evident through this report, the need of the modern nation-state has required further modification of these systems. Two key and early modifications sought to clarify ownership patterns through a registration system and the consolidation of state domain.

By World War I, the Ottomans had accomplished only limited registration and land titles in the main were insecure. Where colonial regimes replaced Ottoman administration registration of cultivated areas continued. The affect, perhaps unintended, was to replace largely semi-communal systems of ownership with a system of ownership that increased share cropping and tenants dramatically. Without exception, the process of registration resulted in the concentration of land holdings amongst local elite, and, in the Maghreb and Egypt, among incoming European settlers and agricultural companies.

In Iraq, for example, the chief land settlement officer noted that his field officers though supposedly impartial were not and that "personal influence ... is commonly the decisive factor ... and anyone may find convincing claims set-aside". Here, as elsewhere, the shaykhs were in a position to take advantage of the evolving system and became legal owners of the tribal lands becoming managers and agents; and tribesmen becoming share-cropping fellahin (landless workers).

⁶ Hourani (1991: 304); In Egypt see Stewart (1986), Rabenau (1994); In Yemen, Dresch (2000); In Syria see Rae (1999); In Morocco see Nassif (1997)

Registration in the Maghreb facilitated a similar fate for small rural farmers, this time in explicit favour of European interests. In Tunisia, Algeria and Morocco, the French used the registration system, to gain control of the more fertile lands either for their own use or in order to grant gifts to local allies. By the end of their term in Algeria, the French colons owned over 2.6m ha of agricultural land, approximately 1/3 of the total available area. In Morocco the figure was 1m ha including half of perennially irrigated lands, while in Tunisia Europeans accounted for some 800,000ha, 1/5 of agricultural land. Egypt went through a not dissimilar experience under the British with 11.5% of agricultural land coming under the control of European land corporations.

Concentration of land was not the preserve of registration; gifts made by monarchs to themselves or others also fostered a landed elite with or without registration, such as in Yemen. Either way, the acute distortions in the distribution of landholdings engendered by these processes, led directly to the redistributive land reforms that characterised the 1950s-1970s in many of the region's emerging nation states.

STATE LANDS

The vast majority of land that forms the territory of modern states in the region was traditionally classed *Mawat* or dead land. *Mawat* land has often been thought as a form of state land but not in the familiar western sense of judicial ownership. The concept in Islamic law is quite different⁷: state ownership is theoretical; the state claims ownership of all land, except in so far as this has been assigned in private ownership (*mulk*) and as a religious endowment (*waqf*). States in the region only adopted the role as a juridical person in relationship to land ownership following the Treaty of Lausanne⁸, and the transfer and registration of Ottoman Sultanic lands (private holdings of the Sultan) to the new states⁹. Since then all but Yemen have transferred

⁷ The status of *mawat* land remains a bone of contention in a number of countries. For a detailed study on the a state's troubled integration of *mawat* land see the Saudi Arabia tenure profile

⁸ In Yemen, the land to first constitute state land was that appropriated from the Imam in 1962

⁹ However, the French nationalised all land as early as the 1840s in Algeria

mawat and forestry land into this category assigning judicial ownership to the state or monarch for the good of the people.

The state also took an 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 Gulf States, Iran and Afghanistan. Otherwise, if the colonial governments did not act on this matter than independent authorities that followed, did. Throughout their 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 soon after independence while religious waqfs were put under control of the state. In Algeria, waqf (*habous*) were put at the disposal of French settlers as early as the 1840s while in Egypt such lands were nationalised in the 1820s. Elsewhere in the Maghreb and the Middle East ‘modernisation’ of Waqf proceeded apace in the 1950s with most lands going to the state or, as was the case in Tunisia in respect to family *waqf*, divided up amongst the rightful heirs. In Iran, the clergy had accumulated substantial holdings of *waqf* land and this afforded them a degree of economic independence from government. The Shah began the distribution of waqf in the reform years of the 1960s but what losses were suffered by the clergy were rapidly replenished following the revolution (1979) and have continue to grow ever since. In Yemen Waqf remains an important land category in rural areas accounting for around 15% of the area (Norman, 1989).

AGRICULTURAL LANDS THE INDEPENDENCE ERA

Many of the WANA nations of the region are recent constructs following the dissolution of the Ottoman and subsequent colonial empires. For those countries that fell under the yoke of colonial rule the first independent governments often sought to entrench authority and remove the power of the old land elite through redistributive land reform. Such reforms not only undermine the old political or colonial elite, it emancipated the peasant from landlords and their monopolies over the land and labour markets. In so doing, they sought a rapid reduction in poverty and inequality. Indeed the countries of the region re-affirmed their desire for equitable distribution of land

through “redistribution with speed” in 1979. Such reforms had all but been forgotten in the early 1980s in favour of the “market” as the most effective land distribution mechanism.

A number of countries, typically in the Gulf of the region but also including Turkey¹⁰, did not enter into redistributive reforms. Morocco and Yemen did confiscate large landholdings belonging to colons or the Imam respectively but did not set limits to holding size and did not target local elites.

Redistributive reforms

Redistributive land reforms took place across most countries of the Middle East and North Africa¹¹, as well as Iran and Afghanistan. In each case the concentration of land brought about by registration and the manipulation of power since the turn of the 19th century was the focus of appropriation and redistribution. In most countries, ceilings were established for land holdings usually dependent on land type and irrigation, with amounts above this, targeted for state appropriation. There were exceptions, such as Morocco and Tunisia, where land reforms focused only on those farms owned by Europeans. For the most part, ceilings were rigidly adhere-to, though in redistribution the majority of lands remained in the hands of the authorities for state farms. These reforms were undertaken in the period 1950 - 1980 with some continuing later such as in Afghanistan, Syria and Iraq though here too the tide soon changed in favour once again of privatisation and faith in land market.

Redistributive land reforms proved to be so expensive as to be unaffordable and invariably they were tied up in bureaucracy while the recipients struggled under strict tenure conditions. Furthermore, functions that had previously been performed by landlords became the responsibility of the government but they generally lacked the personnel, funds, and expertise to supply credit, seed, pumps, and marketing services. Such has been the history of redistributive land reforms that the FAO has described

¹⁰ Yemen did appropriate the Imam’s land and redistribute but did not touch substantial holdings of other elite classes. In Turkey the state did undertake distribution of state lands for resettlement following the dissolution of the Ottoman Empire

¹¹ Morocco, Algeria, Tunisia, Libya, Egypt, Syria and Iraq

them as "discredited"¹² or "belonging in the past"¹³. However, despite these failings, redistributive land reforms did often redress major imbalances in the size and distribution of land holdings empowering many small farmers and ridding the countryside of most absentee landlords.

LAND MARKETS

INTRODUCTION

With a rapidly rising human population, the area of arable land per capita and the ability of countries to meet local food demand with production has decrease right across the region. Largely food self-sufficient in the 1950s, by the 1980s the region was the world's largest importer of cereals, a foodstuff that accounts for two-thirds of caloric intake and protein of much of the population. Most countries now consider themselves vulnerable to the threat of the food weapon and dependent on uncertain political relations and world trade regimes for feeding their own people. The cost of importing the shortfall in food has crippled the economies of many WANA countries and in return for assistance, international creditors have sought commitments to liberalisation through structural adjustment programs. Some countries such as Iraq and Syria independently adopted structural adjustment strategies (see Box 2). In either case, state intervention in the working of land markets is now widely considered by governments across the region as counter-productive within a globalizing world and since the 1980s have enacted legislation to that effect.

LAND MARKETS: OPPORTUNITIES AND CONSTRAINTS

¹² Keith (1999)

¹³ Keith (1999); Herrera (1997); Others argue that redistribution still has a role to play in the region (El Ghonemy, 1999)

Proponents of the market approach in land argue that it ensures agricultural resources are used most efficiently and on a sustainable basis by a strong private sector through enhanced investment. The land market is also suggested a panacea to the problem of farm size, fragmentation and issues of equity. A number of studies suggest that there are no economies of scale above the size that is farmable by a

Box 2: Full Circle of the Reform Wheel in Iraq

Pre-reform: Under the land market that operated till 1958:

- 75% of Iraq's cultivated land came to be held in 2% of the holdings
- 10% of cultivated land came to be held in 86% of the holdings

The original purpose of land reform in Iraq had been to break up the large estates and to establish owner-operator farms, but fragmentation of the farms made extensive mechanisation and economics of scale difficult to achieve despite the expansion of the co-operative system.

In the 1970s, the state turned to collectivisation as a solution. By 1981, 28 state farms had been established employing 1,346 people and cultivating 180,000ha. However, the government soon expressed disappointment with the losses incurred by the state farms.

As a response to the slow pace of agricultural development, a new law was enacted in 1983 encouraging both local and Arab interests to lease large

family¹⁴. Large farms made inefficient by the underemployment of farm resources, and the increasing costs of hiring and supervising labour, would be broken up and brought by family farmers who could use the land more efficiently and pay a higher price for it. Similarly, small, uneconomic holding would be amalgamated by market forces. What constitutes an optimum family farm size is dependent on circumstances, the skills of the farmer and the degree of capitalisation. It also depends on the diversity of income generating activities within the family and the availability and regularity of family farm labour. In an efficient, functioning economy, the question of farm size would not materialise, as the correct size would be determined by the incentive structure of the economy.

Constraints

There are three socio-economic factors that militate against the effective functioning of the land market:

¹⁴ Deininger & Binswanger 1999; Keith 1999

- One is that the market price rarely reflects its economic value in terms of productivity. Two factors influence this. One is the distortion in the land tax systems of some countries that encourage the accumulation of land especially in the absence or rarity of alternative risk-adverse investments. The other is that property in the region has a high eminity value and an intra-family heritable bond that does not always make for a tradable commodity. In rural tribal society it is often the case that close relatives, clan or village have first refusal when an individual disposes of land (see Box); while in the city groupings along ethnic, religious, or tribal lines cut across class divisions and can act as a hurdle to property sale. Amongst the Pashtuns of Afghanistan, for example, it is customary when disposing of property to offer it first to patrilineal kinsmen and secondly to persons whose land borders the piece of land. The underlying aim to maintain land within a particular descent group given the political nature of land.
- Another problem arises out of the purchase price of land as a barrier to those most in need, The potential of this problem has been little studied in the WANA region although El Ghonemy (1997) did examine the situation in Egypt. Here, he estimated for a landless farm labourer that it would take longer than his/her working life span of 55 years to purchase just one feddan (0.42ha) at prevailing wages and prices. These adverse distributional consequences of the land market are dismissed by some advocates of the market approach, arguing that the poverty it engenders over the short to medium term will eventually reduce given the long-term overall rise in average rural incomes. It is a view not shared by the FAO, who instead have pioneered mechanisms collectively termed 'negotiated land reforms' to increase opportunities for those most in need to acquire access to land resources within a land market. This will be returned to below.
- Land Concentration: An examination of the privatisation process in a number of regions reveals that where previously different rights to land were distributed

among different groups and individuals, privatisation tends to concentrate most of these land rights in the hands of a minority. Because of economic and cultural factors and the influence of power-holders, this minority tends to exclude women. The question that still needs to be examined is whether giving women legal and equal rights to land will facilitate their access to factor markets and improve their ability to produce Lastarria-Cornheil (2002) Indeed, liberalising countries of the Horn of Africa have resisted land markets over the past decade for this reason (Bruce 1997).

- Duality of land transactions: Institutionalised systems developed by governments are usually bureaucratic, subject to strict procedures and 'distant'. Informal transaction systems on the other hand remain widely accepted by the majority of land users and function outside legal and administrative constraints. Herrera (1997) found the dual system to be common place in Tunisia with limited variation across the region.
- Another aspect of this dual system concerns land where there are conflicting claims. Considerable amount of land entering the rural real estate market is held in the name of the state, and on at least some of this land there are competing claims, typically based on custom. Where customary claims are strong, such as among the Awlad 'Ali tribal confederation along the rapidly developing coastal strip of Northwest Egypt, the purchaser of state land will often end up paying for the land twice (Rabenau, 1994). If paid for twice or not, such conflicting claims introduce an increased level of long-term uncertainty to the purchaser.
- Most countries of the region have low average farm sizes, high degrees of fragmentation and limited room to expand agriculture (par Sudan). Without local alternative sources for livelihood security, incentive structures militate against land entering the real estate market.

Negotiated land reforms

A number of governments around the world have established a legal framework enabling individuals to purchase land either alone or to combine with others to buy

larger areas on an open real estate market. So-called negotiated land reforms have taken shape in South Africa, Columbia and the Philippines with details tailored to local circumstances and constraints. There are no such schemes currently in operation in WANA despite liberalising reforms in land tenure and the widely acknowledged distributive problems such reforms entail.

FRAGMENTATION AND CONSOLIDATION

Consolidation of land holdings was of much concern to the FAO in its early years (Binns, 1950). Fragmentation still occurs and consolidation is a subject that FAO is now returning to having already started work on the matter in some Near East countries. The most successful consolidation process to date in the region is that in Cyprus (see country profile)

Fragmentation is a stage in the evolution of agricultural holding in which a single farm consists of numerous discrete parcels, often scattered over a wide area. The most usual cause for fragmentation, and the one to draw the attention of policy makers, is that influenced by social structure. Under a system of private law and custom, real property is inherited amongst heirs with progressive sub-division resulting. Often such sub-division between heirs is intended to maintain, by a meticulous similarity in each subdivision, a physical equality of shares in the original holding.

The implications of fragmentation are twofold:

- (1) the plots can become fragmented until rational cultivation is prevented;
- (2) the size of holdings is reduced until it becomes insufficient to support a family.

The first is less of a factor in hill country where it is often too broken for large machinery and modern cultivation methods though distance between plots can become problematic. There are locally employed mechanisms to offset either of these consequences of fragmentation. These include purchase (often after inheritance between siblings, typically by men from their female relatives), exchange and the judicious choice of marriage partners. Furthermore, farmers prior to their death are

sometimes known to gift the land to a son who shows a special interest in agriculture (Wahlin 1994).

This all said, fragmented plots can be a risk reducing measure enabling the farmer to take advantage of soil and microclimate variations. This would be particularly relevant to farmers whose over-all holdings are small. The relative poverty of smallholders in comparison to those with larger areas of land limits their absorption for risk. Furthermore, small farmers often do not have access to credit again limiting opportunities to invest and reduce risk. It may also be the case that such farmers will discount the future more heavily than others may, and further reduce their incentive to invest.

Nevertheless, it will often become the case that families will have insufficient land for their subsistence or income. Over the past century this problem has been partially absorb by the creation of vast new labour markets and livelihood opportunities in the rural, urban, and international space. Indeed, the diversity of livelihood strategies may well provide sufficient investment to intensify land use on what land remains. The farmer can also lease land, and more often than not this is the case. Mundy (1990) found in Jordan that most small-holding farmers cultivate a mixture of fields they own and fields they rent (standard rent or share-cropping), and lease out some owned fields at the same time.

In addressing fragmentation the following issues should be considered:

- It is necessary to examine the reasons for this desire in each case before addressing the matter
- The provision of alternative means of employment may be an important essential in the success of other measures and careful consideration should therefore be given to the development of the rural industrial and service sectors
- Solutions through legal prescription of a minimal area have in the past been unsuccessful given that it is virtually impossible to prescribe an area suitable to all types of agriculture

- The following measures are usually better than attempts to deal with system of division among heirs by direct prohibition. The agriculturally irrational fragmentation of holdings, operating as it must against the farmer's eye on efficiency, necessarily has its basis in some very strong sentiment, the attempted control of which by legislation alone is likely to fail.
- In some cases little else may be required except to provide an alternative means of transferring an interest in property. Amongst heirs, a loan system could function to enable one buy out the others.
- Alternatively, a system whereby heirs maintain their interest in the land without actually working it. One heir might come to an arrangement with kin to farm land as one with kin drawing dividends.
- The best that can be done by means of legislation to deal with succession will usually be to ensure that there is nothing which prevents the adoption of a better system if the heirs so desire - that the law is not prescriptive but merely permissive.

LEASES

As the foregone discussion has illustrated, leases form a key tenure opportunity for small-holder farmers to expand on their landed assets. The traditional practice of leasing through share-cropping or rent arrangements though still evident today in the region use to be far more widespread in the pre-redistributive land reform era. Then, the skewed distribution of land resulted in distorted power relations between the tenant and landowner; the few land lords in control of most of the land and capital and the large pool of potential share-croppers with generally only labour to offer.

With land reform, significant redistribution took place and the sharecroppers that remained enjoyed new rights and security of tenancy. In the current era of market reform, state intervention in the terms of a tenancy contract is thought to promote inefficiencies and imbed market freedom. It has been shown elsewhere that statutory restrictions limit the free negotiations between landowner and tenant and often lead to

a general reluctance of landowners to enter into new leases and, over a period of time, reduce access to land (Herrera 1997; Keith 1999). The Box below details market reforms in tenancy agreements that came into power in Egypt in 1997¹⁵. Here the landlord had laboured under agreements that prevented eviction, enable inheritance of tenancy and maintained artificially low rents. Now land lords can evict at will, set rental rates, and no longer has to recognise inheritance.

There are, however, reasons to be cautious in reformulating tenancy law. Not least among these is the possibility that the removal of safe guards and security for the tenant may well result in tenants mining resources. Power relations between the tenant and landlord are also shifting, reducing security for the former and increasing it for the latter. Indeed, what are the prospects for the rising millions of landless and near landless rural workers? Given the present ratios of wage rates and cultivable land to agricultural workforce, could these poor groups purchase land in the open market in their life time? Furthermore, the pool of landless farm labours is likely to rise with reduced security for tenant farmers especially where inheritance of contracts has been annulled. Such have been the fears in Egypt when market reforms in tenancy agreements came into power in 1997 (see Box 3). What the actual impact of tenancy reforms has been in Egypt remains unclear though there is to be a conference on the matter at the American University in Cairo in March 2002.

¹⁵ Egypt's Law No. 96 was introduced onto the statute books in 1992 and became enforceable in 1997

Box 3: Law no. 96: relationship between landowners and tenants in Egypt

Law no. 96 (amendment to Law no. 178, 1952)

The law stipulated the imperative to increase land rent amounts to more than three-fold (22 times the land tax). Furthermore, the law provided for:

- landowners the right to evict tenants after five years transitional period, which lapsed in 1997.
- Inheritance of tenancy is also cancelled.
- The new tenancy contracts starting this date are subject to market forces and regulation of civil law

Despite the removal of these rights for the tenant, it is assured:

- That the tenant will not be evicted from the house on tenancy land until the government can provide alternative
- That the evicted tenant will have priority in reclaimed land projects.

The proportion of rural people affected is disputed.

- The agricultural census of 1989/90 suggests that rented holding constitute 13% of total holdings but others disagree.
- The *Al Wafd* party newspaper claims 24% of agricultural land is rented.
- Figures on the number of individuals affected range from 1 to 5 million¹.

It was estimated in 1998, that 99% of the country's agricultural contracts had already been

Tenancy as an institution, however, is a socially useful market response, which provides opportunities for a fuller employment of family resources and in the long run for individual mobility. Well structured and with safe guards, it can also provides important opportunities for the poor to improve their lot of land inducing market friendly redistribution of land via the land-lease market. In other circumstances where the poor may be reluctant to bear the risk of managing their farms on economies of scale might sell or rent out their marginal ownership to large farmers in order to benefit from the liberalisation of land-lease markets and to use their family labour resources in a more remunerative manner through the waged labour market either in agriculture or off farm activities.

LEASING ON THE STEPPE MARGINS

Dryland farming areas receiving between 200mm and 300mm average rainfall per annum are widely thought at risk from soil loss given regular cultivation, low organic content of the soil, and the frequency of droughts wind and rain storms. The

assessment of this risk though much commented on is not adequately supported by long-term studies. Nevertheless, it would be useful to explore tenure possibilities that might encourage a more overt conservation strategy. Detailed below are proposals presented by the Chattertons, consultants with extensive experience in North Africa and parts of West Asia.

When the regions' better pastures were first cultivated the cereal crops were reasonable because of the years of accumulated fertility under grazing conditions. That was quickly expended and crops are now very poor indeed. In most years they fail to produce a sufficient yield to be considered worth harvesting and are grazed or sold for grazing. The low and variable rainfall means that the risks of failure are too high to allow nitrogen fertilisers to be used economically.

In parts of this zone in Tunisia tenure is being claimed using olive trees instead of annual crops. The planting of olive trees in such marginal rainfall areas is risky and yields are erratic. The land between the widely spaced trees is cultivated to destroy plant growth. This is an effective method of excluding flocks but is creating the potential for more serious wind and water erosion.

Interest groups with a stake in the zone

- (i) Cultivators: The former nomadic pastoralists have used the traditional respect for a cultivated crop to claim de facto tenure. The tradition that flocks do not graze cultivated cereal crops until after harvest is very strong in all the Maghreb countries and among pastoralists of all ethnic backgrounds. Cultivation and sowing a crop allows the cultivator to claim exclusive rights over the land. Even if the crop fails to produce grain it can be grazed or sold. Cultivation is the key to this claim. Cultivation is costly and the major cause of soil erosion.
- (ii) Nomadic pastoralists: They pass through the zone on their way to the cereal stubbles in the arable zone. They use the zone as a parking area for their flocks as they wait for the harvest to be completed. They graze areas

that have not been cultivated, they purchase crops from cultivators and they feed grain to their animals.

- (iii) Governments: They have similar community welfare concerns for cultivators and nomadic pastoralists as in the rangeland although this zone is more accessible and the cultivators are sedentary which makes the provision of services slightly easier.

The land care concerns are more acute. The cultivation of the land is causing an even greater rate of erosion and dust pollution than in the rangeland. It is also totally useless (from a technical viewpoint) as more pasture could be produced from legume pastures without cultivation.

Existing tenure

The cultivators are claiming the cultivated areas within the marginal zone. They are using the ancient tradition that respects a cultivated crop as the private property of the cultivator for the year that the cultivation was carried out. Once the cultivator has utilised the crop (by harvesting it or grazing it or both) it may revert to public or common ownership or as is more often the case nowadays ownership is maintained. The former, which is not uncommon in Egypt's northwest coast (see country profile) or land plentiful Sudan, is an extremely wasteful and environmentally damaging way to claim tenure.

In this zone the rainfall is low and unreliable. Crop yields are low and crops frequently fail completely due to lack of rainfall. The fertility of the soil is now low and the erratic rainfall makes the use of nitrogen fertiliser too risky. The system only continues because tractor power is cheap. In the past the first law of thermo-botanics limited the cultivation of this zone. It was not worth putting in more human and animal energy into the crop than was produced by the crop. Tractors have changed that relationship completely.

Existing use

The land is cultivated year after year (to make sure that tenure is retained) and a cereal is sown. While grain is harvested in some years the major output is grazing either for the cultivator's flock or for sale to nomads. There have been some attempts to prevent cultivation through legislation (for example Syria) but this is difficult to enforce and is an abrupt method of control that can lead to other problems. (BRDP 1997) When cultivation is stopped the land does not return back up the ecological path it went down but is often invaded by unpalatable weeds. A more gradual approach of substituting pasture for cultivation could prevent the weed invasion.

Why change?

If the land was converted to a legume pasture and fertilised with phosphate fertiliser production could be increased two or three times. There would be large savings in cost as the land would not be cultivated and cereal seed would not be purchased or saved each year. The land would be protected from erosion and dust pollution reduced. All the interested parties would gain. The major difficulty is to develop a tenure system that allows the person who sows the pasture in the first instance and then fertilises it in subsequent years to claim grazing rights in spite of the fact that it is "not cultivated" land and in instances will be perceived as open to public grazing.

Conditional leases as a new form of tenure

Conditional leases (can be called Environmental leases, Landcare leases, Co-operative grazing leases or whatever conditions are most important in the lease) are a useful means of providing tenure and assisting in the change of land use. Again it is important to emphasise that tenure changes are only a part of the package that includes pasture development and investment.

A conditional lease is structured as follows: -

- (a) The occupier of the cultivated land is given a 25-year lease to the land. The 25-year term is only an example based on long-term mortgages. It can be longer or shorter.

- (b) The lease can be sold, transferred and mortgaged.
- (c) The government cannot revoke the lease for 25 years.
- (d) Conditions are placed on the lease. These will be discussed in detail below.
- (e) At the end of 5 years and every 5 years after that the lease is reviewed to see if the conditions are being met. If they are the lease is renewed for 5 years. At the next review the lease can be renewed again. In effect the lease becomes perpetual provided the conditions are met.
- (f) If the conditions are not met the lease is not renewed. There is still 20 years in the lease. The owner can sell or attempt to meet the conditions before the next review.
- (g) If they are met at the second 5-year review the lease is renewed back to the original 25 years.
- (h) If the lease is mortgaged and the owner defaults on payments the lender can foreclose and take the lease as payment for the loan.
- (i) If the owner fails at every 5-year review the lease is cancelled.
- (j) The lease can include some fees but at this stage it is unlikely that fees will be anything but token payments.

Lease conditions

The conditions on the lease are a means of resolving the interests of the various groups that have a stake in the land. Obviously the cultivator will own the lease and be in the most powerful position but this only reflects the present reality.

The government will wish to see the land converted to pasture and will want conditions that insist on a pasture development program and a cessation of cultivation for nearly all the land. Wadi beds could be exempt, as erosion is slight. They are the best soils and with additional runoff water can produce worthwhile cereal yields for the household grain requirements of the cultivator. The government may also wish to apply restriction on ownership that will be discussed below.

The most difficult conditions to negotiate will be those required by the nomads. They are the people who will challenge the lease once cultivation stops. They will need grazing access (for which they are already prepared to pay) but on what conditions. It

is certainly in the interests of the lease owner to have the nomadic flocks to utilise surplus pasture in good years but the nomads will want better rights and a share of the pasture even in bad years.

These negotiations may appear to be difficult but there are some optimistic factors. The cultivators and the nomads are culturally similar. Outsiders may see this as a cowboy and farmer dispute but that is a false analogy as the cultivators are already selling pasture to the nomads. If it can be explained to the nomads that there will be more and better pasture (and perhaps even cheaper) the nomads will have an incentive to agree. The idea of the cereal fence can also be explored. These fences require the cultivation and sowing of barriers around pasture areas and can be a useful transitional measure.

Institutional changes

In the long term there will need to be many institutional changes but it may be possible to begin without them through individual agreements.

- (i) The leases will be defined pieces of land and will need to be registered.
- (ii) Many areas will be disputed. The claims will need to be registered and a mechanism of land courts to resolve them.
- (iii) Procedures for establishing and changing conditions need to be set up.
- (iv) Review systems and appeals against adverse reviews will be needed.

The role of fences

Some outsiders see fences (not temporary cereal fences) as playing an important part in grazing management. Fences in western countries play a dual role. They define boundaries and they act as barriers for livestock. They are mechanised shepherds. In the marginal zone there is no current need for fences. The boundaries can be marked more cheaply by some stones or a natural feature. Livestock are more efficiently and cheaply herded using shepherds. Fences will not survive unless they are accepted by all parties. If they are not they are cut. If they are accepted there is no need for them.

Section 2: Rangelands

The perennial issue on the steppe rangelands is matching herd numbers with available forage that is both erratic through space and time. The situation today is made more complex by the dramatic rise in herd numbers, the loss of herd diversity and the stark loss of many of the better pastures to agriculture. Compiling the problem is the state of limbo in property rights existent on the steppe, a product of past failed government initiatives and the uncertain status of the much-maligned customary systems. The latter, it is often argued, has either been weakened by government actions of the past fifty years or has dissipated by its own account given divergent socio-economic interests among resource users and the inability this supposedly engenders for co-ordinated action. Nevertheless, the poor historic record of past government intervention coupled with deepening concerns of rangeland degradation and the often-chronic fiscal crisis in much of WANA, has created pressures for alternative management strategies that couple devolution of responsibility with a genuine partnership between range users and government bodies. The question then arises as to the current functioning of such informal or customary systems and the possibilities and constraints they pose as a partner in rangeland management. Before turning to the customary system, discussion first turns to the legacy of state intervention on the rangelands and among the moving tribes. The importance of understanding past interventions is that their impact on relevant state and customary structures and institutions provide the ingredients for future change.

PAST STATE POLICY

State integration of people living in peripheral, steppe and mountainous areas has been a gradual process over the past 150 years. Most states sealed the process in the 1950s and 1960s, some earlier, by nationalising all unregistered land including the rangelands, as well as abolishing customary jurisdiction and recognition of tribal groupings as legitimate political actors (if not in practice). The official tenure systems

in countries such as Tunisia, Morocco, Yemen and de facto in Afghanistan, continue to recognise the usufruct rights of tribal groupings to negotiated areas of the steppe and steppe margins but in all other countries, officially at least, they do not. Either way, when it has come to the management of the steppe the state has sought full responsibility. Not only has the state seen in the customary tenure systems the potential for conflict, it has seen inefficiency and indeed the squandering of a strategic natural resource. With nationalisation, governments from Afghanistan to Morocco proceeded to enact settlement policies as a prelude to new tenure systems for the efficient exploitation of the pastoral resources.

Involuntary settlement entailed obvious restrictions on those pursuing a pastoral livelihood, but there was little sympathy among policy makers and scientists for their position. Indeed many saw the “nomadic” system as resulting directly in degradation of steppe resources, which undermined wider national goals of economic growth. In the post-World War II years, international donor agencies such as the United Nations and World Bank have played a key role in arid land management issues in WANA and around the world. Their opinion was summed up by Shier (1956) who “without exception [stressed] that range grazing of the steppe and semi-steppe regions was progressively deteriorating”¹⁶. Some specialists did appreciate that the migratory system “if not very scientific, is still management and represents a kind of adjustment to ecological and economic influences conditioned by tradition and long standing habits”¹⁷. But the general consensus has been that, under pressure of increasing human and animal populations, and a diminishing range area, custom was no longer able to regulate pasture use. Furthermore, it was felt that the organisational and institutional basis on which the customary system relied was in a process of irreversible decline as an inevitable consequence of modernisation and nation-statehood. To ensure that this happened, and happened quickly after independence, overt actions by the state to dismantle the tribal structures and establish national unity were imperative. Settlement

¹⁶ Shier, F. (1956)

¹⁷ Peterson, R. (1962), Peterson was Chief of the Pasture and Forage Branch of the Food and Agriculture Organisation.

has already been mentioned as one mechanism that was employed but it was also crucial that “traditional leaders be brought under close administrative control and their powers checked, ... and [that] customary law and native courts ... be abolished”¹⁸.

Rangeland management experts did not question the break-up of the traditional structures and institutions in WANA. Not only was the issue politically sensitive but if they needed proof of their assumption they could turn to the rangelands for evidence of a crumbling and disenfranchised customary system. It was argued that with no effective regulatory system on the steppe, a situation of open access was resulting in overgrazing and the prevalence of unpalatable vegetation, denudation of plant cover and ultimately soil erosion. The alternative land tenure systems to regulate access to, and realise the potential productivity of the steppe rangelands sponsored by states across the region drew inspiration from western ranging models and the ecological theory that informed it.

STATE TENURE ON THE RANGELANDS

The history of state intervention in the WANA region can broadly be divided in two:

- 1960s-1980s: The introduction of ranching principals through the establishment of co-operatives and the settlement of nomads
- 1980s-present: The widespread failure of earlier interventions coupled with a perception of rising rangeland degradation led to the establishment of exclusionary reserves for pasture improvement. Such reserves "are the main approach in the WANA region" (Ngaido, 1998)

Settlement and the Co-operative System

Settlement schemes sought political control over migratory groups as well as a means of supplying services to a marginal population and facilitating the expansion of cultivation deemed desirable by policy makers. Combining herding with cultivation has a long history in the region. Spontaneous settlement of one degree or another by

¹⁸ International Labour Organisation (1964)

herding families has been commonplace in the 20th century and in earlier periods, as a means to diversify livelihood strategies. Policy makers often saw this as an inevitable trend for all migratory peoples and sought to hasten the process. In some countries the offer of land grants by the state were made in the context of customary land tenure with the authorities either recognising prescriptive rights only within recognised tribal boundaries as in Morocco and Tunisia, or providing land based on tribal identity such as in Saudi Arabia (see country profiles). Other states did not, rather seeing settlement as a means of dispersing tribal families and breaking tribal identity such as in Syria and Iran (see profiles). With the prospect of losing tribal lands to incomers, many in this latter class of countries often ploughed to secure and maintain the land with the social group even where cultivation was not viable. Nevertheless, settlement schemes were largely unsuccessful unless viable or unless attractive alternatives were available such as in the Saudi Arabia and other oil-rich countries.

The use of ranching principles as a means to organise pastoralists and agro-pastoralists was widely promoted by most governments of the region. More often than not these have been spread through the establishment of co-operatives in countries such as Egypt, Sudan, Algeria, Tunisia, Jordan, Syria, Iraq and Iran. Apart from as a means to regulate pasture use they also provided an avenue for inputs of concentrated feeds, veterinary services, credit and other services to their members. Some have argued that more often than not the co-operatives were little more than an avenue of patronage between the authorities and the desert tribes. Be this as it may, the co-operatives continue to be a feature on the rangelands if for the supply of subsidised inputs rather than grazing management.

The aspects of the Western ranching system that were introduced in many countries of WANA included some or all of the following aspects: private rights to graze;

Box 4: Co-operative regulation of grazing in Syria

The rules or institutions of the co-operatives were informed by the western approach to range management and further shaped to suit the political environment and placate a government bent on tribal settlement. Consequently, the rules were uncompromising and inflexible, the institutions and incentive structure poorly designed, and bundled together were unfamiliar to the tribes.

Rules of use:

- Co-operative members received the exclusive right to use the co-operative grazing areas. Co-op members were restricted to a stocking rate of one sheep per hectare¹.
- It was not permitted to cut shrubs for firewood even though a program to introduce gas stoves faltered. The grazing system to be enforced was “rotational grazing”, or the periodical and cyclical resting of pastures.
- The herders were obliged “to follow the instructions of the co-operative committee concerning the movement of flocks within grazing districts as well as between these and the cultivated areas”.

This was a truly farcical system. Not only would herders not relinquish such responsibility for their herds but even if they did, the task of centrally monitoring vegetation supply in the steppe on a day-to-day basis and matching it with herds would have been a bureaucratic nightmare.

- Movement between co-operative areas was also not permitted, a rule irreconcilable with the high spatial and temporal variability of primary production.

Enforcement:

- A penalty against trespassers on co-operative land was imposed, two Syrian lira per head the first time and five lira thereafter.
- Those solely identified in law to enforce these *hema* co-operative rules were the judicial

rotational or paddock grazing systems; the establishment of water points to spread grazing pressure; the setting of a universal stocking rate based on an assessment of the carrying capacity; and the reseedling or re-planting of the range with grasses and shrubs

The co-operative structures were often viewed as a vehicle for social transformation in the steppe and wholly unrelated to tribal structures; the same with institutions governing control and access to pastures. On paper, at least, pastures were regularly demarcated without reference to tribal territories as they existed, and access was only possible through a co-operative. The rules regulating this access were again prescriptive, unfamiliar and poorly explained to those who were supposed to benefit from them (see Box 4).

In implementing the co-operative program, notions of social transformation were replaced with pragmatism. Even in Syria, where opposition to tribal identity was perhaps at its highest in the region, the authorities reluctantly permitted tribal leadership on to the co-operative councils in the hope that the poor uptake of the co-operatives in the first four years might be reversed. Nevertheless, in Syria or elsewhere, membership of co-operatives held the interest of range users not for the access to pastures it theoretically offered, but for subsidises on offer. Access to pastures was not an issue. The authorities sought to enforce the rules directly so not to empower co-operative members, but never had sufficient resources to enforce their will. Government efforts have been hampered by excessive transaction costs of implementing such reforms in poorly productive arid areas and among a dispersed, largely mobile population with entrenched customary systems. But ultimately the failure derived from the inadequacies of the alternative tenure systems on offer. Now the wheel has turned full circle and administrations across the region are re-examining customary tenure as the foundations for a decentralised land tenure system. As a Syrian government official conceded "all intellectual, political and ideological currents that spread in ... the Arab countryside ... are much more affected by tribal tradition than the other way round" (Sayyid 1996).

The Plantations

Plantations are areas of steppe excluded for use by range users, planted up with forage shrubs and subsequently rented under restricted terms after a period of establishment. The popularity of such plantations has spread amongst relevant government departments across the region in response to the inability of state-supported grazing regimes to regulate grazing. They first appeared in the mid-1980s and have since grown in number across North Africa and West Asia par the Gulf states, Turkey and Afghanistan. In Iran, Syria and Jordan the area devoted to plantations is nearing 600,000ha, while across North African countries the figure is approaching three-quarters of a million hectares and growing. The schemes are

centrally controlled, top-down and technically-led with very little or no involvement of local communities.

Unlike the co-operatives, the physical presence of plantations has a direct impact on customary systems of rangeland use. Whereas the co-operative boundaries were largely ignored and not enforced (if ever defined on the ground), trenches or fences mark the plantation boundaries with strictly enforced fines for those caught within such perimeters. Plantation establishment is based on the assumption that the land is state land and little or no reference is made to customary tenure. If the pastures of certain groups are partially or fully consumed by plantations is not relevant since, in government eyes at least, the whole steppe is available for unrestricted grazing. A detailed study on the land tenure implications of the plantation concept is given in the Syrian tenure profile.

CUSTOM

What the chief of the Pasture and Forage Branch of the FAO said in Damascus almost four decades ago is still largely relevant today:

“customary management of grazing itself is probably the least generally understood aspect of animal production, despite the fact that it is the universal factor influencing productivity and stability of the livestock operation”¹⁹.

Customary law (*`urf*) though varying across the region share some principles and characteristics. Custom recognises varying levels of exclusivity for different natural resources such as agricultural fields, water, pasture, and firewood. Initial possession (*asl*) is through the investment of labour (such as digging a well) or occupancy²⁰. Gaining social recognition of these rights comes through exchange, and that exchange involves the mutual ceding of rights. Customary rights, however, are not absolute but a function of an individual's or group's direct efforts at protection, of other groups' capture attempts, and of informal and /or government legal protection²¹. The amount

¹⁹ Peterson (1962)

²⁰ Wilkinson (1983: 303-304).

²¹ Elements of this doctrine are familiar to land tenure systems in WANA, Europe and the United States. In western law it is termed 'adverse possession'. In the Ottoman land code the failure of a '*miri*' tenant to cultivate a field for

of effort or resources devoted to a level of protection will be related to the balance of socio-political and economic costs and benefits that the holder(s) can expect to incur.

A traditional starting point for customary rights in the steppe is the supposed Hadith, or saying of the Prophet Muhammad that states:

“Humanity holds three things in common, water, vegetation and fire”. The ultimate ownership of these resources remains with God but their use is common to all²²

Since, pastures, water and firewood, are limited within and between years, the question then arises as to how competition can be regulated between individuals or groups to stem conflict and depletion.

THE BASIS OF TERRITORIALITY

The basis of property rights and territoriality among the moving tribes has traditionally been water. Establishing a right in water brought with it a parallel usufruct right in the surrounding pastures. Without water, grazing is impossible, and in the vast majority of cases this water has historically been available only with investment in sinking or maintaining a well or cistern. This means that water can be owned²³. However, water can not be denied in cases of thirst or be refused when pastures and water are plentiful to prevent a pasture from being exploited. If waters are short or pastures sparse, such as at the end of the rainy season, in dry years, or under population pressure, prices on water may well be imposed or raised, or access terminated.

Establishment of water rights in the steppe through investment underlies the nodal development of steppe exploitation by migratory populations (Wilkinson 1986) and helps explain the relative geographical stability of tribal groupings. Size of area and fluidity of borders of steppe-grazing areas will tend to increase or become irrelevant

three consecutive years could result in loss of title. Tribal customary law similarly holds that those who fail to protect or use a well or pasture over a period of time forfeit their rights.

²² Wilkinson (1983: 306)

²³ Wilkinson (1983) argues “private ownership [be it by a group rather than an individual] is an essential starting point of nomadic territorialism”. Rights in long-existing water sources and pastures could be captured by a group because of their political and military strength vis-à-vis another group, or through the fact that the resources had been abandoned. In addition, water sources and pastures could be allocated by a shaykh to a particular clan leadership, either for the season or for longer undefined periods.

with rising aridity or where competition over resources is limited. Conversely, in higher rainfall areas of the steppe or in mountain rangelands where land scarcity is a factor, or where the land is partially settled, then there are pressures to define clearer the borders between tribes, clans, villages or individuals. This evolution in tenure does not represent the break-up or weakness of tribal groupings. Often the divisions are undertaken to forestall conflict within and between tribal groupings, to enable investment, or to ensure the land remains within the group.

The understanding of customary law presented here suggests a patchwork of tenure niches with varying rights and levels of individualisation, definition and protection. Ecology has its place in the different forms that territoriality assumes from one tribe to the next, and a gradient of territorial systems runs from the areas of comparatively high rainfall (200-300 millimetres per annum) to those with less. In the more densely farmed and populated areas territories attach to villages. Within these territories, members of another village may own agricultural land but the grazing is held in common by the members of the village whose territory it is, and outsiders cannot bring their sheep without permission. Similar rights and restrictions apply among groups of villages representing tribal sections. Moving progressively up the aridity gradient territories tend to belong collectively to larger groupings. Territories here are not an expression of control of resources per se: the ecologically limiting factors (wells) attach to the local parts of each tribal section or clan, while the grazing areas that attaches to the whole tribe is freely used by those from other tribes. This situation changes when the trucking of water or herds is widespread and the limiting ecological factor, and focus of protection becomes grazing. Borders between territories mark the extent the tribe's peace, on which the honour of the whole tribe depends and the tribe has the right to deny access to its territory by "cutting-off" exchanges with outsiders (Dresch 1993).

Be it in areas where each element of tribal classification is identified with territory, and the territory is exhausted by those of its constituent parts, or where only parts of the tribal classification corresponds to geographical boundaries, borders always define

as area of answerability. To secure the peace is the right, responsibility and prerogative of the unit in question. This is the same across the aridity gradient, and the appeal for help from one's tribal fellows to defend that land is always made in the same terms.

It can be argued that from the densely farmed areas all the way to the margins of hyper-arid deserts, territory and exclusive use rights are built around whatever in the particular case is the ecologically limiting factor: grazing in the farming areas and wells and arable fields in the desert (Wilkinson 1983; Johnson 1969). The ecological constraints vary greatly from place to place and country to country. The specific territorial

systems vary with them from tribe to tribe. A single conceptual and rhetorical system contains all of them, however, and gives merely geographical facts their social value.

Pastures in the steppe rangelands of North Africa, the Middle East and the Arabian Peninsula, usually only provide grazing in the winter and spring months. Some families may remain in the steppe come summer given good pastures or if they herd camels, but most migrate either to their own or hired cultivated fields to graze their herds on crop residues.

Agro-pastoralists in mountainous zones such as in Morocco, Iran, Turkey and Afghanistan have slightly different tenure system to facilitate access to resources year-round (see Box 5). Here summer mountain pastures are held collectively by valley

Box 5: The valley system: Customary tenure among the Afghan Kafir agro-pastoralists of the Hindu Kush, Afghanistan¹

The Afghan Kafir follow a pattern of tenure familiar to agro-pastoralists living in other mountainous areas in the WANA region.

On the valley floor:

- Irrigated and rainfed cultivated tracts and nearby oak forests are privately owned
- Uncultivated land, oak forest and valley pastures are held as a joint estate of decent groups
- Insecure agricultural tenancy agreements which are generally unwritten are usually made with unrelated persons (to forestall conflicting claims)

On summer mountain pastures:

- Pastures generally held collectively by valley community and is often distributed by village
- Particular named sites (*ista*), usually comprising no more than 1,000ha, are associated with households and are acquired through patrilineal inheritance transferred through continual use between generations.
- Regulation of herding population achieved through the 'Palawi institute'. Herding groups associated with *ista* have at their 'core'

communities often distributed by village. For the migratory groups that come from further afield to graze mountain summer pastures, the local villagers often charge fees. The Pashtun pastoralists of western Afghanistan who migrate from the plains to the mountains are charged such fees to pasture their animals (Glatzer, 1996), and it is a similar story for the Qashqa'i of Iran (Beck, 1981).

REGULATION OF ACCESS

Management of the rangelands is not a case of manipulating environmental factors (these are generally outside a herder's control) but of demographic manipulation of the herding population. It is worth iterating Wilkinson's²⁴ "disposable population model" at this point. He suggested the idea of a core population, typically a clan, in control of the main points of natural resources within a given territory, and demographically related to the carrying capacity of an anticipated bad spring. In good seasons, weak, client, or other families and groups (the terms are not necessarily synonymous) could be accommodated while in poor seasons they could be prevented from entering, or be forced out if need be. In severe years the core group would have to move as well. Key to the territory in the past was water rather than the pastures *per se* that were regulated. One of the major changes affecting the rangelands has been mechanisation. This has hastened migrations for the larger and richer flock owners, it has helped facilitate steppe cultivation and it has reduced the dependence of many households on local water resources. The importance of water as an axis of control over pastures has been reduced by vehicular transport, and emphasis in pasture regulation when it exists has shifted to the monitoring of territorial borders.

There are two populations that need to be manipulated, that of the periphery and that of the core. Rise in the core population and the need to redress it to suit resource availability is a continual process. Some families may settle or seek alternative opportunities, perhaps in the cities²⁵. However, there is also the potential of more overt action by one faction of the core group to expel another. The alternatives to

²⁴ Wilkinson (1983: 309)

²⁵ Barth (1961:117)

these are for the core group to increasingly restrict entry by peripheral groups wanting access to pastures, for the core group to introduce new rules regulating their own sheep numbers in the territory, or for the core group to expand territorially. The author has come across all three alternatives. The control of the peripheral groups depends on the identity of the individual and or group, on the availability of pasture, and the ability of the core group to adapt and enforce its rule. This last variable ranges widely between groups and territories reflecting the historical circumstances of the territory and core group, their strength and cohesiveness, as well as their contacts in local and national government.

THE HEMA SYSTEM

An ancient Arab concept of communal pastures is that of Hema ('protected'). For a long time communities maintained large areas of land as their own tribal grazing reserves and maintained as such by force. This custom has been known since pre-Islamic times. When Islam came, the practice of hema was modified by the prophet who is reported in a hadith to have said "there is no hema except for Allah and his Apostles". During the lifetime of the Prophet, hema lands was used as pastures for the horses and camels used in wars. Latter, during the days of Caliph Omar, it was made available also for the animals of individual poor Muslims as well as for the common interest of the community. Omar Draz (1969) conducted a study of hema in its homeland, the Arabian Peninsula. He identified a variety of hema though all with the common characteristic: they were located in areas receiving on average above 200mm of rainfall/year, an agro-ecological zone now widely cultivated. The *Mahjur* ('restricted') system in Yemen maintains a similar variety and purpose as hema but here to they located in areas receiving between 200-500mm of rainfall/year (Kessler, 1993).

In both Saudi Arabia and Yemen, Hema have been formally abolished though they continue to exist informally²⁶. In the late 1960s the Hema system was to be resurrected

²⁶ This said, private hema for use by draugh animals is still formally permitted in Saudi Arabia

and adapted by FAO and piloted in Syria as a steppe tenure system before spreading west to countries of North Africa. However, there is little evidence that hema ever formed an aspect of tenure among the migratory groups in the rangelands (which today all lie under 200mm/rainfall/year). Indeed, Omar Draz (1969), the man behind the resurrection of the hema concept, recognised that they only existed in areas coupling cultivation and grazing and were not a feature among migratory groups though he felt the system could be extend to them. Nevertheless, what was ultimately established in Syria and labelled hema was little more than ranching principles. Herds could not move outside restricted grazing areas, herd numbers were limited and the decisions on individual herd movement were the responsibility of government officials.

CONTEMPORARY SITUATION

Characterising the current situation of range management in the region is problematic not least because the status of customary tenure customary institutions across the region varies between countries between provinces and between tribal groupings. The geographical area of concern for range managers and policy makers is the current transition zone between cultivation and the steppe, which now lies in those areas receiving between 100mm and 250mm rainfall per annum. It is here where cultivation has expanded and the pressure on rangelands from sheep numbers is greatest. It is currently felt that the ecological limit to cultivation is 200mm rainfall per annum if not 250-300mm per annum though in many situations the plough has extended beyond this²⁷. Often lying behind this expansion has been government policies concerned with food security and the fiscal costs of importing basic foodstuffs particularly during the economic crisis across the region in the 1980s. More recently, some countries have banned agriculture below 200mm rainfall per annum such as Syria though others continue to encourage agriculture including Iran and Algeria and its Homestead Program.

²⁷ For possible tenure changes in the 200-300mm zone see 'Leasing on Steppe Margins page 24

Pastures bordering this agricultural zone are typically the most intensely grazed and support sporadic cultivation. Indeed, this area, the so-called 'near steppe' is the site of most government plantations in the region. Received wisdom would suggest a weakened or non-existence of customary tenure in this region though research on the matter is largely conspicuous for its absence. Going on the customary model presented above the logical unfolding of customary tenure would suggest that such areas under these pressures would evolve along the continuum of greater clarity of rights and borders given the increasing scarcity of the ecologically limiting factor, grazing. A review of what contemporary primary research is available on the subject suggests that indeed this is the case.

Among the Awlad 'Ali of the Northwest coast of Egypt the expansion of tourism and development over the past decade and the subsequent rise in the demand for meat, crops and land has resulted in changes in territoriality and access (Rabenau 1994). For a long time the name of each tribe segment has been associated with a geographical area along the coastal strip 25-30 miles deep extending from outside Alexandria for 350 miles till the border with Libya. These they regard as their own and defend even though not recognised by the state, formerly at least. Rising real estate value of this land has resulted in a number of tribal segments dividing their collective property among their members. And while grazing remains common to the segment and is still dependent on local sources of water, access is now regulated through varying price levels charged at wells dependent on availability and demand (L.E. 50-90). In another study, this time of the near steppe in Syria, clarity and definition of tribal territories under resource pressure can be tracked over the past sixty years (see country profile). Here, the tribal ownership of the near steppe is clear and largely unambiguous given that a number of recent customary developments and agreements have been written and, contrary to state policy, signed and guaranteed by state officials.

The extension government registration and privatisation on permanently cultivated areas will not undermine custom tenure, as the two are not far from agreement²⁸. It is where cultivation is either sporadic or non-existent, and rangelands dominate, that the extension of title is problematic. In the near steppe pastures, clan territories will usually be clear but it would be nonsensical to grant title to poorly productive rangelands to individual clan members. The area or patches of pastures required as well as the counter claims of others to the land would make protecting private property expensive if possible at all. If on the other hand individuals only gain ownership to their equal share of clan territory then the title is meaningless. Indeed it would be detrimental for though it would have little bearing on the regulation of pastures in the short to medium term, it may well, over the long term, forestall customary mechanisms that often check 'core' group size and the over exploitation of resources.

The current orthodoxy comprises three possible alternatives:

- the privatisation of rangelands to groups;
- the long-term leasing of rangelands;
- Partnering customary institutions

TITLING TO GROUPS

The privatisation of rangeland areas to groups has wide spread support among donor and research agencies working in the region as a mechanism for overcoming inappropriate resource use (World Bank 1995; Ngaido 1998; Bromley, 1991). Another term for it is Community private rights. Either way, it is perceived that resources in an defined area come under collective management with each co-operative or user-group member having co-owner rights and regulating range use typically through elected management committee.

As has been suggested for the near steppe areas, custom has already facilitated clear divisions between groups, usually at clan level, at least in those areas research has been

²⁸ The reservation some have is that privatisation of permanently cultivated plots will deny grazers who have traditionally held usufruct rights to the crop residues. However, across the region it has been increasingly the case over the past two decades that such rights have been disappearing and replaced by the levelling of fees on pastoralists.

undertaken. That it has occurred in Syria where state pressure on customary systems has perhaps been the greatest suggests that it has occurred elsewhere too. Customary division amongst groups, typically at the clan level, is done to clarify rights and provide an environment for investment either in water or agriculture, and perhaps in light of appropriate technology and clarity of tenure (not necessarily private), in future in pastures. But it has not occurred along the whole scale of aridity and at a point even if titling were appropriate, it become again nonsensical. The question is: is titling and formal registration an appropriate framework through which actual land tenure should evolve?

The purpose of privatising the rangelands to groups are essentially two-fold: (1) through acting as collateral it provides greater access to credit for investment in pasture improvements; (2) through facilitating state protection it clarifies ownership and rights enabling such investment as well as encouraging rehabilitation and conservation.

The costs of registration and cadastral are, nevertheless, expensive and would include costs of awareness raising, education, and not least the torturous task of clarifying borders where they remain unclear, and categorising all rights that might exist. If the land were used as collateral, presumably all individuals with rights to a particular pasture would also have to be identified. Maintaining the register would be similarly expensive and time consuming, as would the state's responsibility in protecting the rights of titleholders. The costs of administering privatisation, running a land / rights market, and securing the rights of titleholders, no matter how simplified it is made, is not self-sustainable given the productivity of the land.

The costs, in all likelihood will be prohibitive but even if they were not, then privatisation runs up against the possibility that whole groups stand to lose their territory if they forfeit on a loan for which land was used as collateral. Given the aridity of the area question, any loans made for investment in the land would be of high risk and possibility of default would potentially be high. The implications of this would be far reaching and it is doubtful it would be countenanced by the state or

customary groups alike. It would entail displacement or impoverishment in instances where individual group members went into debt themselves to clear the group loan.

LONG-TERM LEASING

The widespread use of leases to rangelands is a symbolic step as it requires pastoralists to pay for the use of land which they perceive is theirs and in all likelihood would be resisted. Nevertheless, leasing would entail similar costs to the establishment of private rights. Furthermore, administering changes in leases would entail formal changes to the leasing agreement and the added cost of that. It should also be considered that if the cost of leases was any more than a nominal amount the lease would discriminate against poorer members of the group who live on the margins as it is. To ensure a degree of equity and conservation the lease would also need to include provisions for certain management practices and backed up with state enforcement. Long-term leases have been tried in Iran back in 1967. Here, large blocks of grazing land were allocated on a fixed-term contract of 30-years subject to specific development (investment) and approved operating conditions. The record of their survival can be found in the literature.

PARTNERING CUSTOMARY INSTITUTIONS

Past land tenure reforms attempted to limit herd growth by confining herds to restricted areas; policy makers viewed permeable borders as undesirable since livestock owners were thereby allowed to escape the negative effects of overstocking. Opportunistic strategies of resource exploitation stand this reasoning on its head. Forage short-falls are often localised because of erratic distribution. If adjacent grazing areas experience asynchronous productivity flushes and crashes, herd mobility, and the non-exclusive tenure arrangements that permit mobility, are a cost-effective way of mitigating the effects of local imbalances in livestock numbers and feed supply. Rangelands should be co-managed. As past experience has shown governments cannot centrally administer rangelands. Output of the rangelands is just too low, erratic, and insufficient to pay the costs of direct administration. The only social and economic

solution is for the users to bear the cost of regulating access and share in the cost of conservation and rehabilitation measures. This they are more willing to do only if they have proprietary rights within a system that has local legitimacy and is familiar. In granting statutory recognition of customary rights, there are no general rules as to what exactly should be recorded - fundamental principles, rules, right holders, or specific areas to which rights apply. There is disagreement about the extent that customary law should indeed be codified in detail, given the extent to which it varies and evolves. Rather a focus on certain principles and processes should be recognised. Integration of legal systems is not merely a question of absorbing customary rights in formal law. *An alternative is for the state to recognise and facilitate the legitimacy of customary defined land rights and customary mechanisms for adjudication and land administration.*

Partnering custom in this way holds out substantial opportunities but entail significant uncertainties and difficulties not the least the lack of research into customary mechanisms for adjudication. In Syria, some of this research has recently been completed and is detailed in the box below. It illustrates that even in Syria where action against tribal institutions, formerly at least, has been long standing, custom has been resilient and has continued to evolve demanding the attention of the authorities. There are, however clear problems with this approach:

- 1) For a long time many states have sought to undermine customary institutions and structures such as in Syria and there is will be reluctance both ideological and bureaucratic to direct and formal partnership between state and tribe.
- 2) As the example in the box illustrates, the government officials involved were from the Ministry of Interior (as it was a political problem) and not officials from the Steppe Directorate or Ministry of Agriculture. Though there will be local knowledge among Steppe Officials of local customary territories and rights, the collective knowledge within the Ministry of Agriculture may need to be supplemented with inputs from other ministries and provincial governments

- 3) There are likely to be longstanding disputes over territories or rights and these will require resolution
- 4) There is a significant lack of research on customary systems of land tenure and dispute resolution mechanisms

The advantages, however, are clear:

- 1) The customary system provides a tenure framework to cover the whole steppe. Privatisation of territories described as an option above would be limited if applied to the near steppe region with the clear prescription for more arid regions
- 2) Partnering existing customary systems and enabling them where needed provides local legitimacy and understanding of the process
- 3) The responsibility for protection entailed by the state in a private or leasehold system would defer to range users with the back-up support of police authorities
- 4) While providing security, partnership with custom maintains tenure flexibility and tenure evolution
- 5) Partnering provides a forum in which to agree through full participatory means conservation and rehabilitation measures where needed. Developments in participatory management are being pioneered in Iran and are detailed in the relevant country profile

Though often banned and formally dismantled at least in legal (*qanun*) terms some forty years ago, the customary system has adapted to growing land scarcity, and indeed has often received covert recognition of its legitimacy over the years from the state (see Box 6). However, formal state policy does not condone support for the customary system and excludes it from the development process with the inevitable consequence that the function of custom is weakened. In spite of this, the customary system, its land tenure and adjudication regimes, remains a sound basis and inspiration for a revamped partnership (perhaps in the form of co-operative), regulating access to steppe resources at the interface between the state and herding community.

Box 6: Customary adjudication of land ownership in the steppe: interface with state authorities

A dispute between the large bedouin Sba'ah tribe and a section of the Hadidiyin tribe known as Ghanatsah over the customary ownership of a steppe area called Dayl` lying on the 150mm isohyet illustrates well, the nature of customary adjudication in contemporary Syria. The site had been the focus of a previous dispute in 1975 but the matter arose again between the parties some 6 years later over interpretation of the old treaty. In essence, Sba'ah had ploughed a part the land as a means to claim an area Ghanatsah thought was theirs. Both the 1975 and the treaty detailed below were written and provide a unique insight on land administration.

Muharrab al-Rakan and Ma`jun Salah al-Hudayb represented Sba` ah Btayinat and Sba` ah Abdah respectively, and Hajim al-Sfuk represented Ghanatsah. The disputing parties agreed to the arbiter the Head of Secret Police (*mukhabarat*) in Homs Province, Razi Gayyan. Others attending were the Homs Provincial Head of Police and Colonel Yaseen Bayya`i. Four disinterested and respected tribal individuals were asked to act as witnesses (their identities are not known to the author). The meeting identified the source of the dispute as a difference in interpretation of the 1975 treaty. After the participants

read the text of the treaty, they "listened to the opinions of both Muharrab al-Rakan of Sba` ah tribe and Hajim al-Sfuk of Ghanatsah tribe"¹. Discussions then took place "in an attempt to bring the two view points closer together"¹. The settlement reached was "agreed upon completely by the two disputing parts"¹. It went again in of Ghanatsah. Muharrab was allowed to reap his crop according to custom "as he had ploughed and planted it" but afterwards the land would revert to Ghanatsah.

It is important to keep in mind that this agreement, like others, was extraordinary, considering the Ba`thist constitution and ideology. The decision had been reached with the full participation of the state authorities. As far as the written law (*qanun*) was concerned this land was state land (*amlak dawlah*) and, if not part of a co-operative, which it was not, was open to all Syrian citizens and their livestock. Vestiges of a shaykh's intermediary role had formally died in 1958 but two decades later little had changed in practice. The state continued implicitly to recognise and endorse tribal customary rights and practices, with high officials

Land Tenure Review of the Near East

Part II: Individual Country Profiles

East to West

Afghanistan to Mauritania

Jon Rae

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AFGHANISTAN

(with the assistance of David Marcouiller)

Population: 27,755,775 Growth: 3.28
Labour force: 10m (70% in agriculture)
Land Use: Arable 12% permanent crops 0%; permanent pastures 46%; forests 3%; other 39%

EXECUTIVE SUMMARY

Some 85% of the population are rural and to varying degrees dependent on agriculture and livestock production. The re-establishment of agriculture will play a key role in the country's development. Much of the focus in agricultural aid will be on seed production and distribution along with improved water management, and animal production and health. The drought-stricken North of the country Hazarajat livestock has been devastated by drought (1998-2001) while in the south poppy growing continues as an important coping mechanism.

Land tenure across the country is as varied as the ethnic and sectarian landscape. In general, however, Afghanistan is a land of small farmers, with a majority of farms owner-operated. The largest average landholdings are to be found in the northern and western parts of the country where dry farming is frequently found. In the fertile and substantial Helmand Valley, landholdings are large, and sharecropping predominates. In the central and eastern regions, where there is more irrigated land, holdings are smaller than the national average. This stems from the large ratio of people to irrigated land and from inheritance laws. Tenants and sharecroppers who traditionally received a fifth of the harvest for their labour farm the larger landholdings. Often the crop is divided evenly if the tenant contributed other inputs, such as seed or fertiliser. Tenants and sharecroppers have reduced incentive to develop the land or use the best inputs. On the other side of the spectrum, a large number of small-scale holdings are often not productive because farmers can not afford nor necessarily get access to

the expensive modern inputs or efficient irrigation system. Irrigation which already accounts for 30,000 sq km, is considered a central pillar of rural development in the post-conflict era.

POLICY AND LEGISLATION

Afghanistan's climate is characterised as continental with arid to semiarid precipitation regimes, cold winters, and hot summers. With respect to terrain, Afghanistan is a mostly rugged mountainous country with plains in the north and the southwest. With respect to land uses relevant to agriculture, Afghanistan is estimated to have roughly 12 percent of its total land area classified as arable (1993 estimate of 30,000 square kilometres irrigated) with another 46 percent classified as permanent pastures. Forests and woodlands account for another 3 percent of the total land area.

Afghanistan is a developing, landlocked country, highly dependent on farming and livestock raising (sheep and goats). It is important to note that recent historical events are directly relevant to any discussion of land tenure in Afghanistan. Civil unrest and strife have been the norm in Afghanistan for the past 25 years. Afghanistan was invaded and occupied by the Soviet Union in 1979. The USSR was forced to withdraw 10 years later due to internal insurgency (mujahidin forces supplied and trained by the US, Saudi Arabia, Pakistan, and others). To complicate the situation further, post-Soviet Afghanistan has been marked by considerable turmoil and civil unrest. Since 1990, fighting has continued among the various mujahidin factions. By the mid-to-late 1990s, the fundamentalist Islamic Taliban movement was successful in seizing most of the country. Since October, 2001, Afghanistan has been the location of the conflict between a multinational force led by the United States and Taliban/al Qaeda forces. In addition to the continuing civil strife, the country suffers from high rates of poverty, a crumbling infrastructure, and widespread incidence of land mines within the rural landscape. It currently has a month-old functioning central government but is still plagued by administrative confusion and conflict among various tribal factions.

Since 1980, Afghanistan also has the nefarious reputation as home to the world's largest recorded refugee population. It is estimated that during the conflict with the USSR, roughly one-third of the population fled the country, with Pakistan and Iran sheltering a combined

peak of more than 6 million refugees (Nyrob and Seekins 1986; CESR 2002). In early 2000, 2 million Afghan refugees remained in Pakistan and about 1.4 million in Iran. This fact, when combined with a long-standing agrarian tradition of nomadism, leads to a need to identify and discuss unsettled peoples in the context of land tenure, common-pool resources, and the agricultural/pastoral situation of contemporary Afghanistan.

Until the first few decades of the 20th Century, pastoral nomadism was a way of life for rural peoples across a wide zone stretching from North Africa through the Middle-East and into the heart of Central Asia. Although the living conditions for these peoples have changed dramatically during the past 75 years, some (and many in Afghanistan) still keep livestock and continue their migratory way of life (Pedersen 1994). The two key aspects of nomadism that are characteristic involve animal husbandry (pastoralism) and the capacious notion of movement (nomadism). Historically, Afghanistan reflects the broader Asian events and represents a crossroads, of sorts. Afghanistan is where a branch of the old silk road connected eastern and western markets. Through Afghanistan is where China was linked to the Mediterranean world; where age-old caravans traveled both East-West and North-South linking Central Asia with the Indian sub-continent. Its people are made up of a complex of ethnic groups that are characterized by widely fluctuating traditions, heritage, social structures, and language.

An agricultural census carried out in 1967 showed the average size of farm holdings was 3.5 hectares with over 70 percent of the holdings smaller than this. Some 12 years later following aborted land reform the disparities were more entrenched.

1979: Government survey found:

- showing 82% of holdings had less than 3.5ha
- 80% of population owned 1/3 of total agricultural area
- 5 percent of the rural landholders owned more than 45 percent of the total arable land, having holdings of at least 10 hectares

- About a third of the rural dwellers were thought to be landless labourers, sharecroppers, or tenants

DISTRIBUTIVE LAND REFORM

Land Reform Law in 1975

- Limited individual holdings to a maximum of 20 hectares of irrigated, double-cropped land. Larger holdings were allowed for less productive land.
- All surplus land was to expropriate in return for compensation.
- To prevent the proliferation of small, uneconomic holdings, priority for redistributed lands was to be given to neighbouring farmers with two hectares or less
- Landless sharecroppers, labourers, tenants, and nomads had priority after neighbours

Despite the government's rhetorical commitment to land reform, the program was quickly postponed. Because the government's landholding limits applied to families, not individuals, wealthy families avoided expropriation by dividing their lands nominally between family members. The high ceilings for landholdings restricted the amount of land actually subject to redistribution. Finally, the government lacked the technical data and organisational bodies to pursue the program after it was announced.

1978: (Decree No. 8 of November) Further limited individual holdings to a maximum of 6 hectares of irrigated, double-cropped.

- Holding size otherwise dependent on agro-ecological zone (seven classes recognised)
- No compensation for government-expropriated surplus land.
- Projected estimated that this would free up about 1 million hectares for redistribution to landless or nearly landless peasants (though no cadastral survey had ever been completed). The authorities estimated that only 4 percent of the landowners would be affected by redistribution measures.
- Priority for redistribution: sharecroppers already working on the land had highest priority.

The central government immediately found that the scarcity of cultivable land, and especially irrigated land, made it practically impossible to grant one-hectare plots of first-grade land or its equivalent to every land-hungry peasant. Instead there was a shortage approaching 350,000 hectares of first-grade land. Later the government realised this deficit was even greater when the nomadic population was considered. The government also found that providing formerly landless peasants with plots of low-yield dryland was of little value without other resources, which were also unavailable. Part of the government's problem with the land reform project stemmed from the haste with which it began the program in order to gain political strength. President Babrak Karmal noted the government's inadequate planning in a 1984 speech:

with courage we can say that Decree No. 8 and the start of its implementation took place in an extremely hurried situation. This is an important and major point. A great step was taken without careful and profound study or collection of information from all corners of the country, without scientific study of land questions, national and historic characteristics, characteristics of the situation of peasants in the country, or the nature of the land question, although the aim of this step was lofty and sacred.

Once the program began, it created social disorder in rural areas, which fuelled the opposition already under way against the regime. Under the uncertain security conditions, the land reform program was even harder to implement. There was less land redistributed in central and eastern Afghanistan not only because of the prevailing tenure structure of smaller plots but also because those regions were controlled by the *mujahidiin* and were not subject to any authority of the central government. Farmers often proved unwilling to work redistributed land because of uncertainties of ownership. The land reform measures were one of the causes for the decline in agricultural output after 1978.

By 1981 outside observers believed the government had quietly shelved the land reform program. In 1985, however, the government claimed that land reform had continued apace after the onset of "the new development stage of the Sawr (April) Revolution." According to the government, between 1978 and July 1985 about 688,520 hectares had been redistributed among 319 538 families. In March 1984 the government had announced several amendments to Decree No. 8 to enhance its acceptance in the countryside. These amendments exempted

peasants from several property taxes. The modifications also called for the organisation of village farm councils with broad jurisdiction to oversee land and water reform.

It remains unclear what agricultural policies the Taliban followed once they assumed power. They supposedly supported poppy growing with the diversion of fertiliser to those involved, but it probably can be assumed they did not continue with land reform given its wide spread support in the previous regime, a pattern not dissimilar to Iran following the revolution there in 1979.

EVOLUTION OF CUSTOMARY TENURE

There are a great many ethnic and sectarian groups in Afghanistan, each with their own, if many times shared, culture of land tenure.

Until the first few decades of the 20th Century, pastoral nomadism was a way of life for rural peoples across a wide zone stretching from North Africa through the Middle-East and into the heart of Central Asia. Although the living conditions for these peoples have changed dramatically during the past 75 years, some (and many in Afghanistan) still keep livestock and continue their migratory way of life (Pedersen 1994). The two key aspects of nomadism that are characteristic involve animal husbandry (pastoralism) and the capacious notion of movement (nomadism). Historically, Afghanistan reflects the broader Asian events and represents a crossroads, of sorts. Afghanistan is where a branch of the old silk road connected eastern and western markets. Through Afghanistan is where China was linked to the Mediterranean world; where age-old caravans travelled both East-West and North-South linking Central Asia with the Indian sub-continent. Its people are made up of a complex of ethnic groups that are characterised by widely fluctuating traditions, heritage, social structures, and language.

Pastoral nomadism is a dominant feature of the agrarian-based economy of Afghanistan. Mainly based on sheep, goats, and camels (with minor numbers of cattle), pastoral nomadism is both a form of economic sustenance and a way-of-life. Pastoral nomadism, given Afghanistan's climate and topography, relies on seasonal variations to determine migratory

routes of people. In East Afghanistan, two seasonal migrations occur. These are relatively well-defined migration patterns utilising lowlands in the winter and highlands in the summer. Pastoral nomads, in general, utilise common property land resources that are informally controlled by tribal leaders. Usufructory conflicts are common, particularly between use of lands for grazing and more permanent agricultural production.

Grazing grounds typically lie in a zone between arable land and the barren plains or mountainsides (both vast uninterrupted tracts and smaller grazing tracts interspersed amongst more arable lands). Most arable lands in Afghanistan are geographically defined where water is available (due to arid conditions, cultivation of crops is heavily reliant on some form of relatively primitive irrigation). This resulted in relatively stable boundaries between permanent agronomic activity and pastoralism. The exception to this is dry-land farming (*lalmi*) of wheat on non-irrigated lands.

Discussed here will be tenure among the majority Pashtun population who dominate around Kabul and much of southern Afghanistan, and Afghan Kafir, a relatively minor ethnic group of the Hindu Kush.

THE PASHTUNS

The Pashtuns are divided amongst clans and tribes but the system does not correspond to any territorial or political order in the steppes. Durrani Pashtuns dominate west Afghanistan but share basic cultural norms with neighbouring Timuri, Zuri, Taheri, Mahmudi, due largely to Persian influence.

- Land secured through conquest, gifts, and purchase
- *Private property* considered on irrigated and non-irrigated valley floors.

Disposal of property is not free but must be offered to patrilineal kinsmen; secondly to persons whose land borders the piece of land. Land tends to remain within particular descent groups given the political nature of land.

- *Summer grazing* and forest in surrounding mountains held by people living in the valleys who collectively own property through patrilineal descent groups. Pashtun Nomads graze on the fields paying a fee.
- *Winter grazing* (on arid plains) there are customary usufruct rights but these are only enforced when right holders are present - there is no reservation in absentia. Otherwise pastures open to all.

Such usufruct rights established by:

- Using an area for several consecutive seasons
- In the highland *summer areas* best pasture under the control of nearest village who own pastures corporately and rent out to nomads on a seasonal basis
- Nomads acquire grazing rights either through the purchase of farmland, canals or wells in or adjacent to pasture (rarely used given the unreliability of pastures across years)
- *Tenancy agreements* usually with unrelated Pashtuns (later claims based on old inheritance quarrels may well be the reason for this), are generally unwritten. Tenants can be evicted immediately following harvest. Landlords receive 2/3 tenant 1/3. Tenants supply oxen and 1/3 inputs. Often additional tasks allocated.

AFGHAN KAFIR OF THE HINDU KUSH

Local society, particularly in northern mountainous region home to the Afghan Kafir, is dependent on customary tenure that share enough characteristics to be collectively termed: "valley systems"

- Private property: Valley floor irrigated fields owned privately while tracts of uncultivated land, oak forest and pastures held as a joint estate of decent groups (rarely comprising whole lineages).
- 70% of territorial disputes on the valley floor occur within mainly agnate groups (3-5 generations)

- *Summer mountain pastures* are held collectively by valley community and often distributed by village. However rights to grazing at named camping locations (*ista*) are acquired through patrilineal inheritance transferred via continual use between generations.
 - *Regulating access*: Herding groups of agnates may also include non-agnates from different lineages (palawi). The so-called "Palawi institute" is an important feature for the herding groups that can number between 4 and 10 households, for it provides flexible access to resources.
- *Winter grazing* is individualistic with valley stables and surrounding holm oak (sacred) forest held as private.

IRAN

(with the assistance of David Marcouiller)

Population: 66,128,965 **Growth:** 0.72%

Labour force 17.3m (33% in agriculture)

Land use: arable 10%; permanent crops 1%; permanent pastures 27%; forests 7%; other 55%;

Irrigated area: 94,000 sq km

GDP% from agriculture: 24%

Legal system: the constitution codifies Islamic

EXECUTIVE SUMMARY

The Pahlavi regime neglected indigenous agriculture and pastoralism and furthermore favoured policies of tariff-protected and subsidised meat and dairy imports. This was an important contributing factor to the nations economic ills through the 1960s and 1970s, and played a role in the revolutionary movement. Prior to reforms, wealth was based on private ownership of entire villages with landlords controlling the scarcest resource, *qanats* (underground water channels). The royal family and landed elite possessed around 80% of cultivated land and *qanats*. The impact of land reform in the 1960s is disputed but it is estimated that nearly half of all tenants received title to the land they worked. Their individual rights were short-lived. In 1967 the Corporation Law pooled land to achieve economies of scale, and placed them under the government management. Following the revolution in 1979 there were some in the regime who saw land reforms as western inspired and sought the return of appropriated land to the 'original' owners but those who saw the reforms as a mechanism for social justice won-out. In 1989, the authorities distributed near 500,000ha of land left by fleeing landlords and the royal family, as well as a further 600,000ha of public land. An expanding population coupled with goals of food security has pushed agriculture to its ecological limits.

The pastoral sector was the focus of draconian interventions for much of the 20th century. the authorities pursued Settlement in the inter-World War years and again in the

1970s. Following the revolution, settlement was viewed as a policy of the old regime, and abandoned. In finding a satisfactory mechanism to partner pastoral groups in a long-term management strategy for the remaining rangelands, the authorities have for the past 15 years pursued, a participatory approach.

POLICY AND LEGISLATION

Iran's climate is characterised as mostly arid or semiarid and subtropical/Mediterranean along the Caspian coast. Its terrain is characterised by a rugged, mountainous rim; a high, central basin with deserts and mountains; and small, discontinuous plains along both coasts. With respect to aggregate land uses relevant to agriculture, Iran has roughly 10 percent of its total land area classified as arable land, and 1 percent in permanent crops. A 1993 estimate identifies approximately 94,000 square kilometres as irrigated. Permanent pastures comprise 27 percent of the total land area while forests and woodlands comprise another 7 percent.

Iran's population of approximately 66 million (2001 estimate) is roughly divided 61 percent urban (refers to within municipalities) and 39 percent rural. Approximately 221,000 people are classified as "unsettled" (Statistical Centre of Iran 2002). Historically referred to as Persia until 1935, Iran became an Islamic republic in 1979 after the ruling shah was forced into exile. During 1980-88, Iran fought an indecisive war with Iraq over disputed territory. Iran is currently classified as a theocratic republic.

Historically, rural Iran was made up of many villages and hamlets that were characterised by a highly stratified social organisation (some argue that, although highly stratified, rural Iran was less stratified as compared to urban Iran). Social structure in rural villages consisted of three basic classes: (1) the largest landowner (or owners), (2) peasants owning medium to small farms and local merchants/artisans, and (3) landless villagers. Traditionally, wealth was based on private ownership of entire villages with landlords controlling the scarcest resource, *qanats* (underground water channels). Prior to reforms, the royal family and landed elite possessed around 80% of cultivated land and *qanats*.

DISTRIBUTIVE LAND REFORM

During the early 1960's the ruling monarchy headed by the Shah (Mohammad Reza Shah Pahlavi) came under pressure from internal and external forces to develop policies to reform land ownership. Land reform (1962-71) was launched by royal decree and implemented in phases; the aim of reform was to transfer ownership of land to the cultivators. Until the land reforms instituted by the Shah in the 1960's and 1970s, Iran was dominated by large landlords exploiting cultivators who paid modest land rents. Although argued by some, the land reform program of the Shah led to a transfer of approximately 85 to 90 percent of affected lands to cultivators with original owners retaining 10 to 15 percent.

PRE REFORM SITUATION

- Prior to land reform, 39.9% of holdings were of less than 2ha;
- 65.2% of the landholders own 18.7% of the land
- 16.7% held 60.1% of the land
- Owner-operated farms were 30% of holdings, the remainder farmed largely under sharecropping arrangements (landlord 'take' ranging from 20-80% of harvest)

LAND REFORM

1962: Land reform enacted in

- Completed in 1971
- 1.8-1.9m sharecroppers received land
- Whereas prior to reform there were 1877,000 holdings after reform there were 2,312,000
- Resulted in the expansion of agriculture 11.3m ha in 1960 to 16.4m ha in 1974

Post reform farm size

(HA)	IRRIGATED %	NON-IRRIGATED
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		%
< 1	51.74	33.32
1-2	19.81	15.14
2-5	19.05	23.03
5-10	6.51	15.73
10+	3.16	12.78

1967: Corporations Law passed to pool individual holdings within Farm Co-operatives (FC)

- Ownership of land replaced with shares
- FCs managed by government appointees with farmers in essence becoming farm labourers
- By 1979 there were 93 FC covering 850 villages and 400,000ha
- Widespread dissatisfaction with the 'share system' impeding adoption of technology and spurred the development of Rural Production Co-operatives where farmers maintained title to land.
- Thirty-nine such RPCs established by 1979.
- After the revolution 86 FCs disbanded leaving just 7; RPCs fared slightly better with 19 also making the transition

Evaluation of Iran's policy of land reform (Majd 1987) suggest that the Shah's land reform was widely beneficial and returned land to the masses of tenant cultivators on highly favourable terms. This is contrary to the popular view that the reforms were of a limited nature. Furthermore, evaluative results suggest that these reforms radically changed land ownership and resulted in significant rural socio-economic transition. It did not, as some argue, result in political stability nor did it act to strengthen capitalist institutions. It acted to

destroy the political and economic power of the landowning class transferring wealth from landlords to peasants on highly advantageous terms to peasants.

In a response to the above mentioned study (Majd 1987), others have argued (Araghi 1989) that the results of the Shah's land reform were not highly advantageous to the peasantry and appeared as a *deus ex machina*. Land reform, (according to Araghi 1989) resulted in a highly fragmented ownership pattern with average tract sizes too small and overly non-contiguous to be economically advantageous to the cultivators. Furthermore, it is argued (ibid) that land reform led to a massive increase in the number of people separated from direct ties to the land and to the creation of poor urban wage-labour sector. Furthermore, it was an important contributor to rural to urban migration leading to urban unrest and ultimately led to the overthrow of the Shah's regime.

THE IMPACT OF THE ISLAMIC REVOLUTION

Following the revolution to a fundamentalist Islamic state in 1979, the basic rural landholding structure did not change significantly. A small minority of landowners continued to profit from sharecropping and tenant arrangements. Since land reform targeted private landholdings (not lands owned by religious groups) the historical ruling religious leaders were relatively unaffected by land reform and since the revolution, these religious landholdings (*vaqf*) have grown in size. Uncertainties about future land ownership, as well as the war with Iraq, caused further disruption of agriculture through the 1980s. Indeed, 10% of agricultural land fell into Iraqi hands between 1980 and 1982, although Iran subsequently regained the territory. The war further stifled agricultural development with the diversion of funds and draining of the already shrinking agricultural labour pool through heavy conscription. Coupled with uncertainties over land reform, the war contributed to the loss of farm labour--5 million people--between 1982 and 1986. Land reform during this period was in a state of limbo. For some in the new regime land reform was a legacy of the old regime and argued for the return of appropriated lands. Others in power saw the reforms as social justice, and at the tail-end of the war this faction won-out.

1989: Continuation of land reform with the distributed near 500,000ha of land left by fleeing landlords and the royal family, as well as a further 600,000ha of public land.

CURRENT STATUS (1999):

- 50% of landholdings have less than 5ha; 33% of landholdings < 2ha
- 33% of landholders hold just 3.8% of total agricultural land
- Widespread support for Rural Production Co-operatives has fostered a further 600 with plans for an additional 600
- There remains dissatisfaction with the pace of agricultural development. Goals first articulated in the 1st Development Plans (1989) sought the development and expansion of agriculture but in spite of attempts, notes the Plan and Budget Organisation of the Iran, "the desired goals have not been achieved" (Kojidi, 1999)
- The Iranian authorities currently estimated there to be some 30mha of cultivable land of which only 18.5mha is currently being used because of:
 - lack of water
 - the practice of fallow, estimated at 4m ha annually

EVOLUTION OF CUSTOMARY TENURE

Throughout the 20th century the migratory populations, most of them non-Farsi speakers, have been the focus of draconian settlement schemes to bring them more fully under the political yoke of the state as well as to improve the productivity of the steppe.

1924-41: All pastoral population subject to enforced settlement schemes of Reza Shah With his departure some migratory groups managed to return to their former lives, amongst them the largest of them all, the Qashqa'i.

1960: Abolition of tribal Khan duties and powers to: collect taxes, assign land, supervise migration, form armies, settle tribal disputes

1962: The Land Reform Law resulted in substantial loss of pasture. The regulation of pastures were not directly addressed in the reform but the better pastures were allocated to individuals for permanent occupancy and settlement

- The widespread expansion of cultivation at the expense of grazing lands drove some migratory groups to cultivate even on an unprofitable basis in order to secure the land within their group. Such was the case of the Shahsevan in northwest Iran which ploughed to secure their customary rights

1963: Forest and Range nationalisation Law – The nationalisation of all rangelands with the exception of village pastures defined in the law as twice the size of a village's cultivated area

- This act covered 76% of the country's area.
- Pastoralists who now grazed their sheep 'free' on 'state' rangelands were now taxed for the privilege if indirectly at slaughter
- Legislation co-ordinated through Forest and Range Organisation of the Ministry of Agriculture and Agrarian Reform (MAAR)

1967 FRO supplemented with Ministry of Natural Resources with responsibility for:

- protection and correct use of natural resources (i.e. forests, range, soils, watersheds, wildlife). Exclusionary projects for re-vegetation, stabilisation or recreational (including the setting up of a hunting preserve in Dasht Arjan).
- Improve rangeland not open to use because FRO could not guarantee effective management.
- The FRO, on the other hand, favour co-operatives 'to whom large blocks of grazing land can be allocated on a fixed-term contract subject to specific development (investment) and operating (... approved management practices) conditions'

- Despite the legislation and for reasons of pragmatism when administering to widely dispersed population, the authorities continued to utilise tribal headmen (not khans) to negotiate land and migration rights.

1970s: settlement schemes re-imposed

1960s-1970s national land reform

1971 - Law prohibiting the renting of pasturelands from others (not enforced)

1971 - Law prohibiting the use of pasturelands without a permit and with flocks greater than 200 head (not enforced)

1975: Political recognition of tribes abolished. The tribes would now be considered as any rural population.

- Military control of migration and grazing ceased
- Access to pastures resources did not return to tribal structures; rather tribesmen were now required to secure individual land-use permits issued by the Ministry of Agriculture and Natural Resources.
- The licensing system, though said to be universal, covered about 40% of Iran's range and pastures in 1977 (Sandford, 1997).
- Rights to a particular area were determined by previous usage (MAAR had received the old military *Entezamat* records) but many lost out as their names or locations were not formally recorded in the *Entezamat*.
- Permits only assigned to grazing land (*marta*) above water channels; those below which had previously been grazed and cultivated by the tribesmen was denied and deeded through land reform to non-tribal members and townsmen.
- For those tribesmen who had invested in the land (built houses or planted trees or cultivated) prior to 1962 gained title to the land. Activities after this date were now, in 1975, deemed illegal

- Only seasonal and pastoral use of land is permissible on the designated pastures

With the loss of government control, tribes that had been forced to settle such as the Qashqa'i, re-assert their political autonomy and in particular their rights to use customary pastures. Many settled tribes members and those in town returned to the mountains.

Zekarat (1997)

Rangelands: 90m ha of pasture land of which 14,000ha are "good grazing", the remainder is poor or fair.

99m livestock, 60m dependent solely on grazing; the land can support 15m head (National Report 1994, Islamic Republic of Iran, Env. Protection Agency).

To achieve food self-sufficiency, agriculture has pushed onto steeply sloping areas: 66% of the grains grown on lands with slope > 20%

125m ha under threat of soil erosion.

(Beck, 1980)

The Qashqa'I are a Turkish-speaking nomadic group whose ancestors came from central Asia probably in the 15th century. They expanded with the increment of Lurs, Kurds, Arabs, Persians and gypsies. The confederation comprised 400,000 by the 20th century. Five big tribes and many small ones comprise the confederation. Herd sheep and goat in a seasonal migration of 350 miles between lowlands and highlands adjacent to and within Zagros mountains.

Qashqa'I identity is focused on political leaders and groups and on cultural, linguistic, and territorial criteria.

Customary management: tribes held and defended access to resources collectively. Although some agriculture was undertaken by some khans, control over territory depended on "political and military strength rather than written deeds" (Beck 1981). Khans allocated specific units of winter and summer grazing to the sub-tribes on a seasonal or long-term basis. Individuals and groups secured rights to tribal land through payment of taxes and other expressions of political loyalty to tribal leaders. Well organised groups were able to increase

land and members while weak groups lost land and members. Groups could change their political affiliations and territories, and land beyond confines of tribal boundaries could also be utilised. Tribal leaders were crucial in the overall pattern of land use and in negotiating land disputes between individuals, between tribal groups, and between them and the outside world. Most qashqa'I practiced careful range management by rotating grazing areas, avoiding overgrazing, restricting camel foraging, constructing water catchment basins to improve grazing and cultivating forage crop.

Policy makers at the time stated that Iran was rapidly being denuded of vegetation, that the great deserts were expanding - and that it was the pastoralists (Sandford 1977). One of the purposes of the tax on sheep sold in cities was to control numbers in the countryside. Timber collection, firewood collection, and charcoal making it is argued by Barth (1975; Bates 1973, Beck 1981) is the main cause of de-vegetation, not pastoralists. Policy makers often guilty of cultural prejudices concerning rural and especially tribal people - which should be seen in the context of the increasing gap in the rates of socio-economic change between urban and rural areas in Iran. A significant problem for effective management is commercial herds.

Circumstances encouraged economic diversification. Prior to 1960s it was normal to cultivate in winter and summer pastures. Now main avenues: agricultural labourers; charcoal production (laws not enforced or corrupt officials and tree line retreated); sale of gum tragacanth (katira) (extracted from exposed roots of the boteh shrub - those with grazing permits charged gum tappers a fee); collection of wide nuts.

TURKEY

Population: 66,493,970 **Growth:** 1.24%

Labour force 23m (38% in agriculture)

Land use: Arable land 32%; permanent crops 4%; permanent pastures 16%; forests 26%; other 22%

Irrigated area: 36,740 sq km

GDP from agriculture: 15%

EXECUTIVE SUMMARY

Agriculture remains an important but declining (due to industrial growth) part of the Turkish economy (roughly 15 percent of GDP in 1993). Commercialisation of agriculture since the 1950s has benefited from irrigation projects and now specialises in high value fruits and industrial crops. Much of the commercial agriculture is concentrated in the fertile coastal plains of the Aegean and Mediterranean Seas. There is a dramatic difference in productivity between more fertile, irrigated lands in the southwest and that from farms in the semi-arid Anatolian Plateau or in the arid southeastern part of Turkey.

Agricultural practices vary widely and are largely determined by site productivity. Whereas modern commercial agriculture can be found along the coastal plains, the Southeastern portion of Turkey remains an agriculture of self-sufficiency (in addition to suffering from civil strife brought about by the ongoing Kurdish rebellion). Efforts to improve rural life in Eastern Turkey have been significant which spills over into more modern agricultural practices with recent advances in irrigation. Large-scale hydro initiatives coupled with irrigation projects in the Euphrates and Tigris River Basins have resulted in more rapid agrarian development and hold the promise of increasing the supply of productive land into commodity production.

Although Turkey suffers from a dearth of information on land ownership (due, in large part, to that lack of a comprehensive cadastral survey), the literature suggests that current

Turkish land tenure is characterised by much more equal distribution of land as compared to most developing countries and its nearby middle eastern neighbours.

POLICY AND LEGISLATION

Land tenure in Turkey has historical roots in the Ottoman state which was characterised by central government ownership of land with habitation and cultivation rights provided to independent peasants. Under early Ottoman rule, Turkish agricultural lands were maintained by lease agreements with farmers under relatively secure tenure arrangements. This had the effect of restricting the growth of a landowning class. However, the Ottoman Land Code of 1858 facilitated a general increase in the incidence of land sales and land transfers and coupled with a reversion to Islamic practices of inheritance favoured the growth of a class of large landowners during the latter decades of the empire. By the time of the empire's demise and the subsequent successful movement toward independence (1920s), land ownership had become less equitable with a small group controlling relatively larger holdings (Akşit 1993; Zürcher 1997 217). A decline in land concentration occurred in the 1930s and 1940s resulting from an overall attraction of alternative investment opportunities and an opening up of new lands to cultivation.

Although Atatürk had stressed the need for upper and lower limits on landownership, the latter to halt the fragmentation process, little in the way of effective land reform has been carried out. Nevertheless, more than 3 million hectares had been distributed to landless farmers between the 1920s and 1970, most of it state land. At the same time, the Turkish Civil Code (1926) established the legal basis for land registration¹:

According to Metz (1996; 185) who refers to a 1980 Turkish Census of Agriculture and acknowledges some disagreement, land ownership patterns are heavily concentrated in small holdings of less than 5 hectares (78 percent of farms and 60 percent of farmland). Another 23 percent of the farms (18 percent of farmland) were categorised in the range of 5 to 20 hectares.

¹ Articles 2997 and 2015 of October, 1926; The Land registry is held by the Directorships of land registry. Only real rights are registered (as well as ownership mortgages). Personal rights such as easement, rent, tax value are not registered. There are 15 regional directorates, 1001 district land registry directorships and 315 cadastral directorships under supervision of regional directorates. The registries are open for public viewing.

Less than 4 percent of the farms (15 percent of the farmland) were larger than 20 hectares. Few farms exceeded 100 hectares in size.

Due to significant fragmentation and the need for larger plots of land to attain more efficient economies of size, leasing and sharecropping are extensive. Despite this fact, the majority of farms are owner operated. Joint ownership is also common. Owners are frequently involved in swapping (through leasing and sharecropping arrangements) distant fragmented parcels for relatively closer parcels for reasons of operational efficiency. Owners of large holdings, sometimes-whole villages, usually rent out all or most of their land. Between one-tenth and one-fifth of farmers lease or sharecrop the land they till, and landless rural families also work as farm labourers.

Tenancy arrangements are many and complex. Some leaseholds can be inherited, but many tenants lack sufficient security to make a long-term commitment to the soil they till. Sharecroppers generally receive about half of the crop, with the owner supplying inputs such as seed and fertiliser.

Village-owned common property pastures are often used by grazing groups rather than individual livestock operators. These communally owned grazing lands typically encompass less-fertile sloped lands that are generally less productive for the cultivation of grains and other crops. During the past 50 years, much of the increase in arable lands has been drawn from these common-pool lands leading to increased erosion and a general reduction in the availability of grazing lands. Forest lands are, by and large, state owned and comprise approximately 20.2 million hectares (roughly 26 percent of the total land area). Although a modest forest products industry exists and timber production is a growing interest, the forests of Turkey are primarily utilised for fuelwood production and watershed protection (World Bank 2001).

The problems of land tenure remain, and some have worsened. Many farms are too small to support a family and too fragmented for efficient cultivation. Tenancy arrangements foster neither long-term soil productivity nor the welfare of tenants. In many areas, the rural poor are becoming poorer while land better suited to grazing continues to be converted to grain

fields. At the same time, however, many large landholdings have been turned into productive modern farms that contribute to the country's improved agricultural performance. Major irrigation projects in the Euphrates River Valley and elsewhere offer the prospect of increasing the supply of productive land. The declining population growth rate has reduced the pressure for land reform, and industrialisation offers an alternative for landless farm workers.

THE REPUBLIC OF CYPRUS

Island Population 762,887 Island Growth: 0.59 Island land use: 12% arable; 5% permanent crop; 0% permanent pasture; 13% forest; other 70% Island Irrigated land: 390sq km

Republic Labour force: 291,000 (5% in agriculture) GDP from agriculture 6.3% legal system: common law with

POLICY AND LEGISLATION

A former British colony, Cyprus achieved independence in 1960 but underwent a significant multinational struggle ending in a mid-1974 separation between the Republic of Cyprus (lower 63 percent of island) and North Cyprus (comprising the northern 37 percent and recognised by the Turks as the “Turkish Republic of Northern Cyprus”). The 1974 separation was the result of historical attempts by Greece to usurp control (the “enosis” movement) which was resisted by those on the island of Turkish decent and culminating in a Greek-led military coup that led to (provided an opportunity for) an invasion of nearby Turkish forces. The line separating the Republic of Cyprus and North Cyprus (sometimes referred to as the “Green Line”) is maintained with the assistance of a long-standing United Nations military presence. Following separation, an important Cypriot land tenure issue involved the resettlement of refugees following partition in 1974. On both sides, land was forfeited by those who decided to resettle. Unfortunately, a dearth of usable data could be found that elaborated on the ultimate resolution of this situation.

Land ownership in Cyprus is descendant from the Ottoman period and consists of three basic categories: private lands, state-owned lands, and communal lands. Unrestricted legal ownership of land dates back to a 1946 British administration law that superseded the land code of the Ottomans (in which all legal ownership of land resided with the state with

usufructuary rights residing with hereditary tenants). This Immovable Property Law of 1946 affected all former state-owned lands properly acquired by individuals and those lands already privately-owned (as per Ottoman definition). Villages or towns retained ownership of communal lands with remaining vacant lands reverting into state ownership (mostly forested lands in the mountains).

The Republic of Cyprus Department of Lands and Surveys has a substantial history in operating an exact registration, titling, and land cadastral planning structure embodied in the Cyprus Land Registration and Tenure System. Fragmentation of land parcels has been an important historical artefact of land ownership in Cyprus both before and after the 1946 legal passage². The 1946 census showed 60,179 holdings averaging 7.2 hectares. By 1960 the number of holdings had risen to 69,445, an increase of 15.4 percent, and the average holding had decreased to 6.2 hectares. By 1974 the average holding was an estimated 5 hectares. Holdings were seldom a single piece of land; most consisted of small plots, an average of ten per holding in 1960. In some villages, the average number of plots was 40, and extremes of 100 plots held by a single farmer were reported. Given the problems of widely scattered land plots and small parcel sizes, efforts were made in the 1960s and 1970s to consolidate parcels (Solsten 1993). The Land Consolidation Law of 1969 was enacted which established the Land Consolidation Authority.

The government reports the following breakdown in land ownership by community group: 59.6 percent of land -- owned by Greek Cypriots, 12.3 percent – owned by Turkish Cypriots, 1.4 percent owned by other minorities, and 26.7 percent owned by various units of government. The largest private landowner is the Church of Cyprus, whose holdings before the Turkish invasion included an estimated 5.8 percent of the island's arable land.

² Both Greek and Turkish inheritance practices required the division of an estate among the surviving heirs. At the time of the 1946 law, fragmentation of land was already great, many holdings did not have access roads, and owners frequently possessed varying numbers of plots that might be separated by distances of several kilometres.

LAND ADMINISTRATION

Cyprus registers title deeds and these indicate ownership, the existence and value of a secured loan, and the purchase price. They are governed by legislation [The Immovable Property (tenure registration and valuation) Law Cap 224; The Immovable property (transfer of mortgage) Law N9/65)]but are not open to public scrutiny. The land register is administered at a regional level through the Ministry of Interior. Fee and charges relating to land registration are not ring-fenced but deposited in the consolidated fund of the Republic. Administration is financed through a budget from central government. Legal title is granted by the state at the time of property transfer but the title is not guaranteed by the state nor backed by a system of indemnity. Cyprus is still continuing towards the complete registration for all land. Around 14,000 registrations are made each year though the overall number of registered properties was not available.

The Republic of Cyprus's Land Consolidation Program

The Land Consolidation Law of 1969 established the Central Land Consolidation Authority, with the power to buy and also acquire compulsorily land and other property, which it could sell or use for land consolidation. The authority's board included members of several ministries and departments and also representatives of the farmers. At the village level, committees of government representatives and local farmers co-ordinated and supervised the local program.

Land consolidation consisted of merging fragmented holdings. Dual and multiple holdings were to be eliminated, and plots smaller than the minimum listed in the 1946 land law were to be expropriated. Government-owned land could be used to enlarge holdings; recipients could purchase the land at current market prices, paying in instalments at low interest rates. A farmer owner who lost land in the redistribution process was to receive land having the same value as his former holding. The land consolidation program also involved

TURKISH REPUBLIC OF CYPRUS

Island Population 762,887

Island Growth: 0.59

Labour force: 86,300 (20.8% in agriculture) **Land use:** 56.7% agricultural land, 19.5% forest, 4.96% uncultivated, 10.68% occupied by towns, villages, and roads, and 8.16% unusable

GDP from agriculture: 11.8%

Legal system: common law with civil law modifications

POLICY AND LEGISLATION

Similar to the Republic of Cyprus there are three categories of land ownership formerly recognised: private, state, and communal. The greatest amount of land is privately owned. Much like the south of the Island, a growing population has driven the expansion of cultivation at the cost of commonly held village grazing land. There is a dearth of information on the current land tenure system. It is known that consolidation of holdings has not been attempted.

The largest landholder is still thought to be the Muslim religious foundation Evkaf Idaresi (Turkish Religious Trust, usually known as Evkaf). Before the events of 1974, Evkaf owned 1 to 2 percent of the island's total farmland. These holdings dated back to Ottoman times and were mainly donations in perpetuity (*waqf*) from members of the Turkish Cypriot community. Much of Evkaf's land was located in parts of the island that remained under the control of the Republic of Cyprus.

SYRIA

Population: 16,728,808 Growth: 2.54%
Labour force 4.7m (40% in agriculture)
Land use: Arable land 28%; permanent crops 4%; permanent pastures 43%; forests 3%; other 22%;
Irrigated area: 9,060 sq km
GDP from agriculture 29%
Legal system: based on Islamic law and

EXECUTIVE SUMMARY

Until the mid-1970s, agriculture had been Syria's primary economic activity. At independence in 1946, agriculture was the most important sector of the economy, and in the 1940s and early 1950s, agriculture was the fastest growing sector. Wealthy city merchants invested in land development and irrigation. Rapid expansion of the cultivated area and increased output stimulated the rest of the economy. However, by the late 1950s, little land that could easily be brought under cultivation remained. During the 1960s, agricultural output stagnated because of political instability and uncertainties caused by land reform. From 1976 to 1984 growth declined to 2 percent a year. By the mid-1980s, the Syrian government had taken measures to revitalise agriculture. The 1985 investment budget saw a sharp rise in allocations for agriculture, including land reclamation and irrigation. Syria is undergoing an economic boom following several years of poor crops and foreign exchange shortages and the economy has been growing at around 7% per annum since 1990. However, Syria's development from a state-controlled economy to a market - oriented one remains cautious and the economy is still largely centralised.

POLICY AND LEGISLATION

The introduction of the Ottoman Land Code in 1958 coupled with French policy of registration and a growing penetration of the market precipitated the establishment of large landholdings among city merchants. Upon independence land ownership was highly skewed

in favour of large landholdings. It has been estimated that some 72% of agricultural land was held in holdings of greater than 25ha + while 53% of the land were held in holdings greater than 100ha. The vast majority of the landlords were absentee their farms tilled by sharecroppers. Pressure for reforms grew with the ascendancy of the Ba'th Party and their desire to diminish the power of the old political class whose influence came with control over land.

LAND REFORM

1952: Decree for the distribution of State Lands (No. 96 30th Jan 1952) as part of the "program for workers and peasants" but faltered given that the area and location of unregistered state land was unknown.

1958 (amended decree No. 88 of 1963 and No. 145 of 1966). Set the maximum size for agricultural land dependent on region, and presence and type of irrigation. Expropriated land tended to be the poorer land as landlord was allowed to chose most favour areas for himself and family. The agrarian reform laws were similar to those in Egypt

- limited the size of landholdings (see table below)
- provided sharecroppers and farm labourers with greater economic and legal security and a more equitable share of crops
- The Agricultural Relations Law laid down principles to be observed in administering tenancy leases, protected tenants against arbitrary eviction, and reduced, under a fixed schedule, the share of crops taken by landlords. It also authorised agricultural labourers to organise unions and established commissions to review and fix minimum wages for agricultural workers.

1963: (Decree Law 88) lowering the limit on the size of holdings and providing flexibility in accordance with the productivity of the land.

- ceilings on land ownership were set at between 15 and 55 hectares on irrigated land and 80 and 300 hectares on rain-fed land, depending on the area and rainfall.

- The compensation payable to the former owners was fixed at ten times the average three-year rental value of the expropriated land, plus interest on the principal at the rate of 1.5 percent for forty years
- The expropriated land was to be redistributed to tenants, landless farmers, and farm labourers in holdings of up to a maximum of eight hectares of irrigated land or thirty to forty-five hectares of rain-fed land per family.
- Beneficiaries of the redistribution program were required to form state-supervised co-operatives.
- price of redistributed land to the beneficiaries to the equivalent of one-fourth of the compensation for expropriation

Ceiling on land holdings during reforms

Ceiling ¹	Criteria
80ha of in regions	Rainfed in regions receiving > 500mm
120ha of rainfed	Rainfed in regions receiving 350-500mm
200ha (140ha) ²	Rainfed in regions receiving < 350mm
300ha (200ha) ²	In the Northwest (Muafazat Dayr al-Zawr, Hassakeh and Raqqah)
35-50ha	Orchard
15-45ha	Irrigated depending on region and type of irrigation

¹ Landlord able to dispose of up to 8% of land to wife and children prior to appropriation

² May 14th, Decree No. 31, 1980

By 1975 1.4 million hectares (68,000 hectares of irrigated land) had been expropriated and

Impact of reform on distribution of land holdings¹

Most observers credited land reform measures with liquidating concentration of very large estates and weakening political power of landowners. Some government data of uncertain coverage and reliability indicated that before land reform more than half of agricultural holdings consisted of one hundred hectares or more, but after reform such large holdings amounted to less than 1 percent. The same data showed that smallholdings (seven hectares or less) had increased from about one-eighth before land reform to just over one-half of total holdings after reform, and that 42 percent of holdings were between eight and twenty-five

466,000 hectares (61,000 hectares of irrigated land) redistributed to landless peasants and smallholder farmers. A further 254,000 hectares of land were allocated to co-operatives, ministries, and other organisations, while 330,000 hectares were flagged for sale. In all, some 50,000 family heads (over 300,000 people) had received land under the reform program

1980: Order in Council mandated additional expropriations and further reduced the size of agricultural holdings. Data from the 1970 census revealed that the average farm holding was about ten hectares, and that one-fifth of the rural population remained landless.

Syrian Land Registration System

- Syria maintains a register of deeds (rather than of title deeds).
- Register records, which are fully open to public inspection, indicate ownership, the existence and value of a secured loan/mortgage.
- Land registration / administration the responsibility of MAAR, takes place at a regional and local level. The administration is financed both by taxation and by (registration) fees paid by customers.

Legal title is granted and guaranteed by the

LAND ADMINISTRATION

1858: The Ottoman Land Code introduced general registration but was only implemented at limited sites. Registration of title and survey was carried out on a large part of the cultivated land in Syria (Iraq) hastening the disintegration of communal forms of land tenure (*mush'a*) and communal rights.

1930: The law of Immovable Property No. 3339 (1930, laid down the principles and procedure for cadastral survey and registration. Owners who received registered title

were still *miri* holders, i.e. nominally tenants of the state, but in practice they owned the land absolutely (except for inheritance following civil rather than shari'ah law).

1943: 3,544,883ha had been surveyed and registered hastening the disintegration of communal forms of land tenure (*mush'ab*) and communal rights. However, the register system soon failed with on-going hostilities

1979: 40% of the agricultural land registered with clear title given and joint possession ended. However, work was proceeding slowly.

CATEGORIES OF LAND

- Syrian Civil Code (1949) codified the legislation of the French period and retained the categories of land used in the Ottoman Land Code, with some modifications

Private land (*Mulk / Miri* tenants)

- 1970: 83% of farmers owned all land they operated; 10% rented all their fields.

Waqf land

- The French throughout their period permitted and encouraged the sale of extensive *waqf* properties to business enterprises, irrigation concessions, and large landowners
- The 1949 Civil Code prohibited the creation of family *waqf* (and finally abolished for good within a year). Charitable *waqf* continued but placed under state control.

State land (incl. *mawat* land)

1926: *'ihya al-mawat* [reviving dead land] persons who brought unregistered state land into cultivation could acquire registered title by proof of a period of (3yr.) Enacted with an eye on encouraging the expansion of cultivation particularly in the northeast of the country.

1949: Syrian Civil Code, ownership rights in *mawat* land could be established if the claimant could satisfy the Department of Public Domain that possession occurred in good faith and was based on a proper cause, and that the land had been tilled for five consecutive

years. If individuals in fact bothered with the procedure, which many did not, or if they lacked documentary proof, the influence of urban businessmen or shaykhs closed the gap.

1952: decree no. 135 – all unregistered land including *mawat* land (consequently all steppe land) brought under the Directorate of State Domain and classified state land (*amlak dawlah*). The decree abolished all prescriptive rights in the ancient land category of *mawat*

1970: Decree No. 140 (July 20th 1970): first attempt to prevent appropriation of rangelands unless secured prior to the act. Decision No. 13 (1973) eased restrictions on cultivation of state land policy climate that encouraged cultivation

1987: No.96/T (November 11th) formalised the use of non-irrigated steppe lands by issuing licences to grow cereals based on an obligation to plant a proportion (20%) of fodder shrub. The objective not to limit cultivation in the steppe but rather to utilise 100% of cultivatable steppe land as well as to raise revenue through fees. There was a government commitment to cultivate 30%.

1992: Decision No. 17 (Sept. 15th) "To observe strictly the prohibition of the cultivation and growing the non-irrigated steppe lands, which remain dedicated for natural and planted rangelands" - based on a gradual decrease over five years

1994: December 6th - Circular No. 4553/1) immediate ban on steppe cultivation

1995: December 3rd, Decision No.27: terminated right to steppe irrigated lands

TENANCY

- 1949 Land Law of May 18: Emphasised leasee responsibility to "keep the land productive, to avoid making radical modifications, to respect customary use, and to keep it in good condition"

- 1958 Decrees No. 134 (Amended No.218 of 1963 The Agricultural Relations Act) - Clarified covers the rights of the owner in the harvest in share-cropping arrangements specifying (20% of rainfed and 25% in irrigated)
- 1979 (post reform): 26.9% of farmers took partners to supply land, work, machinery or financing (ICARDA 1979)
- In 1980 an estimated 1/5th of the agricultural labour force

EVOLUTION OF CUSTOMARY TENURE

Control of the migratory tribes of the Syrian steppe and desert has been an active policy of (city) state powers for a long time and achieved by the Ottoman authorities in the latter part of the 19th century. The French subsequently used the tribes as a balance to nationalists in the cities and settled areas. Upon independence nationalists sought to wholly subdue and break the tribes through settlement. Though unsuccessful in this quest, the governments that have followed independence have nevertheless excluded tribal structures and institutions from formal government policy. This policy has suffered the same problems as the settlement schemes, and in actual implementation of the state has reluctantly dealt with tribal entities to facilitate interventions.

1870: Ottomans establish a desert province for the administration of the desert tribes; later adopted by the French

1920s: the French and English establish zones of control for each of the major desert tribes over which recognised shaykhs are made responsible

1940: *Arrete* No. 132/LR4th (of 4th June) The so-called Law of the Tribes, which brought together previous laws associated with steppe administration and introduced additional provisions to establish a “special system” for land grants outside of the cultivated areas (*ma`murah*). Whereas it had been the responsibility of the civil authorities to sanction these grants in the past (i.e. the city authorities), it was now the job of the steppe-based military (*Controlé Bédouin*). There were three principal ways the *Controlé Bédouin* were to do this. The officers needed to confirm:

1. That the land being claimed fell within the “moving area” (*manatiq al-tajwal*) of the tribe making the application;
2. That the land was suitable for cultivation, and;
3. That the claimant had suitable funds to carry out the venture.

1942: The articles from the Law of the Tribes relating to land grants lasted just over one year on the statute books before being annulled its applicability and stipulated that no new grants outside of the *ma`murah* could be given

The Law of the Tribes permitted substantial land grants were made to tribal shaykhs in the northeast of the country in the Jazirah. The law also precipitated disputes between the mainly camel breeding tribe (Sba'ah) and those raising sheep (Hadidiyin and Mawali) in the near steppe outside Aleppo and Hama.

1944: Despite the abolition of the land grant clauses the tribes, with the consent of the *Controle Bedouine*, agreed to the division of the better pastures (and so end the dispute). These divisions where extended further into the steppe in 1956 covering some 2mha. Only some land was suitable for cultivation; this and additional areas were eventually ploughed but large areas were reserved for grazing.

1949: Proclamation of the Constitution. The use by the French of the moving tribes as a leverage against the nationalists gave further impetus to the authorities to pursue an aggressive tribal policy aimed ultimately at abolishing all tribal privileges and power. The constitution proved unfavourable towards the tribes. In Chapter X – Transitory Measure: Article 158 of the Constitution stated that

- (1) The government shall undertake to settle the nomads.
- (2) Pending settlement a special law shall be enacted safeguarding bedouin custom among nomads, and it shall specify the tribes that shall be subject thereto.
- (3) A programme for progressive settlement of the bedouin shall be laid down in a law that shall be voted together with the funds necessary thereof.

(4) The electoral law shall contain provisional stipulations for bedouin elections, which shall take into consideration their present condition with reference to the civil register and voting procedure.

1953: The “Law of the Tribes [1940] promulgated by the foreigner during his abhorred mandate” was annulled in its entirety and replaced with a new Law of the Tribes, Decree No.124³. Legal distinctions remained, and guns could be carried in the *badiyah* (Art. 17). But now the law only applied to those tribes that had previously been listed as “nomadic”⁴. These included the `Anezeh factions as well as a further seventeen mostly sheep raising (*shawawi*) tribes, among whom were the Hadidiyin and the Mawali. The Minister of the Interior was empowered to remove tribes from this list as and when he saw fit, and if he did so “the tribe [would] thus become a settled community ... no reversion to nomadic life [would] be possible”.

1952: decree 135 (October) Along with the nationalisation of all unregistered land in the country, this decree made provisions for the allocation of 50ha plots to settling tribal households⁵.

1955: The Extraordinary Development Budget of, drafted in light of the IBRD report, earmarked close on \$2.8 million over a seven-year period for tribal settlement. What was envisaged in government policy was that families would be settled on individual 50ha plots, 20ha of which would be reserved for improved pasture. The size of any one settlement was to be restricted to 5,500ha on which it was estimated that 120 households, including 10 non-farming families, could be settled; these numbers would be allowed to double if all land allocated for grazing was ploughed.

1956: Government aims of tribal settlement coalesced with demands from the tribes to clarify provisions, and expand the geographical coverage of the 1944 tribal territorial treaty⁶ which had divided lands in the near steppe among the Sba`ah, the Hadidiyin, and the

³ The Nationalists original policy vis-à-vis the moving tribes was to substitute the *Contrôle Bedouin* with a Syrian organisation of the Council of the Desert, similar to that existing in Iraq at the time (Charles 1942: 86).

⁴ Thirty-five tribes lost tribal privileges under this decree.

⁵ International Bank for Reconstruction and Development (IBRD) (1955: 56)

Mawali. Cultivation in a part of the area covered by the 1944 treaty (see above page), a continuing shift away from camels to sheep, and a doubling of sheep numbers in the intervening period stimulated the same tribes to seek further definition of their moving areas. The resolution, reached through tribal arbitration did just that. Government demands for division of the land into 50 ha plots and distribution of these plots in such a way that the tribes were mixed in settlement did not appear in the final agreement. The problem that was ultimately being resolved was among the tribes themselves and not between the state and the tribes. Settlement and cultivation, as Rakan (Shaykh of Sba'ah) said, was only possible in a few scattered sites in the steppe, not over all of it⁷. What the tribes wanted was clarity about their moving areas in order to stem rising levels of conflict and provide a secure atmosphere for investment in water for animals and for agriculture. As a *mukhtar* of the Abraz clan (Hadidiyin) said, “the borders were drawn between the tribes because the insecurity without them was causing much violence”⁸. Like the 1944 treaty, this one in 1956 largely reflected a logical unfolding of the customary land tenure system. The details and impact of the treaty will be discussed at length in following chapter on customary land tenure.

1958: (28th of September), President Jamal ` Abd Al-Naṣir (President of the United Arab Republic combining Syria and Egypt 1958-61) repealed the Law of the Tribes of 1956 and proclaimed that henceforth tribes would cease to possess any separate legal identity. This was of historic importance for it was the last legislation to deal specifically with the tribes and marked the final act in the long struggle by central governments to eliminate the tribes and the shaykhs, in law, as rivals to their own power and jurisdiction.

STATE REGULATION STEPPE PASTURES

1970 Law 140: Decision 140 (15.7.70) and its amendment Decision 13 (1973): formally recognised in law the *bema* co-operatives as the basis for the “National Range Development

⁶ See Chapter 3, section 'The final years of the mandate'

⁷ Expert Committee Report to the Damascus Conference (1956)

Programme". Co-operative members received the exclusive right to use the co-operative grazing areas. A penalty against trespassers on co-operative land was imposed, two Syrian lira per head the first time and five lira thereafter. Those solely identified in law to enforce these *hema* co-operative rules were the judicial police of the Steppe Directorate; tribal authorities were not re-empowered. The committee themselves could not change the co-operative rules. That decision was reserved for those at the highest levels of authority within MAAR and the Ba`th Party, and in some cases, such as the penalty structure, by acts of law.

In 1974 the Peasants' Union took control of the well-established co-operative movement from the Ministry of Agriculture. At the time the co-operative network was ubiquitous in the settled areas, and though the same was not true in the steppe, a bridge-head of eight *hema* co-operatives had been established covering 700,000 ha or roughly 6.8% of the steppe area⁹. The slow progress of *hema* co-operative establishment reflected dissatisfaction among herders at government appointees filling all positions on the co-operative boards. Under the Peasants' Union this changed and the position of co-operative leader became an elected one. Officially, the Peasants' Union considered the co-operatives as an important vehicle for the social revolution among the moving tribes but this objective was not in keeping with local political realities or with Asad's move to inclusion and national unity. In a dramatic reversal of policy it was decided that the heads of individual co-operatives would be elected. The shaykhs and other notables of the tribes rapidly assumed the helms of existing co-ops. With the shaykhs' encouragement together with a vigorous recruiting drive by Peasants' Union officials, the organisation of new co-operatives soon took-off¹⁰. Through the latter half of the 1970s, *hema* co-operatives spread from the steppe of Hama, Homs and Damascus to Aleppo, Raqqah and Dayr al-Zawr. In 1983 there were 50 *hema* co-operatives, while some twelve years later in 1995

⁸ Conversation with a *mukhtar* of Bu Ṣalah of the Abraz, the Hadidiyin at Abu al-Fayad: 21st February 1996

⁹ Six in Hama Province covering the whole of the Hama steppe, and one each in Homs and Damascus provinces.

¹⁰ Unlike the procedure for any other type of co-operative, it was a requirement that a Ba`th Party representative be directly involved in agreeing the establishment of a new *hema* or camel breeding co-operative. There are a handful of camel co-operatives, most located in the eastern steppe.

this had rocketed to 424, claiming close-on 200,000 members and covering approximately five million hectares of the steppe¹¹.

The rapid expansion of the co-operatives did not mark a widespread acceptance of the *hema* concept among the tribal groups. The co-operative range management rules were never adopted by members or enforced by official personnel, largely because the restrictions involved were too inflexible and many times inappropriate. The incentive for the herding households to join the co-operatives was not one of access to pastures but rather to more immediate resources. In 1979, to speed up the process of co-operative establishment, the authorities monopolised the supply of animal feed; if herders wanted feed they had to join a co-operative¹². From the author's 1995/96 survey among herders on the Aleppo and Hama steppes, 96% of them said they had joined the co-operatives to access the subsidised feed on offer. The other 4% said they had joined on the instruction of their shaykh¹³. When asked if the co-operatives managed the grazing and water resources, only 6% professed to even knowing this was a responsibility of the co-operatives. And of this 6%, none thought that the co-operatives actually carried out its responsibility. In an interview with the PU official responsible for the *hema* co-operatives in Aleppo province, he acknowledged that the co-operatives had a mandate for steppe protection but frankly admitted it was not a reality on the ground, and never had been in Aleppo or elsewhere¹⁴. Others had already reached the same conclusion. In the first independent review of the *hema* co-operatives conducted by ICARDA in 1982, the report concluded that "very few of the [*hema*] co-operatives have actively become involved in the improvement and control of their range areas" (in fact in their survey they found none)¹⁵. Officials within MAAR were of the same opinion. A three-year internal MAAR study on the state of the range in four selected *hema* co-operatives (1980-

¹¹ SAR - Steppe Directorate (1996)

¹² Manzardo (1980: 30)

¹³ This population was largely made up of those Bu Ghazal households interviewed. Under the instruction of Faysal al-Sfuk, Shaykh of Bu Kurdy, Bu Ghazal joined the al-Adam co-operative, which was otherwise dominated by Bu Kurdy.

¹⁴ Conversation with the Mudir of the PU's regional office at Sefireh, Aleppo Province: 3rd July, 1996

¹⁵ Nygaard, Martin and Bahhady (1982: 116).

1982), concluded “that the co-operatives needed real protection through well organised grazing”¹⁶.

The *hema* co-operative system, then, does not and never has played a role in regulating access to steppe pastures¹⁷. With their take over by the Peasants’ Union the co-operatives became a part of the ubiquitous network of patronage which included subsidised feed and cash loans through the National Feed Revolving Fund.

STATE FODDER PLANTATIONS

Despite the tentative beginnings of shrub plantations in 1983, greater government and agency funding became apparent in 1988 and the following four years saw their rapid spread across the steppe. In 1996 125,000 ha had been planted with shrubs and in 1999 this had risen to 220,000 ha. Though *Atriplex* species dominate these plantations, the Steppe Directorate does not know the exact shrub composition of each. However, production from the Steppe Directorate nurseries during their five-year plan (1990-94) gives a clear idea of what has been available to the plantations.

Two interrelated goals are sought by the SD in following the plantation concept: first, the rehabilitation of degraded rangelands, and second, the growth and stabilisation of agro-pastoral incomes. After a period of shrub establishment, averaging five years, the plantations were opened to the public for use during restricted periods in the winter and spring. Those that trespassed and were caught were fined 5,000 Syrian Lira, the equivalent of around \$100 or the price of a two-year old ewe¹⁸.

Plantations were to be located where SD officials judged the steppe to be degraded. Each provincial SD office was responsible for identifying sites in their region and, in collaboration

¹⁶ Battika *et al.* (1983: 4)

¹⁷ Jaubert and Bocco (1994: 17)

¹⁸ The trespass penalties are decided on in each province by the Provincial Agricultural Council composed of the representatives from the Party, Peasants’ Union, Governor’s Office, and from each ministry with an interest in agriculture. The figure given here is for Aleppo only. Ten individuals were fined for trespass violations in Aleppo plantations in the nine months January through September 1996.

with the Head Steppe Directorate in Palmyra¹⁹, the size of the plantation. Only private steppe land could not be included within a plantation; otherwise all other land was technically state land, including cultivated fields and co-operative pastures, and could be and was appropriated²⁰. With the site and size determined, a committee²¹ was established under the authority of the Minister of MAAR, to produce a technical and economic feasibility study for the proposed plantation. No socio-economic impact assessment of the likely effects the plantations would have on the herders was required or ever carried out. If the committee, which usually had around one month to report, gave the go ahead, MAAR provided financial support for plantation establishment.

Between 1983 and 1995 the Aleppo Steppe Directorate established four separate plantations covering 22,420 ha. The vast majority of the area consisted of lands held and grazed by the Abraz clan of the Hadidiyin, with Haib accounting for the rest²² (see map 7.1). When the Steppe Directorate of Aleppo and Hama then announced in 1995 that they wanted to establish another plantation²³, this time of some 50,000 ha between Wadi al-`Azib, Maraghah and Abu al-Naytel, the shaykh of Abraz, Faysal al-Nuri, complained to the Governor of Aleppo on behalf of his tribe. Faysal al-Nuri explained to the governor the customary land tenure situation, the pressures that had recently been imposed upon it by past plantation

¹⁹ Amongst other considerations, the Head office had information on the number of shrub seedlings available from the nurseries.

²⁰ The first plantation ever to be established in the country, that at `Ein al-Zarqah, took in over 80ha of licensed cultivation, all belonging to one steppe village (conversation with the *mukhtar* of Samamra clan of Abraz, Adami Village: 10th April 1996). This was by no means the exception: 12% and 14% of the Abu al-Naytel and Abu al-Fayad plantations respectively were cultivated under license prior to establishment. At Maraghah there was no prior cultivation.

²¹ The committee should be composed of an Agricultural Economist, a geologist, and representatives from the provincial departments of the MAAR and the Steppe Directorate.

²² For further information on the impact of `Adami and Maraghah plantations on the local households see Rae *et al*, 1996.

²³ The committee formed by the Ministry of Agriculture and Agrarian Reform to study the proposals put forth by the Aleppo and Hama Steppe Directorates was established on 7th September 1994 (decision No. 680 of the Minister of Agriculture, Assad Mustafha).

establishment²⁴ and the inevitable outcome should the new plantation go ahead. On the 13th February he wrote to the governor:

Once these lands are annexed and the said reserve is established ... we would no longer have lands for our sheep to graze. We were moved from `Ein al-Zarqah and Maraghah where two reserves were established. To the north of us is the al-Haib tribe ... with whom we have a bloody dispute ... [and consequently] we are not welcome on their pasture. Moreover, the establishment of the reserve would cause hundreds of herders to move away, many of whom have houses in the area.²⁵

The Governor asked Ghassan Eimesh, the director of the Aleppo MAAR, what could be confirmed. Eimesh reply not only confirmed what Nuri had said but went on to question the plans of the plantation on technical grounds. He wrote that the site in question was in fact “one of the good sites in our steppe in terms of plant cover”²⁶. He went on to say that there “are about 100 [tent and house dwelling] families living there all of the Abras clan” a number of which had been “moved from Ein al-Zarqah and Maraghah sites due to the establishment of reserves there”. The Director also noted that “there are no alternative lands for the Abras clan” and that there was “a dispute between them and the neighbouring al-Haib clan”. The Aleppo authorities abandoned the joint venture between the two provinces, and instead they switched their focus to the establishment of a smaller plantation at Dabourah, a site held by clans of Ghanatsah, Hadidiyin. In 1998 the land there was appropriated and planting begun.

²⁴ Apart from the cultivation and pasture lost through the plantations, thirteen households were dislodged from Maraghah lands, and twelve from `Adami. All these households were from Abras and none was compensated in any way by the authorities (Plantation Survey Results).

²⁵ Letter to H.E. The Governor of Aleppo from Faysal al-Nuri and companions on behalf of the Abras tribe: 13.2.1995

²⁶ Letter from the Mudir, Directorate of Agriculture and Agrarian Reform to the Governor of Aleppo, No. 1942/16: 21.2.1995

The role of family, clan, tribe and patron-client networks, remain some of the strongest institutions in the country. Concerted efforts to de-tribalise the steppe areas faltered at the start and since then an informal policy of accommodation has developed. A regime governing a new state with a diverse population and seeking military success against Israel needed a strong home front, something Asad forged through inclusionary mechanisms, patronage, and a powerful police state. This in part relieved the ideological attack on the moving tribes but it was the practicalities of steppe administration that reinforced tribal institutions. The tribe has proved a resilient and adaptive concept and a persistent feature of the political landscape. The social, political, and

IRAQ

Population: 23,331,985 **Growth:** 2.84%
Labour force: 4.4m (15% in agriculture)
Land use: Arable land 12%;
permanent crops 0%; permanent
pastures 9%; forests 0%; other 79%
Irrigated: 25,500 sq km
Legal system: based on Islamic law in
special religious courts, civil law
system elsewhere

EXECUTIVE SUMMARY

The build up land property in the hands of city merchants and tribal shaykhs took shape in the latter half of the 19th century under Ottoman control and subsequently during the British Mandate. Such were the distortions in ownership of land and power that reforms were hastily pursued in the wake of the Ba’thist revolution in 1958. In the proceeding 40 years Iraqi agriculture travelled full-circle in land reforms. It looked to Egypt and copied land reforms enacted there but results were small farm size and fragmented holdings. Collectivisation seemed the answer in the latter part of the 1970s but this soon showed its hand and since the mid-1980s the state has returned to a privatisation program in all but name. The changing status of land under the era following the Gulf War remains unclear though reports suggest a build-up, once again, of large land holdings.

POLICY AND LEGISLATION

The Ottoman Land Code of 1858 attempted to impose order by establishing categories of land and by requiring surveys and the registration of land holdings but only limited surveys were completed and tenure remained insecure.

HECTARES	NUMBER
< 1	24,270
1-5	25,849
5-25	41,905
25-150	27,555
150-250	1,847
250-500	1,702
500-1,250	,1221
1250-2500	424

1930s: Large landowners became more interested in secure titles because a period of agricultural expansion was underway. In the north, urban merchants were investing in land development, and in the south tribes were installing pumps and were otherwise improving land. In response, the government promulgated a law in 1932 empowering it to settle title to land and to speed up the registration of titles.

- Under the law, a number of tribal leaders and village headmen were granted title to the land that had been worked by their communities. The effect, perhaps unintended, was to replace the semi-communal system with a system of ownership that increased the number of sharecroppers and tenants dramatically.

1933: law provided that a sharecropper could not leave if he were indebted to the landowner. Because landowners were usually the sole source of credit and almost no sharecropper was free of debt, the law effectively bound many tenants to the land.

REDISTRIBUTION REFORMS

By 1958, two-thirds of Iraq's cultivated land was concentrated in 2% of the holdings. The collective holdings of 86% of the farmers amounted to less than 10% of the cultivated land. The Ba'athist revolution articulated the mood of the majority and enacted land reform, which not only surd up political support but greatly diminished the old political class.

1958: Land Reform law, modelled after Egypt's law, limited the maximum amount of land an individual owner could retain to 1,000 dunums (100 hectares) of irrigated land or twice that amount of rain-fed land.

- Compensation was to be paid in state bonds, but in 1969 the government absolved itself of all responsibility to recompense owners
- The law provided for the expropriation of 75 percent of all privately owned arable land.
- The expropriated land to be distributed to individuals in parcels of between seven and fifteen hectares of irrigated land or double that amount of rainfed land

- The recipient was to repay the government over a twenty-year period
- The recipients also required to join a co-operative..

Ten years after agrarian reform was instituted, 1.7 million hectares had been expropriated, but fewer than 440,000 hectares of sequestered land had been distributed. A total of 645,000 hectares had been allocated to nearly 55,000 families although several hundred thousand hectares of government land were included in the distribution. The situation in the countryside became chaotic because the government lacked the personnel, funds,

Impact of reforms

Although Iraq claimed to have distributed nearly 2 million hectares by the late 1970s, independent observers regarded this figure as greatly exaggerated. The government continued to hold a large proportion of arable land, which, because it was not distributed, often lay fallow. Rural flight increased, and in the late 1970s, farm labour shortages had become so acute that Egyptian farmers were invited into the country.

and expertise to supply credit, seed, pumps, and marketing services--functions that had previously been performed by landlords. Landlords tended to cut their production, and even the best-intentioned landlords found it difficult to act as they had before the land reform because of hostility on all sides. Moreover, the farmers had little interest in co-operatives and joined them slowly and unwillingly. Rural-to-urban migration increased as agricultural production stagnated, and a prolonged drought coincided with these upheavals. Agricultural production fell steeply in the 1960s and have since never recovered fully.

1970: law reduced the maximum size of holdings to between 10 and 150 hectares of irrigated land (depending on the type of land and crop) and to between 250 and 500 hectares of non-irrigated land. Holdings above the maximum were expropriated with compensation only for actual improvements such as buildings, pumps, and trees.

- The government also reserved the right of eminent domain in regard to lowering the holding ceiling and to dispossessing new or old landholders for a variety of reasons.

1975: law enacted to break up the large estates of Kurdish tribal landowners (in the north of the country). Additional expropriations such as these exacerbated the government's land management problems.

COLLECTIVISATION

1978: To resolve problem of farm size the authorities turned to collectivisation

- By 1981 Iraq had established twenty-eight collective state farms that employed 1,346 people and cultivated about 180,000 hectares.
- In the 1980s, however, the government expressed disappointment at the slow pace of agricultural development, conceding that collectivised state farms were not profitable.

1983: law encouraging both local and foreign Arab companies or individuals to lease larger plots of land from the government.:

- By 1984, more than 1,000 leases had been granted
- As a further incentive to productivity, the government instituted a profit-sharing plan at state collective farms.

1987: the wheel appeared to have turned full circle when the government announced plans to re-privatise agriculture by leasing or selling state farms to the private sector

Forms of tenure (circa 1957)

1932 - All land not classified as mulk, matruka or waqf should be classified miri either granted tabu or lazma, or retained in state ownership as miri sirf. On miri state retained raqaba while granting the tasarruf. In practice, both grant what in english law would consider absolute ownership, since they confer rights of disposal and inheritance with minor restrictions.

Lazma is a customary institute and was recognised in the:

- 1932- Law of Granting Land on Lazma. Recognised in Ottoman times, the law was formalised as a way of establishing individual tenure while maintaining tribal solidarity. Enabled individuals to claim land if cultivated over the previous 15 years. Once secured it could be transferred though only with the approval of the Ministry of Justice (Tabu Dept.) which would ensure that the land did not leave the tribe. However, was found to be yet just another mechanism for appropriation of land by pump-owners to the loss of prescriptive right holders.

LEBANON

Population: 3,627,774 Growth: 1.38
Labour force: 1.3m (? in agriculture)
Land use: Arable: 18%; permanent crops 9%; permanent pastures 1%; forests 8%; others 64%;
Irrigated area: 860 sq km
GDP from agriculture: 12%
Legal system: mixture of Ottoman law,

POLICY AND LEGISLATION

Lebanon's land tenure system is characterised by many smallholdings, but the number has declined over the years. In 1961 about 127,000 farms were reported operating. The partial census of 1970 recorded some 75,000 farm holdings, of which 46 percent were smaller than 2 hectares while only 12 per cent had 10 hectares or more. In 1981-82 there were some 64,000 active farms, with only 50 in the 100-to 1,000-hectare range.

Landholding patterns were also affected by massive population movements in the 1970s and 1980s. Lebanon's internal refugees strove to maintain title to their lands, many of which came to be controlled by rival sectarian or political groups. A case in point was in southern Lebanon. After the 1978 Israeli invasion, many Muslim landholders fled to other parts of Lebanon, hoping to reclaim their land following Israel's withdrawal. But instead of handing the land over to the United Nations Interim Forces in Lebanon (UNIFIL), as was expected, Israel turned it over to the Christian South Lebanon Army (SLA). The effect was to dispossess many of the former landholders.

Two important socio-economic trends made it difficult to evaluate the farming structure in the 1980s and 1990s. The first trend was consolidation of holdings, as Beirut-based

professionals began buying up small farms before the 1975 fighting. The war may have slowed this development, however, because it complicated long distance supervision of land. At the same time, the trend toward large families, especially in the south, made the old system of dividing holdings among male offspring less feasible, although in many cases this factor was offset by the migration of males to the city or emigration abroad.

The number of farms dropped during the war, resulting in more tracts of untilled land rather than in more ownership transfers. Small freeholders who choose to continue farming often lived in poverty. Even before the 1975 Civil War, the average annual income for the head of an agricultural household was estimated at L£500, compared with L£1,100 for a counterpart working in industry or L£8,060 in the services sector. One report noted that 56 percent of those engaged in agriculture in southern Lebanon, most of whom were landowners, also had second jobs in the late 1960s.

EVOLUTION OF CUSTOMARY TENURE

Ottoman Land Code of 1858 has had a lasting impact on customary land tenure in Lebanon:

1. Ottomans gave local municipalities the power to rent common mountain range and forest to individuals
2. Use rights granted to those cultivating abandoned or virgin land were transformed into ownership rights if the farmer planted trees, crops or fenced (Baalbaki 1997; Jordan Conf.).

The 1858 law Art 10 was used by influential leaders to allege first occupancy and laid claim over large areas of common forests and pastures. The French continued the status quo.

1971: Government claimed ownership of rights (*haq al-raqabah*) over rangelands while granting use-rights to local communities. At the same time (1) the local municipalities and village committees empowered to manage access to these lands, and (2) Dept of Forests of the Ministry of Agriculture vested with the right to grant cutting licenses.

Current assessment of the rangelands: None of the provisions altered encroachment on the rangelands, poor management by municipalities and dominance of local leaders to appropriate large areas.

JORDAN

(Eric Patrick)

<p>Population: Growth: 3%</p> <p>Labour force: 1.15m (in agriculture: 7.4%)</p> <p>Land use: Arable land 4%; permanent crops 1%; permanent pastures 9%; forests 1%; other 85%</p> <p>Irrigated area: 630 sq km</p> <p>GDP from agriculture: 3%</p> <p>Legal system: based on Islamic law</p>

POLICY AND LEGISLATION

Land tenure in urban, and to a lesser extent peri-urban, areas has been well established, at least in the higher rainfall areas, for some time. Again, in the areas historically used for arable production, institutions have developed which are relatively stable, and the interaction between the peasant producer and the state has been regulated in ways which evolved gradually. In the case of rangelands, however, which until relatively recently were either seen to be of little value or were too difficult or uneconomic to exercise control over, the state and its codified system of land tenure - which is based on the need to tax a sedentary population working arable land - was never systematically applied.

At the present time in the *badia*, or desert areas, of Jordan the privatization process, not just of land but also of government services, which has been rapidly proceeding in the arable and urban areas, is being applied as well. This is causing tensions, in the social, economic and ultimately political realms, due to differential abilities of local (and in many cases non local, speculative urban) actors' ability to gain the ear of the state in the land adjudication process. This question is examined also in the case study.

LAND ADMINISTRATION

An excellent summary of the role and operation of the Department of Lands and Survey (DLS) can be found in Amer (1997) and which serves as the primary reference for this section. Note that the author is a director of the DLS. For an examination of the importance of the DLS records during the Mandate period as an historical document regarding changing land use and tenure see Amawi and Fischbach (1991). The DLS is the government organization entrusted to maintain cadastral records and to perform surveys for the entire Kingdom of Jordan. It was established in 1927 and currently DLS employs over 1400 staff. These include: registration of land property rights; settlement of land ownership disputes; conducting field survey work to delineate property boundaries; development of cadastral maps and the archiving of all legal documents related to land ownership. There are 31 registration offices spread throughout the country

Currently, DLS maintains records on 812,000 land parcels, associated with 2,285,000 ownerships' owned by 96,500 land owners. The DLS processes approximately 15,000 transactions each year and collects not less than U.S. \$100,000,000 annually as revenues. Of particular interest to this study is the fact that the DLS administering state domain lands through appropriation, leasing, authorization, and designation and assists in developing regions and developing plans for land management. Furthermore, Land Surveying and settlement Groups operate in various locations in Jordan on demand, and are responsible for the land survey fixing of owners rights. The DLS is the only authority responsible for providing cadastral information (maps & registers) to public or private users. This information is compulsory for management of development schemes. The DLS cadastral database is used as basis for development projects by a number of ministries in Jordan as well as by all municipalities in Jordan.

A Geographic Information System (GIS) is now being installed at the DLS and all of the owner registers are now stored in digital forms. At the **country level**, most important objectives of this project are given by Amer (1997) as:

- Certainty of ownership
- Security of tenure
- Reduction in land disputes
- Encouragement of the land market by introducing fast, cheap, secure and effective system for recording and transferring land transactions.
- Monitoring of the land market and control of land transactions and ownership.
- Successful land reform through the permanent availability of information regarding who owns what rights on what land.
- Better management of state domain lands. This gives a rise to improved revenue collection from the land which it leases, gives for rent or otherwise authorises.
- Support for land taxation
- Improvements in physical planning.
- Improvement of lands settlement and surveying for new developing areas prevents population migration to big cities

Interestingly, the description of land registration from the perspective of the state given by Amer (1997) is frank in acknowledging control and surplus extraction and/or rent on transactions by the state as being objectives of the exercise, a point which shall be returned to in discussing conflicts in ‘common property’ areas. Unfortunately, the belief that registration of rural areas will reduce migration to urban areas has not been borne out to date, as the attractions of regular employment outweigh the irregular benefits of cultivation or herding in areas with irregular rainfall, according to many Bedu interviewed in my own fieldwork in the *Badia*. In fact, most users / former users of ‘common property’ lands maintain some traditional economic mode of production even if part of their production unit (the extended family, and more broadly kin network) gains a regular cash income in a settlement. This has led to a pattern of rapid development of small towns (Millington *et. al.* 1999, Dutton *et. al.* 1998) in a ‘transition zone’ between the *Badia* proper and the economic poles such as Mafraq, along roads. Where subsidised groundwater is also provided by the state, however, the

opposite effect occurs; there is a migration of urban capital to develop cheap land and water in the periphery, by well connected absentee landlords (see case study).

To the **individual or citizen**, the merits of the national systematic register result from four effects of a cadastre which is authoritative, complete and gives guarantees, according to Amer (1997):

- The documented evidence of land ownership, which a cadastre provides, supplies security, reduces or eliminates the risk of eviction and thus enhances the incentive to invest in the land or real estate.
- This legal security affects the availability of resources for financial investment by increasing the possibility of mortgage-based loans.
- Dealing in land becomes easier, cheaper, faster and safer. Access to land is consequently improved.
- Increased legal security will result in a decrease of title and boundary disputes and related litigation, which saves costs for both government and citizen and promotes good relations between neighbours.

The concept of citizenship is introduced here, which though subtle is important, as it specifically relates to the Western concept of a nation-state, something which existed even in theory in the rangelands concerned since the early twentieth century. This point, and the question of borders and the definition of territory and access to land, shall be revisited. At this point, however, it is salient to note that, at least in the case of state land or common property, the access listed above as an advantage may in fact be *preferential* access by those with financial and/or social and/or political capital, a point which shall be returned to. Similarly, whilst disputes may be lessened in areas which have historically been held in private title, the policy of land registration on either an individual or group basis has been shown to have the opposite effect, at least presently / in the short term.

Amer (1997) recognises that there are a number of obstacles in implementing a GIS at the DLS in Jordan, or more broadly a systematic land registration procedure. These include,

At the national level:

- Lack of a national steering committee to monitor, evaluate and control the plans, operation and co-operation between government agencies.
- Lack of unique social security identification numbers for each individual. This leads to the existence of multiple name sets for the same landlord. This leads to loss of credibility in information systems.

At the administrative level:

- Interpersonal and interdepartmental political struggles that are native to many organisations severely limit the organisation's ability to reorganise itself to apply an innovation or to get the long term interdepartmental support and co-operation it requires.

At the operational level:

- Existence of *masha* ownership. This means that one parcel is owned by large number of owners, so that any individual owner shares in a tiny unusable piece of land. This leads to having a land that no owner have the right to invest in or sell or split. Moreover, the number of owners increases dramatically due to multiple transfer of inheritance transactions.

EVOLUTION OF CUSTOMARY TENURE

This last point by Amer (1997) leads our discussion to the question of constraints on 'optimal' land management resulting from indigenous tenure systems, which is often the perspective taken by the state, but will also examine the functional logic and advantages of these systems as well as the constraints created by imposing a formal, codified tenure registration system, particularly in rangelands. For an excellent discussion of indigenous land

tenure systems (as they are multiple) and the evolution of the relationship between local land users and the state, see Lancaster and Lancaster (1999). This work is the *magnus opus* of the former director of the British Institute for Archaeology, who spent several decades in Jordan and knows many of the Rwala (northeastern Jordan) very well. For an historical examination of land tenure and agriculture in northern Jordan see Palmer (1999).

Razzas (1994) argues that for the last two decades, land to the northeast of Amman, Jordan, has been the locus of fierce contestation among the state, the tribes, and new urban settlers. The roots of conflict can be traced to the colonial era, when the British transformed tenure in commonly held cultivated lands into individual ownership, but treated commonly held pastoral land as unowned 'state land'. Today, the ownership and control of pastoral, but rapidly urbanising, land is being contested by tribes claiming traditional rights, Palestinian refugees claiming use rights, and the state claiming legal ownership. In fact, 'legal property rights' represent only one aspect of the complex normative and institutional arrangements used to control land. Two other aspects of land control should be considered: 'property claims' (reflecting the plurality of competing and conflicting claims) and actual 'property status' (reflecting the plurality of control mechanisms).

Historically, Bedu concepts of territory were expressed by the term *dirab*, meaning the area throughout which a group migrated, mainly pastoral but often including some cultivated zones (Dutton, 1998). The effective boundary of the *dirab* were necessarily fluid, as they were dictated at a given point in time by such factors as the size of the group and its alliances, the number and type of livestock owned, the nature and reputation of their leader and the weather. The relative strength of their neighbours was an important factor, which in turn may have been influenced by any groups' relationship with external forces / authorities, which themselves were typically in flux. Thus the Bedu developed a *contextual* concept of land tenure which distinguishes between claims and controls (*i.e.* an effective claim) and between right of access and right of disposal. 'Right of disposal' is the close to a Western legal concept of ownership; the ability to buy and sell in a land market. In an arid, sparsely populated landscape it is difficult to enforce claims, resulting in constant disputes even if land would have been registered, and the right of disposal was not until recently a practical aspect

of land use. With the integration of the Badia into the market economy, which has intensified since the 1970's, with an explosive growth in demand from the newly oil rich Gulf countries for meat, fruit and vegetables, land speculation based on claims of absolute ownership has become problematic (see case study).

CUSTOMARY TENURE SYSTEMS AND RELATIONSHIP TO THE STATE

In the tribal concept of land tenure in Jordan, which we can call customary law, ownership means preferential access to resources and control over the surplus they generate, as opposed to absolute ownership with the right of disposal (*i.e.* sale) of that resource (Lancaster and Landcaster 1999). Ownership is strongly connected to use, but contains longterm rights of access. Furthermore, land tenure is land use specific. This is another important distinction *vis-à-vis* Western legal concepts of property ownership. Once again, the land tenure philosophy is pragmatic and contextual, probably due to the lack of a central authority who was able to impose an universal codified law, as happened in riverine environments such as Mesopotamia and Egypt, which produced sufficient surplus to support a permanent authority bureaucracy.

In the case of irrigated land, which represents a substantial capital investment in associated infrastructure, land is owned by those who develop it (Lancaster and Landcaster 1999). Rainfed land under cultivation is associated with a particular descent group, however other individuals or groups may have usufruct rights and preferential claim over the surplus (production from) that land resource. Rangeland have land claims which are the least easily enforceable for practical reasons, meaning that they are subject to potential conflict. Traditionally a particular group was understood to have priority in given area(s), whilst making numerous, often informal and *ad hoc* arrangements to use other groups' traditional areas. This is feasible given a low population: usable resources ratio; but may breakdown temporarily during years of drought, but remains a resilient social institution, as good years will follow.

In terms of categories of land tenure recognised in Jordan, one can distinguish between *mulk* or owned land, which is developed in some way such as with buildings, orchards or

gardens around a village; *musha'a* or communal land held by peasants, which is periodically redistributed; and *waqf* land, owned by a religious body and the income from which goes to charitable enterprises. There is also state land, *miri*, of which the state has the right of disposal but for which the population has usufruct rights. The state or central authority can control land under Islamic law (Lancaster and Lancaster 1999); *miri* land can be rented for cultivation, may be released for purchase and can also be withdrawn. The latter in the case of Jordan has been for forest reserves, nature reserves, range reserves, protection of antiquities etc., but of these the most resented are forest and range reserves, as they affect larger areas and are potentially productive resources. The legal concept of *musha'a* land ended when the DLS began registering land under the Mandate government, but registration never went east of Mafraq. The Jordanian government, at the end of the Mandate, declared that all uncultivated land belongs to the state (Dutton 1998). This was an incentive to sedentarization, building upon the opportunity created by the stability of the Mandate period which allowed pastoralists around Mafraq to settle, the land furthest east in the country to be registered (Jaradat *et. al.* 1993 IN DUTTON).

To appreciate the potential subtlety and complexity of tenure in practice, in the context of a society where the appropriate unit of analysis may be the kin network rather than the individual, in contrast to assumptions behind Western concepts of property rights, the following description from Lancaster and Lancaster (1999: 190) is salient, as well as highlighting the role of the DLS:

A young man is a builder and part-time farmer and gardener. In 1993 he grew onions on family land with their agreement; the onions will be shared around the family, with himself having extra shares...This year no one else in the family was interested in the land, which is owned by his father and two uncles, with eighteen male offspring between them, and registered in the name of the dead grandfather. Next year an uncle is retiring from his job in Amman, returning to the village and wants to garden. "So when my uncle returns, we will see how matters go between him and me, and when we have sorted out the working of

the land, and the claims on its produce, we will call in the Dept. of Lands and Surveys, and re-register the garden.”

The relationship between local people who have customary and usufruct rights to an area and the state claim over *miri* land is illustrated by the case of the RSCN nature reserve at Dana, which may soon become an international biosphere reserve. The state, using its prerogative to take *kharaj* or reserve land out of *miri* land, created much resentment with the concept of an absolute reserve, based on Western ideas about exclusivity of ownership, access and use. This has created much resentment locally due to alienation of much grazing land. In an interesting development, advocates for local pastoralists used archaeological and written sources to support the local view that the area was not a wilderness but rather had always been used by tribal families, which had rights under both customary and Islamic law (Lancaster and Lancaster 1999).

As can be seen from this brief characterization of traditional tenure arrangements outlined above, customary law has the advantage of flexibility, the ability to constantly renegotiate arrangements, while agreeing on principals (everyone has a right to a livelihood). Wahlin (1994 IN LANCASTER) examines this in one rural area of Jordan in terms of the structure land ownership and the pattern of inheritance. This flexibility, however, has limits, either when the presuppositions behind the system (relatively equitable power between competing interests) and/or, in the case of common property grazing land, when the mobility which the system grew out of is restricted. Both such shocks, both from outside the system, have disrupted the relative equilibria of the system and the understandings / ‘rules’ / even culture which governs it and out of which customary law, as a pragmatic problem solving mechanism, evolved. Use of land has changed, in part because of new technology (such as drilling rigs) and new relationships between one system and the nation state which embodies it, an ideology which imposed itself on the tribal communal lands at the end of the First World War. The concept, imperatives, logic and instruments of the nation state often contradicted and overwhelmed the traditional economic practice and cultural worldview. The

dirah, referred to above, was crisscrossed with national borders which (to a greater or lesser degree, depending on the border and the point in time) restricted mobility.

A POLITICAL ECOLOGY OF GOVERNANCE IN JORDAN

Tribal peoples in the *badia* distinguish between concepts of governance (*kukuma*) and of the state (*daulut*) (Lancaster and Lancaster 1999). States are not the only bodies which can govern; indeed any reputable individual can potentially provide specialized services such as dispute resolution which allow live their lives. The state is potentially an enabler of social practice and the pursuit of livelihood however, in practice, it is usually seen to be an agent of surplus extraction. Furthermore, it is seen as rule by might rather than authority derived from legitimacy growing out of the moral premises of the community. As when state legislated tenure usurps customary law, the state is seen as an external actor; its agents are not known individuals, accountable to the community.

Naturally, a political entity predicated on a fixed spatial extent of jurisdiction is suspicious of, yet needs to enlist the support (Tell, 1994; IN DUTTON) of individuals and groups who pass at least some time in their state on a regular basis. Similarly, the new concept of citizenship meant that one could owe allegiance to one state, and by definition to be seen to owe allegiance to another state instead may be treasonous, and the benefits of belonging to one state cannot be repeated in others. Finally, the right to extract surplus / rent, implicitly in exchange for the benefits of being governed by this political entity, are again mutually exclusive. Accordingly, Jordan, along with her neighbours, attempted to restrict movement and encourage sedentarisation. This resulted in pastoralists, many of whom had 3 or so passports (Lancaster and Lancaster 1999) to 'shop around' for the best policy environment, *i.e.* nation state, in the realm of land tenure and other policies affecting their ability to make a living. The centralist, authoritarian Ba'thist nationalist socialist regime in Syria from 1958 abrogated customary laws (Rae et. al. 2001) as one of its first acts in the 'steppe zone' and organised co-operatives.

A similar regime took power in Iraq, whereas in Jordan and Saudi Arabia regimes dependent to some extent upon and sympathetic to the Bedu, at least as symbols of their own

desert roots, held sway, and in Jordan participation in state sponsored co-operative production schemes was essentially voluntary. Nevertheless, the fact that the state was becoming directly involved in the means of production represented an important stage in the 'capturing the peasantry', resource capture and the entrenchment of a particular type of power typically associated with the 'development'/ incorporation of peripheral regions (Ferguson 1994), bureaucratic state power. Glubb set up the Desert Patrol Force in the 1930's (Dutton 1998), partly as a make-work program during the depression as well as to suppress raiding (Lancaster and Lancaster 1999), partly to directly engage these groups into the state system, in a logic of traditional patron-client relationships, together with payments to local Shaykhs. Interestingly, this mobile group also served to collect the animal tax from mobile subjects. The Jordanian army has always been composed of a disproportionately large fraction of desert tribal members. Interviews of Bedu by the present author recorded several comments along the line of "we keep the King in power"; whether or not this is accurate, it reveals a keen awareness of the nature and *quid-pro-quo* of the patron-client system.

The logic of patron-client relationships was not new to land users in common resource areas, or indeed in arable areas of Jordan. Shaykhs and other local notables had traditionally accumulated power, or more accurately reputation and influence, within this logic by offering gifts, hospitality and protection, as well as successfully resolving conflicts. They became natural intermediaries between local land users and external forces interested in exerting control over these difficult to pacify sparsely populated arid lands with mobile populations. The Ottomans (Lancaster and Lancaster 1999) and British after them (Tell 1994) both used subsidies (or bribes) in order to woo the local population, or at least to keep them in line. The Hashemites in particular, having been placed as they were on the throne of a 'foreign' territory to compensate them for the loss of the Hejaz to ibn Sa'ud and Wahabiism, naturally coveted the support of indigenous groups. This insecurity was compounded as Jordan became surrounded as Jordan was with socialist, Arab nationalist neighbours in from the time of Nasser, with the added threat of a disloyal Palestinian state-within-a-state with the mass exodus from the West Bank after the Israeli victory in The Six Day War. The legitimacy of a

monarchy, though possibly inimicable to a strict interpretation of Islam, was not outside the logic of patron-client relations, and particularly as the claim to authority was based on religious grounds.

Furthermore, the state has more recently begun to view the *badia* as a great untapped resource (Dutton 1998), much as the Brazilian government with the Amazon, the latter having produced such massive and disastrous development programs as the World Bank backed Noroeste Project. In the case of Jordan, which is bereft of a petrol income with which to purchase or maintain loyalty, similar investments on a smaller scale include the Badia Research and Development Programme (see case study), again funded by Western monies. This lack of oil revenues has implications for land tenure in communal areas. Just as the Hashemites / the state acts as a patron with respect to local populations, so the authorities are clients of international patrons. Jordan has generally received support from conservative oil rich monarchies in the Gulf, partly as compensation for maintaining Palestinian refugees (Lancaster and Lancaster 1999) and partly, together with the United States, as a buffer against radical Arab nationalism, communism and, more recently, Muslim fundamentalism.

Since the fall of the Soviet Union, espousing private ownership of property / the means of production is no longer sufficient to ensure the foreign aid which affords the largesse used to oil the patron-client system within the state. Structural Adjustment programs, made necessary after remittances from expatriate Jordanians dried up with the expulsions from the Gulf for declaring neutrality during the Gulf War, have been imposed upon Jordan by the IMF (Harrigan and El-Said 2000), together with a new policy environment. Amongst other reforms, the elimination of subsidies for *alef*, concentrated animal feed, and deep boreholes have enormous implications for rural land use in the *badia*. This is accompanied by strong pressure to privatize nationally owned / run means of production and services (Wils 2000), such as the telecommunication system, and this logic naturally extends to land tenure where land is not already privately held. Note that private, in this sense, is understood to mean both private *and titled to individuals*, as opposed to the 'group ranches' of earlier, more socialist

influenced policy environments. Private land titled to individuals facilitates a market for land, indeed this is precisely the objective of this policy.

Unfortunately, preliminary experience and observations has shown that private land titling is not successful in terms of equity, should that be a criteria in policy making, but is successful in a perverse way with respect to the stated objective and theoretical rationale of encouraging investment. This investment has often come in the form of land speculation by largely urban buyers (see case study). This is not a new process. Lancaster and Lancaster (1999) cite the case of the area of Safi, where, until it was forbidden in 1975, land was sold largely to outsiders from Irbid and Amman. Similarly, in wadi Fainan local land users developed irrigated gardens in order to occupy tribal, favourably sited land before it could be usurped by outsiders. Once again, this time in the Dana gardens, which have been cultivated by the current owners since the 18th century and are considered to be a major tribal resource, there is little commercial production for the market. This is similar to what Lichtenthaler (1999) describes for the Sada'a area of Yemen, where it is considered shameful to sell (or at least to be seen to be selling) oranges; they must be given away. In spite of the market orientation of land use throughout Jordan, it is important not to overlook what could be termed the moral aspect of economics. This is particularly true in tribal areas, where reputation is a key element in developing and maintaining social capital and therefore is taken into account when considering a course of action.

Even if land titling is in place, however, this does not necessarily prevent a better connected individual from simply occupying that property, as has been occurring even in the peri-urban area of Amman (Razzaz 1993), let alone in a remote area of the country. The policy of land titling for the purpose of encouraging investment assumes a politically neutral state, a purely technical administrative body interested in maximising utility for the society as a whole and thereby guaranteeing access to land and security of tenure in an even-handed manner. In reality, of course, the state is often and to various degrees the captive of interest groups, yet as the 'representative and servant of the people', according to political theory developed in a very different historical-cultural setting has the legitimacy to arbitrate between these groups, either directly or indirectly. In spite of democratic reforms recently in Jordan,

and particularly under King Abdullah, Jordan can still be considered to be a rent collecting hierarchy. The 'civic myth' monarchies, of which Jordan and Morocco are prime examples, have found it necessary to embark on limited but highly trumpeted processes of political liberalisation, if only as a necessary survival strategy (Kamrava 1998). The incentive therefore exist to invest in accumulating political capital in order to obtain collective funds (state funds) for individual profit. This has clearly been happening with subsidies for deep wells and the nature in which permits for drilling / lack of enforcement of drilling policies for well connected individuals, often from outside the area, in the *badia*.

SAUDI ARABIA

<p>Population: 22,757,092 Growth: 3.27%</p> <p>Labour force: 7 m (12% in agriculture)</p> <p>Land use: Arable land 2%; permanent crops 0%; permanent pastures 56%; forest 1%; other 41%</p> <p>Irrigated area: 4,350 sq km</p> <p>Legal system: based on Islamic law,</p>

EXECUTIVE SUMMARY

The Ottoman land code of 1858 was implemented in limited areas of the Hejas and was subsequently adopted by the Saudi authorities with the establishment of the nation state. Prescriptive rights on unused land remains a running problem in the kingdom for though no longer recognised by the state, it remains persistent in custom and a ruling by the Mufti in the late 1950s supporting custom still carries resonance. Uncontrolled development around urban areas is a clear manifestation of the continuing legitimacy of this ancient right.

The King maintains another ancient right to bestow rights to land to individuals or groups. This privilege was widely used by King Abdul Aziz in his marshalling of bedouin support in the first half of the 20th century. In lieu of land and services the bedouin were expected to settle and sell their herd. This so-called Hejar principal in land distribution was again deployed in the 1960s with the added incentive of a monthly cash stipend and free irrigation. The program peaked in the mid-1970s. Land concentration is high with the skewed distribution in landholdings reflected in the Gini index at 0.83, one of the highest in the Middle East.

POLICY AND LEGISLATION

The Ottoman Land Code of 1858 was applied for a short period in small but spatially important areas in the Hijaz. With the establishment of the Saudi state in 1932, modernisation

of law incorporated elements and procedures from the Ottoman System according to Shari'ah. The power of the new state to initiate change or to plan development were designed to be compatible with traditional ways and not lead to the neglect of the Islamic concept of the beneficial use of previous (Ottoman) regulations.

The persistent issue for the new state, and one that remains contentious to this day, is the right of prescriptive rights on *marwat* land. Article 85 of the Ordinance governing the organisation and functions of Shari'ah law (1952) insisted on the illegality of any land claim on *marwat* land made without state permission. Appropriation deed only issued once the following had been consulted: Municipality, the *Waqf* Department, Ministry of Finance and Ministry of Agriculture and Water. Disputes arose as to the legality of this law and it was left to the Chief Mufti in 1957 to make a ruling. He confirmed that dead land can be owned and utilised:

"He who utilised the land claimed it as his own, whether or not he had permission from the authorities. He own surrounded a land by stones, it became his own free of charge. When an interested person got it he had to utilise it or leave it. Any dispute or interpretation by municipality or another will refer to the shari'ah. Anybody trying something else is not going in the right direction"

The Mufti's rebuff of state authority was challenged in the following decade first in 1967²⁷ and conclusively the following year in a decree that nationalised undeveloped land and transferred the power to issue deeds from the Islamic courts to the state. The decree ruled "that undeveloped lands are owned by the government, that appropriation of such land was recognised, and that any deed supporting appropriation are invalid".

State land or not, the King and by extension his government, maintain the ancient right to bestow land to individuals or groups. This right was employed by King Abdul Aziz in his efforts to marshal bedouin support for Wahabi military forces and at the same time assert central control 1912-1932: the so-called Hejar principle. By using the right, the king established settlement nucleuses, one or more for each tribe. Between 122 and 550 hejars were

created scattered through central and northern-eastern parts of the peninsula settling parts of 13 tribes²⁸. Their remoteness underpinned their dependence on outside support. Many have since collapsed their land unfit for agriculture or water insufficient.

The Hejar principle was employed again by the state a generation later in response to the severe drought 1958-61. The scheme aimed at settling the migratory tribes as cultivators assisting them financially and in skills. The scheme had its apogee in 1970 with a budget near-on 13 million Saudi Ryals. Drought-stricken areas were targeted, principally in the Northwest of the country, and Hejar established within each tribal territory²⁹, typically along Wadi Sarhan, Tabuk and Al Ula). However, it suffered from the temporary nature of the scheme and the indefinite dating of its execution period led to an unstructured approach being adopted. Consequently, no soil surveys were conducted. Nevertheless 10,253,266 dunams came under cultivation³⁰ by 644 citizens and 259 government pumps installed (293 private pumps). Given this poor start and the salinity of the soil³¹, the Hejars have become administrative and social welfare centres and the summer residence for migratory groups.

Facilitating this distribution of public lands was the Public Land Distribution Ordinance³² of 1968 (1388H). Apart from nationalising unregistered lands as mentioned above, the decree allowed for the distribution of between 5ha and 10ha to supposedly qualified individuals for an initial trial period of 2 or 3 years (reflecting *shari'ah*). If 25% of the land was satisfactory development during this period title deed was granted. Companies were permitted to hold up to 400ha and there was a limit of 4,000 hectares for special projects.

In 1989, the total area distributed stood at more than 1.5 million hectares. Of this total area, 7,273 special agricultural projects accounted for just less than 860,000 hectares, or 56.5%; 67,686 individuals received just less than 400,000 hectares or 26.3%; 17 agricultural companies received slightly over 260,000 hectares, or 17.2%. Judging from these statistics, the average

²⁷ Decree 1387H ruled that anybody who alleges land appropriation will have his allegation disregarded

²⁸ Among them Utaiba, Motir, Harb, Shammar, Al-Awazim and Al-Murrah

²⁹ Tribes 'benefiting' included Howeitat, Bani Atiya, 'Anaza, Sharrarat and Rwala

³⁰ Current cultivated lands at some of these sites are: Wadi Sarhan (1,230ha) and Tabuk (2,400ha)

³¹ In this early period the project was sustained through irrigation and subsidies to public well guards, as well as judicious private investment in wells

³² Royal Decree No. M/26 (6/7/1388)

fallow land plot given to individuals was 5.9 hectares, 118 hectares to projects, and 15,375 hectares to companies, the latter being well over the limit of 400 hectares specified in the original plans. Today, the establishment of new Hejar is seldom given unless the supply of water is sustainable and guaranteed and the soil fit. Further restrictions on settlement and customary claims are found in defined oil and gas zones. Nevertheless, the Hejar coupled with regular, wage-based, or urban commercial employment have reduced the proportion of migratory people in the country from 70% in the 1930s to between 20 and 25% in the 1990s.

The government also mobilised substantial financial resources to support the raising of crops and livestock during the 1970s and 1980s. The program prompted a huge response from the private sector, with average annual growth rates well above those programmed. These growth rates were underpinned by a rapid increase in land brought under cultivation and agricultural production. Private investments went mainly into expanding the area planted for wheat. Between 1983 and 1990 the average annual increase of new land brought under wheat cultivation rose 14 percent.

In the 1970s, increasing incomes in urban areas stimulated the demand for meat and dairy products, but by the early 1980s government programs were only partially successful in increasing domestic production³³. Bedouin or more often hired expatriates continued to raise a large number of sheep and goats. Payments for increased flocks, however, had not resulted in a proportionate increase of animals for slaughter. Some commercial feedlots for sheep and cattle had been established as well as a few modern ranches, but in the early 1980s much of the meat consumed was imported. That not, remained dominated by customary methods.

HEMA LAND

- Known since pre-Islamic times, Hema is a custom whereby communities maintained large areas of land surrounding their central territory to be their own tribal grazing reserves, for their sole benefit. It was consider community or tribal land and defended by them with the use of force.

³³ Subsidies for animals owned by Bedouin were initiated in 1979; further benefits included water trucks and other transport

- The practice of Hema was modified by the Prophet who is reported in a *hadith* to have said "there is no hema except for Allah and his Apostles". During his life hema was used to pasture horses and camels of war. Later, during the days of Caliph Omar, hema was made available also for animals of poor Muslim individuals as well as for the common interest of the community.
- In the modern state the practice of Hema was banned in 1953 following a dispute between tribal groupings. Only private hema used for working animals are now permitted.

LAND ADMINISTRATION

Saudi Arabia registers titles to land, though the registers are not open to public scrutiny. The register only recognises ownership, not the existence or amount of a secured loan, nor purchase price. There is no register of deeds. Law governs registration. The Ministry of Justice administers the land register. The system is financed partly through real estate and the remainder through the state. Public authority grants legal title at the time of property transfer; and this title is guaranteed by the state and backed by a system of indemnity. The number of titles registered (either in total or on average each year) was not apparent from the Saudi Government. The register is now complete within pre-defined limits of territory.

BAHRAIN

The agricultural sector typically accounts for 1 per cent of GDP and employs 5 per cent of the workforce. Development of agriculture is limited by labour shortages, lack of water and salinity of the soil. The major crop is alfalfa for animal fodder, although farmers also produce dates, figs, tomatoes and other fruit and vegetables for the local market. Over 60 per cent of cultivable lands is held on three-year leases discouraging the stability for needed development. The lack of grazing inhibits livestock production.

KUWAIT

Agriculture has seen minimal development in Kuwait. The country's desert climate sustains little vegetation. Kuwait has no rivers, only a few wadis that fill with winter and spring rain. Scant rainfall, little irrigation water, and poor soils have always limited farming in Kuwait. Before the discovery of oil, several occupations contributed to the economy--nomads moving livestock to the sparse forage in the desert, pearling, and fishing--but none of these occupations provided much beyond subsistence. Once the government began receiving oil revenues, the contribution of other sectors to national income was reduced still further.

Detail information on land tenure in Kuwait is not available

QATAR

Population: Growth: 3.18%
Land use: Arable land 1%; permanent crops 0%; permanent pastures 5%; forests 0%; other 94%;
Irrigated area: 80 sq km
GDP from agriculture: 1%
Legal system: discretionary system of law controlled by the Amir, although civil codes are being implemented; Islamic law

Small-scale farming, nomadic herding, pearling, and fishing were the predominant means of subsistence in the region for the centuries before the discovery of oil. Although the relative importance of these activities has declined as a means of livelihood (with commercial pearling disappearing completely), the government has attempted to encourage agriculture and fishing to provide a degree of self-sufficiency in food.

1960 - 1970: The number of farms increased fourfold to 411. Severe conditions, such as extremely high temperatures and lack of water and fertile soil, hinder increased agricultural production. The limited groundwater that permits agriculture in some areas is being depleted so rapidly that saltwater is encroaching and making the soil inhospitable to all but the most salt-resistant crops. According to estimates, groundwater will be depleted about the year 2000. As a partial solution, the government plans to expand its program of using treated sewage effluent for agriculture. Parkland and public gardens in Doha are already watered in this way.

Qataris who own agricultural land or properties generally hold government jobs and hire Iranians, Pakistanis, or non-Qatari Arabs to manage their farms. The government operates one experimental farm.

UAE

Population: **Growth:** 1.59%

Labour force 1.4m (8% in agriculture)

Land use: Arable land 0%; permanent crops 0%;
permanent pastures 2%; forests 0%; other 98%;

Irrigated area: 50 sq km

Land tenure information unavailable

OMAN

Population: 2,622,198 **Growth:** 3.43%
Land use: Arable 0%; permanent crops 0%; permanent pastures 5%; forests 0%; other 95%
Irrigated area 580 sq km
GDP from agriculture: 3%
Legal system: based on English common law and Islamic law

EXECUTIVE SUMMARY

Agriculture is restricted to limited areas and is heavily reliant on the input of artificially derived water sources (typically falaj). Tribal custom with the assistance of the state maintains and regulates these traditional sources of water while private ownership of fields is widespread. Areas of rangelands are also identified with particular tribes and though the state abolished tribal borders and nationalised such lands in the mid-1970s, an understanding of management without reference to custom would clearly be inadequate. Alternative sources of livelihood are diverse around the major urban centres though less so in the interior. The oil and gas industry offers some limited opportunities but often they have relied upon expatriate staff. The industry also has rights to restrict land investment and development in the oil and gas concession areas that cover some two-thirds of the country. Given the complex tenure map over much of the rangelands a coherent management policy has yet to evolve. In some instance, such confusion has resulted in the depletion of rangeland resources most notably in Dhofan to the south of the country.

POLICY AND LEGISLATION

Oman has five distinct agricultural regions³⁴. Going roughly from north to south, they include the Musandam Peninsula, the Al Batinah coast, the valleys and the high plateau of the eastern region, the interior oases, and Dhofar region, along the narrow coastal strip from the border with Yemen to Ras Naws and the mountains to the north.

In the early 1990s, interior farming areas accounted for more than one-half of the country's cultivated land. Rainfall, although greater in the interior than along the coast, is insufficient for growing crops. Most of the water for irrigation is obtained through the *falaj* system. A *falaj* requires tremendous expenditure of labor for maintenance as well as for construction. Because private maintenance efforts during the 1970s and early 1980s proved inadequate, the government initiated repair and maintenance of the *falaj* system to increase the quantity of water available to cultivated areas.

The cooler climate on the high plateau of the Al Jabal al Akhdar enables the growing of apricots, grapes, peaches, and walnuts. The Al Batinah coastal plain accounts for about two-fifths of the land area under cultivation and is the most concentrated farming area of the country. Annual rainfall along the coast is minimal, but moisture falling on the mountains percolates through permeable strata to the coastal strip, providing a source of underground water only about two meters below the surface. Over farming has resulted in a number of conservation measures including the freeze on new wells, delimiting several "no drill zones", and the building of recharge dams.

Apart from water problems, the agricultural sector has been affected by rural-urban migration, in which the labour force has been attracted to the higher wages of industry and the government service sector, and by competition from highly subsidised gulf producers. To counteract this trend, the government encourages farming by distributing land, offering subsidised loans to purchase machinery, offering free feedstock, and giving advice on modern irrigation methods. As a result, the area under cultivation has increased, with an

³⁴ Information on Oman is limited. Much of what is here is derived from the Library of Congress

accompanying rise in production. But extensive agricultural activity has also depleted freshwater reserves and underground aquifers and has increased salinity.

The area under cultivation increased by almost 18 percent to 57,814 hectares over the period from 1985 to 1990. Fruits were grown on 64 percent, or 36,990 hectares, of the area under cultivation in crop year 1989-90.

Oman is a sultanate and ultimate power to decide on matters of tenure rests with the Sultan. The sultan, much like the King in Saudi Arabia or the Sultans along the Persian Gulf maintain the ancient right to bestow state land at will.

Article 11 of the Omani constitution stipulates:

- All natural resources are the property of the state
- Inheritance is a right governed by the Shari'ah of Islam
- Private property will be protected. No one prohibited of disposing of property within the limits of law

Rangelands are wide spread and though nationalised in the mid-1970s regulation of access is controlled through customary channels. This said, two-thirds of the country constitute concession areas to oil and gas companies and though they have little interest agriculture and herding it is they through the Ministry of Oil and Gas that has ultimate say on any investment in the land.

YEMEN

Population: **Growth:** 3.38%
Labour force: most employed in agriculture and herding
Land use: Arable 3%; permanent crops 13%; permanent pastures 33.5%; forest 4%; other 45.5%;
Irrigated area: 5,674 sq km
GDP from agriculture: 20%
Legal system: based on Islamic law, Turkish law, English common law,

Work commissioned for this tenure profile has not materialised.

SUDAN

Population: **Growth:** 2.79%
Labour force: 11m (80% in
agriculture)
Land Use: Arable land 5%;
permanent crops 0%; permanent
pastures 46%; forests 19%; other
30%;
Irrigated area: 19,460 sq km
GDP from agriculture: 39%
Legal system: based on English
common law and Islamic law; as of

Commissioned worked has not been forthcoming. For a detailed and reasonably up-to-date study on land tenure in this country it is recommended that you refer to:

BRUCE, J (Ed.) 1996, COUNTRY PROFILES OF LAND TENURE: AFRICA

<http://www.wisc.edu/lrc/rp130.html>

Djibouti

Commissioned worked has not been forthcoming. For a detailed and reasonably up-to-date study on land tenure in this country it is recommended that you refer to:

BRUCE, J (Ed.) 1996, COUNTRY PROFILES OF LAND TENURE: AFRICA

<http://www.wisc.edu/ltc/rp130.html>

EGYPT

Population: 69,536,644 Growth: 1.69%
Labour force: 19.9m (29% in agriculture)
Land use: Arable: 2%; permanent crops: 0%; permanent pastures: 0%; forests: 0%; other: 98%
Irrigated area: 32,460 sq km
GDP from agriculture: 17%
Legal system: based on English common law, Islamic law, and Napoleonic codes

EXECUTIVE SUMMARY

Agriculture remains a dominant sector in the Egyptian economy. It employs about 35% (4.4m) of the labour force and accounts for 20% GDP and merchandised exports. Agricultural land base is 7.5m feddans (97% of the country not suitable). Holdings are consequently small averaging 0.8%. Even with impressive gains in agricultural output there is the potential for further significant gains by the widespread adoption of technology and credit services suitable to small farmers and the introduction of post-harvest technology and marketing services in a liberalised economic environment.

The earlier system of 'feudal' tenure was replaced by co-operatives and state organisation of inputs and outputs. These arrangements together with the provision of credit promoted the use of modern inputs. The government invested heavily in expanding irrigation and drainage infrastructure and the reclamation of desert lands. However, the rapidly rising population, the dependence on food imports, the new reforms are seen as essential.

POLICY AND LEGISLATION

Egypt's period of modernisation was initiated by Mohamed Ali and his break with Ottoman authorities in 1820. He set about nationalising land property (1820-30) and took control of all *waqf* land (600,000 feddans). Furthermore he forced nomads to settle along the Nile valley though more for security reasons than for agricultural labour. He subsequently granted land use rights to power base groups (army officers, religious leaders and favoured

Egyptian families (500-8,000 feddans each). This basic structure was maintained through to Gamal Abdul-Nasser's revolution 1952. Fiscal crisis in the late 1800s precipitated the conversion of land use grants to private property³⁵, and the sale of land, at the cost of six-times the land tax, to foreign owned individuals and companies. European ownership constituted 11.5% of all agricultural land by 1890³⁶. In addition:

- Egyptio-Turkish landlords took advantage of sale taking 300,000 feddans (in 1879 estimated that the royal family held 1/5 of all land most of it the best land). The fellaheen cultivated plots of 2-5 feddans against payment of tax.
- Furthermore, because of debt land taxes rose from 1/4 to 1/3 to 1/2 driving many fellaheen off the land and into the city with the land falling to the government, businessmen, village shaykhs etc. It is estimated that 2-300,000 feddans released this way.

On the eve of the 1952 Revolution, ownership of land was heavily concentrated in a few hands. About 0.1 percent of owners possessed one-fifth of the land and 0.4 percent controlled one-third, in contrast to the 95 percent of small owners with only 35 percent of the land. In addition, 44 percent of all rural inhabitants were landless.

REDISTRIBUTION LAND REFORM

The 1952 and subsequent reforms (1961 and 1969) aimed to redistribute rural resources, shift the balance of rural political power, and desire to drain surplus from agriculture to subsidise urban growth and industrialisation.

- Ceiling set in 1952 at 200 feddans reduced to 100 feddans in 1961 and to 50 in 1969 (supplemented in)

³⁵ 1867 & 1884: decrees also permitting privatisation of reclaimed land upon prior request and approval by government, a rule adopted in *Article 57* of Egypt's civil law and expanded in *Article 874 of 1948* which accepted the cultivation of land as property even in the absence of prior approval.

³⁶ Between 1840-1870 improved technology for the control of floods made it possible to grow 2-3 crops each year rather than one. Input of technology expands cultivation by 60% by the 1900

- Royal estates confiscated and foreign ownership outlawed
- Waqf (11% of arable land) acquired by the state
- Sharecropping restricted to 50% harvest

Some 864,521 feddans were distributed, or about 12 percent to 14 percent of the cultivated area, and more than 346,469 families (1/10th of rural population) received land in 2-5 feddans plots. The pyramid of land ownership was truncated at the top and widened at the base: whereas large holdings were not entirely eliminated, the share of those owning fifty *feddans* or more dropped to 15 percent, and 95 percent of owners came to control 52 percent of the land instead of the 35 percent they had owned before the reform.

The reforms were reasonably successful, perhaps because of their modest aims. However, the impact of population growth and fragmentation through inheritance continued to make an effect. By 1984 the number of small owners (those with fewer than five *feddans*) increased to nearly 3.29 million in 1984 from 2.92 million in 1961, while the area they owned dropped from 3.17 million *feddans* to 2.9 million *feddans*. Furthermore, the number of landless families also rose. In 1988 it was estimated that nearly 1/3 of rural pop remain tenants and another 35% landless wage earners. This was despite an additional 1.4mha of *reclaimed* land becoming available for distribution at the time, though only 15% had been allotted in 4 feddan units to 54,000 households.

LAND MARKET REFORMS

One of the barriers to further productivity gains was the Egyptian tenure regime. On 1952 Land reform laws tenants enjoyed the security of capped rents, secure tenure and the right of inheritance. The tenancy map in Egypt as elsewhere is complexity. A profile of land holdings suggest familiar patterns of access to land such as owner-operator, share-cropping, tenant-cultivator (cash rent-in) or owner only cash rent-out. But most profiles are a multiple of interrelated tenancy relationships which involve a combination of two or more of the above. According to agricultural census 1989/90 the number holdings totalled 2,910,279 with the following forms of tenancy:

- Farms under ownership: 7%
- Cash rented: 13.3%
- Sharecropped: 1.5%
- Mix of holdings: 17.5%

Others put the figure of rented holdings nearer 24% while the number of individuals affected range from 1 to 5 million³⁷.

It was argued at the time that restrictive contracts between tenant and landlord provided insufficient incentives to optimise productivity. Rent capping typified the inefficiencies. Disparity between official rental price of £E80 per feddan and the market value was estimated in 1993 at close to £E20, 000 (Bush 1993). Above all, rising populations were clearly placing a heavy burden on limited available land and this was coupled with the repeated failure of government polices relating to excessive intervention and inadequate price incentives.

In order to address the problem Law no. 96 was passed in 1992 as part of wider structural adjustment legislation:

Law no. 96 (amendment to Law no. 178, 1952) 'The law regulating the relationship between owners and tenants of agricultural land', 'The law stipulated the imperative to increase land rent amounts to more than three-fold (22 times the land tax).

- Furthermore, the law gave landowners the right to evict tenants after five years transitional period, which lapsed in 1997.
- Inheritance of tenancy was also cancelled.
- The new tenancy contracts starting this date are subject to market forces and regulation of civil law.
- Safety measures include the assurance to the tenant that (s)he will not be evicted from the house on tenancy land until the government can provide alternative.

³⁷ The agricultural Committee of the People's Assembly claim the lower figure while other higher figures are reported by Aal (1999).

- The evicted tenant will have priority in reclaimed land projects.

It remains unclear what the impact of this shift from equity to efficiency has been. It was estimated in 1998, that 99% of the country's agricultural contracts had already been renegotiated. Some Human Rights groups have pointed up the rise in rural conflicts, injuries and indeed deaths following evictions or raises in rents though no official figures are available. The American University in Cairo is holding a conference in March 2002 to discuss the impact and reference should be made to their website for details of papers.

A predicted consequence of Law 96 is a rise in landless numbers and rural poor. Some have argued (Adams 1999) that such problems would have been inevitable with or without the new law given rising populations and fragmentation of holdings. He points to the fact that 60% of income of the rural poor comes from non-farm income and that such income is an inequality-reducing source of income in land-scarce settings such as rural Egypt because inadequate land "pushes" poorer households out of agriculture and into no-farm sector. A focus on agricultural incomes is misplaced as it contributes most to rural income inequality since it is highly correlated with land ownership.

EVOLUTION OF CUSTOMARY TENURE

The Desert law No. 124 (1958) Introduced modern practice and the legislation of land. It removed all legal recognition of customary rights, including customary ownership even in the presence of improvements, insisting instead on the cadastral registration of title. Some six years later Law No. 100 partially reversed this provision and acknowledged recognition of customary ownership of lands where trees were planted prior to 1956 (permitting sale or transfer of up to 50 feddans for enterprise and up to 10 feddans of arable land for households). Come 1969, the state nationalises all unregistered land, establishing its to sell or lease such land to individuals or companies for projects of national interest. Despite this, customary claims (*wad' al yid* - lay on hands) continued to be made on what was now state land and 1981 Law 143 (supplemental implementation regulations Decree 198 of 1982) legitimised such claims

where land had permanent improvements and sometimes without. Article 18 of the same law also provided recognition of land with a minimum of 40 seedlings/feddan, provided a system of irrigation was in place prior to 1981. In addition Art. 19 recognised land cultivated at least 3 years prior to application.

NORTHWEST COAST

As the adjustment to laws above indicate there is de facto recognition of customary rights. The actual operation of customary rights in contemporary Egypt is limited. The following discussion will focus on the Awlad 'Ali, a tribal confederation of 40 tribes occupying a territorial strip running the length of Egypt's Northwest Coast from Alexandria to Libya. The rapid expansion of tourist developments in this region has precipitated some detailed studies on the customary system (Rabenau: 1994; Mohsen 1975).

The customary system among the Awlad 'Ali as been shaped by two objectives:

- 1) it secures survival of the tribal community in a risky environment by providing mutual access to communal land and water during times of need; and
- 2) it raises overall welfare, by offering individual households the property rights needed to secure the fruits of their labour.

Conflict resolution is resolved through mutually agreed mediators either at the level of the clan or tribe as is suitable. Nevertheless territorial boundaries between the clans and tribes are apparently well established as are customary land right types:

- *Communal land rights*: land rests with the clan (*aila*) with rights to a specific geographical region (*watan*) recognised by other clans. Land rights not absolute however and is restricted by the right of neighbouring clans to graze their herds in time of need. This does not always follow ecological rational but also follow the fluid political map between clans and tribes.
- *Right of annual cultivation*: distributed lands to individuals with usufruct rights largely for barley production, which requires no long-term investment. The land is not permanently owned by the household, even if the household cultivates over years the same plot. Others

may use the land during the off season. The practice is believed to result in topsoil loss. Increase in herds has raised the demand of supplementary feed. The weakness of customary law in this respect is that since individuals can cultivate land at no cost, yet have no permanent right to the land, there is a tendency to over consume valuable resources with little incentive to conserve top-soil. One of the issues for future development is whether community laws and property rights can be adapted to guarantee a more sustainable pattern of land use.

- *Rights to permanent use:* capital improvement to the land in the form, for example, of housing construction, orchard planting or construction of a wall around a spot, confers rights for permanent use (*wad' al-yid* to lay hand on). Traditionally, there were few improvements par a cistern but as the tribes have become more sedentary it has come to include these other forms of investment. Minor rock diversions dykes used in rainwater harvesting apparently do not qualify.
- *Grazing rights:* all members of clan have a right to graze their herd on uncultivated communal land. Other clans have similar rights in times of need though this does not include access to water where it has been artificially derived such as cisterns. Individual clans own most of the land within 40km from the coastal zone. Beyond this land is hyper-arid (> 100mm per annum) open range and access to pasture is unrestricted at any time.
- *Traditional water rights:* water derived from a cistern is owned by the family who constructed it. Others may use the water for personal use though dependent on season might be required to pay (L.E. 50-90). There were 2,500 cisterns on Awlad 'Ali territory in 1986 rising to 4,000 in 1994. Given the continued growth in human and animal populations and especially in orchards, the number of cisterns is likely to increase in future.

The above suggests an intensification in the customary system. Population is increasing 50% faster along the coast than in others parts of Egypt. Customary tenure is evolving in response but remains to address the following issues:

- Temporary Cultivation

- As water harvesting becomes more common, increase upstream harvesting may reduce amounts for those downstream. There is no local precedent for the resolution of this problem though procedures evolved among tribes in Yemen to deal with such problems may be useful.
- Given acute flood events the maintenance of wadi terraces needs to be maintained and indeed the maintenance of those in the upper valley is extremely important and represents a community service. In Yemen where the customary system has evolved shaped by terracing, strict regulations exist and make up-stream farmers responsible for down-stream fields.
- Ground water is modest along the coastal strip, and the recent arrival of pumps are likely to lead to excessive use and customary law has not yet developed means to resolve the issue.

Those clans close to fast growing urban centres and roads are attempt to improve lands to secure it even if such improvements are merely the act of building a stone wall around a site (i.e. Bourg El Arab). Outsiders seeking to invest and develop land are finding that they have to pay for the land twice. The developer first seeks the agreement of, and compensates, the bedouin owner and then they purchase the property again from the state in order to receive formal title (in urban areas from the Governorate, and in rural areas usually the Central Development Authority). Transaction costs are perhaps higher given they are probably more cumbersome and more risky given the customary owner has no written proof ownership.

Other land is being appropriated without reference to customary ownership, particularly by the state which sees no need to compensate bedouins for land the state already claims. This is a particular problem on communal lands since the law does not recognise land claims by tribes or clans. As a result, some clans are now distributing all their land to individuals.

Rapid development along the coastal strip is raising questions of equity:

- With most development taking place along the coast, clans and households with traditional claims to the areas both suffer the greatest displacement of land uses, but also enjoy the greatest windfall profits from the sale of the land. Most of these are of the *Saadis*, who traditionally have been wealthier and more powerful than others. As a consequence, current developments exaggerating older disparities.
- Governments recognition of individual claims will only accelerate privatisation since it is the only way for a tribe to maintain the land within the group. This can weaken communal use.
- Clans living inland, mostly *Murabitins*, will gradually lose access to summer grazing lands along the coast increasing pressure on in-land rangelands
- With substantial windfalls to be made, those with the greatest access to formal legal system are likely to benefit the most. Among these are the *umda* shaykhs as well as the government itself and larger developers.

LIBYA

(with the assistance of Brian and Lynne
Chatterton)

Population: 5,240,599 Growth: 2.42%
Labour force: 1.5m (17% in agriculture)
Land use: Arable land 1%; permanent crops 0%; permanent pastures 8%; forests 0%; other 91%
Irrigated area: 4,700 sq km
GDP from agriculture: 7%
Legal system: based on Italian civil law system and Islamic law, common religious courts

EXECUTIVE SUMMARY

Agriculture is largely restricted to the coastal plains and mountains with desert predominating south of this strip supporting occasional oasis cultivation and sparse pastures. The Ottomans, Italians, French and British attempted to supplant custom with a modern tenure system but were largely unsuccessful. The Italians did displace some tribal sections from the more fertile areas in the north and these became the focus of redistribution following independence. In order to consolidate power after 1969, Qadafi heavily restricted custom on paper if not in practice. Nevertheless, private ownership of cultivated lands is now widespread. Depletion of water sources for irrigation did not spur conservation tenure measures rather the authorities placed their focus on bringing aquifer water from the south in the Great Man-Made River scheme, which is yet to become operational despite vast sums and seventeen years of construction. Its impact on oasis development and the growing population in the south has not been fully gauged but are likely to be detrimental. Tenure on the rangelands is unclear. The state has initiated a number of rehabilitation schemes over the years though these have been limited. It is assumed that custom prevails.

POLICY AND LEGISLATION

Although statistics vary, only a very small percentage of Libyan land is arable--probably under 2 percent of total land area. About 4 percent is suitable for grazing livestock and the rest is agriculturally useless desert³⁸. Most arable land lies in two places: the Jabal al Akhdar region around Benghazi, and the Jifarah Plain near Tripoli. The highest parts of the Jabal al Akhdar receive between 400 and 600 millimetres of rain annually, whereas the immediately adjacent area, sloping north to the Marj Plain, receives between 200 and 400 millimetres. The central and eastern parts of the Jifarah Plain and the nearby Jabal Nafusah also average between 200 and 400 millimetres of rain annually. The remaining Libyan coastal strip and the areas just to the south of the sectors described average 100 to 200 millimetres of rain yearly. In addition, the Jifarah Plain is endowed with an underground aquifer that has made intensive well-driven irrigation possible. Between these two areas and for a distance of about 50 kilometres south, there is a narrow strip of land that has enough scrub vegetation to support livestock. Desert predominates south of this strip, with only occasional oasis cultivation, such as at Al Kufrah, Sabha, and Marzuq.

The Ottoman Land Code, which required registration of individual land rights for tax purposes, was not successful in Libya. The colonising Italians did attempt to free the fertile coastal strip and settled poor Italian farmers and were successful in securing 210,000ha along the coast with tribes expelled to the south, but in general, efforts to change de facto land tenure failed. Nevertheless, the Italians did establish nominal state-controlled over land and, between 1951 and 1961, this gradually became absorbed by the government of the independent state of Libya. Since coming to power in 1969, the Qadhafi government has been very concerned with land reform. Shortly after the revolution, the government confiscated all Italian-owned farms (about 38,000 hectares) and redistributed much of this land in smaller plots to Libyans.

1970: Series of laws repossessing all remaining Italian and foreign land, along with that held by the deposed monarch (King Mohammad Idris al-Senousi) and anti-revolution Libyans.

- Outlaws future ownership of land by foreigners. About 115,000ha repossessed.
- Lands redistributed at 2-8ha irrigated or 40-60ha rainfed or 20ha mixed
- Sale of the land is forbidden and if a farmer wants to quit for whatever reason he must return the farm to the government for its reallocation.

The state retained some of the confiscated lands for state farming ventures, but in general the government has not sought to eliminate the private sector from agriculture as it has with commerce. It did, however, take the further step in 1971 of declaring all uncultivated land to be state property. This measure was aimed mainly at certain powerful conservative tribal groups in the Jabal al Akhdar, who had laid claim to large tracts of land.

Another law passed in 1977 placed further restriction on tribal systems of land ownership, emphasising actual use as the deciding factor in determining land ownership. Since 1977 an individual family has been allotted only enough land to satisfy its own requirements; this policy was designed to prevent the development of large-scale private sector farms and to end the practice of using fertile "tribal" lands for grazing rather than cultivation. This law nevertheless meant a gradual reassertion of private rights with regard to land, and small farmers are once more allowed private ownership of land and other property. Studies published in the late 1970s indicated that at any given time, about one-third of the total arable land remained fallow and that as many as 45 percent of the farms were under 10 hectares. The average farm size was about 11 hectares, although many were fragmented into small, non-contiguous plots. Most farms in the Jifarah Plain were irrigated by individual wells and electric pumps, although in 1985 only about 1 percent of the arable land was irrigated.

Partly as a result of these policies as well as the dictates of Islamic rules of inheritance, in 1986 Libyan farms tended to be fragmented and thought too small to make efficient use of water. This problem was especially severe in the long-settled Jifarah Plain, which has been Libya's single most productive agricultural region. Rather than address the water problems directly the country initiated "the great man-made river" project. Begun in 1984 with the

³⁸ Given the paucity of information on land tenure in Libya, a substantial part of this country profile was derived from the Library of Congress

objective of carrying water in a large diameter pipeline from well-fields in the south to the northern coast, and from thence to Benghazi in the east and Sirt³⁹ in the west, the scheme, which is expected to take 25 years to complete has had little noticeable effect so far on the overall shortage, partly due to the high operational costs.

On the rangelands, the government has, Over the last 20 years, has establish nine major range development projects⁴⁰ trailing a variety of technologies including rehabilitation, shrub plantations (Atriplex), medic production, and fencing (range protection).

³⁹ Qadafi's home region

⁴⁰ Gharian-Jabu, Bir El-ghanam, Benghazi Plain, Jabal El-Akhdar, ElKharruba, Zlieten, Middle Zones, wadi sasson and El-assa range

TUNISIA

(with the assistance of Brian and Lynne Chatterton)

Population: 9,705,212 **Growth:** 1.15

Labour force: 2.65m (22% in agriculture)

Land Use: Arable land 19%; permanent crops 13%; permanent pastures 20%; forests 4%; other 44%; irrigated 3850 sq km

GDP from agriculture: 14%

EXECUTIVE SUMMARY

In Tunisia, the land tenure system was similar to that of Algeria, with large cooperative farms and some state farms. Nomads in steppe areas have transhumance rights to grazing paths and informally establish grazing rights to small sown crops. They have the right to graze stubbles in arable zones and practice common grazing. There are small and large private farmers with legal tenure and communities in non-arable, hilly and or mountainous regions that have tenure based on tradition and who practice community use of their resource.

Tunisia under President Ben Ali is pursuing a policy of privatisation of land together with forms of subsidy to encourage large-scale plantings of olives and spineless cactus and reforestation in both fertile and marginal zones. Political protest at this development is not obvious although low prices and drought have caused hardship for small farmers in the last several years. It is, however, leading to the private cultivation of huge tracts of land formerly considered marginal and belonging to the state and will no doubt create a land market that may force many small farmers to leave agriculture in return for cash for their small holdings.

POLICY AND LEGISLATION

The introduction of a land registration system in 1885 eased colonial expropriation of much of the better land notably in the valley of Majerdah and certain areas around Bizerte and Tunis. Immediately prior to Tunisia's independence some 6,500 French held 800,000ha⁴¹ (100-200ha per settler) of fertile land (20% of total). A further 1mha were held under arrangements of *Waqf* (habous) but poorly farmed and a further 2.5m ha of marginal land in the central and southern regions held customarily by semi-nomadic tribes under communal ownership.

Land reform was instituted in 1958. Initially a ceiling on farm size of 50ha was imposed in Mdjerdah valley only, with excess confiscated and losers compensated before the land was turned over to tenant farmers with irrigation experience. These were required to pay for the land over a 20-year period as well as join a production co-operative. Furthermore, the recipients were charged for costs of public irrigation scheme according to land productivity and ranged b/w 25 and 60% of value added. The reforms also instituted a scheme for consolidation of scattered parcels of land.

Initial reforms were undermined by the distribution of land among family members prior to expropriation. To address this, the Agricultural Land Property Law (1964) removed all land from colons (roughly 700,000ha of the best land). A small proportion was subsequently distributed to landless farmers but the major share was organised into state farms. The law also tried to force all holders of *mulk* and leased lands to be grouped into collective production co-ops but this element was shelved in 1969 following much discontent.

Since the mid-1970s the authorities have pursued a land market policy "to create modern, regularly shaped, continuous holdings of optimum size adapted to take advantage of technological progress and modern farming techniques". Of some 918,000ha of state land, 300,000ha had been transferred into private hands by 1991. A similar process was taking place on collective land. Of the original 3mha (50% cultivated rest pasture), 1,200,000ha of agricultural land had been privatised by 1991 together with 600,000ha of pasture.

⁴¹ 75% of this amount was owned the rest held under rental agreement

The agricultural census of 1980/81 census shows 85% of total farming population had access to land (owners, tenants, sharecroppers, agro-pastoralists). Out of total arable land: 87.6% was *mulk* in units of 13 ha (average number of plots per farmer: 3.2) and 12.4% was state-owned (including 48 state farms averaging size 4,500ha each). Of the private, 7.4% of the holdings had less than 5ha (average size of 2.2ha), the owners of which represents 43 % of total owners. At the other end of the scale about 1% of private owners possess 17.5% of total private land. This has changed little through the 1990s⁴².

Fresh registration of land was decreed in 1964 (Decree No. 64-3 of February 20th) compelling complete and systematic registration and cadastre, free of charges. However many institutional, legal and administrative constraints have made it difficult to achieve land registration objectives. The cadastre covers only 35,000ha/yr - a slow pace when there is 3.5mha to cover. Those farmers that could prove continuous cultivation for 5 or more years could receive "possession certificates"⁴³ with presumption of eventual registration. Despite state interest in registration, the majority of land users, commonly accepts informal transfers that function outside legal and administrative constraints.

Current concerns in land tenure focus on halting rural - urban migration, consolidating property rights and speeding up registration. Among the measures being pursued is the liquidation of *waqf*⁴⁴ (*habous* both *enzel* and *kirdar*) and the final dissolution of collectively-held land.

EVOLUTION OF CUSTOMARY PROPERTY RIGHTS

1901: (January 14th) decree ordering the delineation of collective tribal lands consisting of approximately 3mha (all in south and central [excluding oasis] Tunisia)

⁴² In 1998 it was reported that the bottom 46% landholders possess 8% of land; top 3% hold more than 35%; 85% of farmers cultivate less than 20ha

⁴³ Officially at least, these are sufficient for collateral

⁴⁴ This follows on from extensive legislation dealing with *waqf* including its supposed abolition in 1965: 1898: Jan 31st - Decree permitting the rent of *habous* via adjudication for periods of 10yrs - total appropriated by colons 40,000ha

1956: About 1mha under arrangements of *waqf* (*habous*)

1918: (Nov 23rd) decree conferring responsibility for the southern collective lands on military authority

1935: (Dec 30th) decree relating to civil (rather than military) collective lands - states the definitively the legal status of these lands as belonging to the state with the perpetual usufruct right common to the communities.

1957 & 1959: Regulation of the communally held tribal land rights. Changed into individual ownership of settled cultivation in units of 10-20ha, mostly with olives with remainder remaining communal. In both cases farmers organised into co-operatives (law May 1963). Grazing lands were assigned to co-operatives to control the number of livestock and improve pasture.

1964, June 1964 - Act 64-28 (modified Act No. 71-7 of Jan. 4th 1971 & No. 79-27 of May 11th 1979 and No. 88-5 of February 8th 1988) permitted the privatisation of collective lands

1956: (Mar 31st & 1957) Abolition of public *waqf* or *habous* with land transferred to the state. Private *habous* lands divided amongst legitimate claimants. These changes affected 29% of total arable land of 4.2m ha.

ALGERIA

(with the assistance of Brian and Lynne
Chatterton)

Population: 31,736,053 Growth: 1.71%
Labour force: 9.1m (25% in agriculture)
Land Use: Arable land 3%; permanent crops 0%; permanent pastures 13%; forests 2%; others 82%;
Irrigated area: 5,550 sq km
GDP from agriculture: 11%
Legal system: socialist, based on French and Islamic law

EXECUTIVE SUMMARY

In Algeria the socialist revolution resulted in the large French farms in the arable zone being turned either into cooperatives or state farms. Most of these were reallocated in the early 1990s and distributed to either individual families or to small groups of private individuals. Some state farms remained but were designated “model” farms. Transhumance is of great importance and there is a feed transaction between the pastoralists and the sedentary farmers during late summer and early autumn, which is regulated and administered by the Ministry of Agriculture at a local level.

Individuals and nomads obtain an informal tenure over small pieces of land when they plant a crop of cereal during the transhumance in the rangeland and marginal zones. This informal tenure lasts from the working of the land until the harvesting of the crop. It has adopted as a means of obtaining more lasting tenure over land in marginal areas for drought-sickened herders, for families the government wishes to settle in a marginal area and for opportunistic landowners who wish to establish rights to a piece of land.

In the rangeland and through the marginal to the coastal belt there exists common grazing by specific communities or tribes on traditional lands and grazing paths. Communities in

marginal areas where hillside precludes arable crops often have an informal traditional tenure over areas of forest and hillside where common grazing takes place. Small, medium and large farmers who farm in the mountainous arable zone have tenure based on family possession that is legally recognised and documented.

POLICY AND LEGISLATION

In colonising Algeria in 1830 the French aimed to integrate the Algerian economy and landed property legislative framework into those of the home country. Through nationalisation and the proclamation of various laws in the mid and latter 1800s, the French colons were able to secure for themselves and their local collaborators much of the more fertile agricultural lands. Prior to their expulsion from the country in 1962 land distribution and landholding status in Algeria was:

- 23,000 French controlled 2.6m ha (30% of cultivatable land)
- Average farm size among the French: 373 ha/person mostly in fertile north
- Average farm size for holdings of indigenous population: 11.6ha / person in the less fertile mountainous areas.
- Private sector accounted for 80% of Algeria's farmers and 60% of the country's agricultural land.
- Rainfed farming was largely restricted to in the interior away from centres of colonisation

LAND REFORM

Algeria has initiated a series of land reforms since winning independence from the French. These reforms have been broken in to 4 distinct periods.

Redistribution Land Reforms: Phase 1

At independence, the newly installed government took over for its own use, farms vacated by the French and other foreigners though the lands remained legally owned by the settlers.

This arrangement lasted until October 1963, when the authorities decreed that all land abandoned by the colons would be owned by the state. By mid-1966 all remaining unoccupied properties had been nationalised and turned over to workers under a self-management system. A small portion of farmland had been occupied by Algerians claiming to be previous owners, as well as by labourers who had worked for the colons. The authorities also gave some land as a reward to veterans of the War of Independence. Most of the expropriated 2.7 million hectares, however, were turned into state farms run by workers' committees, under a socialist sector that received almost all of the funds allocated to agriculture but that suffered from a cumbersome central government bureaucracy and a lack of motivation.

1962 - July - Colon farms spontaneously released (amounting to 2.6mha)

- Ownership transferred to the state
- The unity of the farms were maintained
- Individual farms, managed by salaried committees usually of seven individuals within the guidelines of the national development plan.
- By 1966 nearly 1m people absorbed within the scheme

1964: Landed property of Algerian colonial collaborators confiscated amounting to 100,000ha

The traditional subsistence agricultural sector (6mha (4 m cultivated)) was not socialised. These were farmed by small and large land owners as well as *fellabeen* (poor tenants, share-croppers and landless waged labour estimated at 920,000).

Redistribution Reforms: Phase 2 (1971-1978)

The then prime minister, Boumediene, announced dissolution of the state-farming sector in 1971 with the introduction of an agrarian reform program that called for break up large state-owned farms, a ceiling on land holdings, and their redistribution to landless peasants. The only condition with which these peasants had to comply was to join government-organised co-operatives, which would provide them with state loans, seed, fertilisers, and agricultural

Impact of Reforms on Agricultural Productivity

Reforms were still born in their impact::

- progress in productivity gains did not match that of Algeria's neighbours Tunisia,
- Farm incomes fell
- The area of wheat diminished

Why?

- Institutional transformation in agriculture not backed by adequate investment to meet production requirements

equipment. Boumediene's agrarian revolution (1974-78) resulted in 98,000 peasants receiving ten hectares of private land each and the organisation of 6,000 agricultural co-operatives.

1971 *La Reforme Revolutionnaire* (Ordinance 71-73): The Charter of Agrarian Revolution and subsequent legislation permitted:

- abrogating previous legal and customary land tenure regimes
- Establishment of the National Fund of the Agrarian Revolution (NFAR) created through the nationalisation or donation of collective lands:
 - expropriation without compensation of all land held by absentee landowners;
 - expropriated lands in excess of 43ha of 25,900 larger landowners
- Result: approximately 11.3m ha had been distributed to about 98,000 beneficiaries with plots between 10-15ha.

With the death of the long-time President Boumediene in 1978 the reform program ended presumably because of the heavy financial losses it had incurred. Other contributing factors may have been the new government's concern over poor agricultural productivity, rising costly food imports, and the generally unsatisfactory performance of communal farms. In response the new government of Bendjedid sought moves away from socialist models to capitalists modes of production. In conjunction with these reforms, the new government allocate more public funds to agricultural infrastructure, especially dam construction and water projects.

Mixed Capitalist and socialist land Reforms: (1978 - 1986)

Objectives:

- satisfy food needs through expansion of agriculture and irrigation
- ensure freedom by removing dependence on food imports
- promote interests rural masses
- relieve the state of heavy financial burden

Tenure Reforms⁴⁵

- In attempt to establish economies of scale, self-managed and agrarian revolution sectors were merged and reorganised into 3,239 state farms (*domaines agricoles socialistes (DAS)*). DAS comprised 2,539,000ha and 148,500 farmers.
- A further 436,500ha of state agricultural land divided into 108 experimental farms
- 45,500 small privatised landholdings established on approximately 700,000 hectares increasing the total private-sector area to 5 million hectares.

With these reforms having little impact on productivity 2nd wave of reforms initiated

Capitalist Reforms: (1987-)

Objective to restructure and privatise state sector:

- Conversion of DAS into smaller autonomous units of two types:
 - *Exploitations Agricoles Collectives* **EAC**

Formed voluntarily with a minimum of 3 members and not exceeding 2,000ha (667ha each as opposed to 43ha max).

EAC first rent the fields but after five years members receive the right to sell their share

⁴⁵ At the same time, Agrarian reforms liberalised the system for marketing agricultural products and gave incentives for intensive farming

1990 law permitted that EACs no longer had to be kept together and most subsequently evolved into EAI

EAC land shares based on 99yr lease though farmers "authorised to treat this land as their own" (WB 1994)

- *Exploitations Agricoles Individuelles* **EAI**

3,400 state farms (about 700 hectares each) into privately owned farms averaging eighty hectares each.

Individual farmers gained permanent and transferable right of ownership provided the farm remained undivided to ensure adequate cultivation size

Status of EAC & EAI in 1992

	No. created	Total Area	Members
EAC	28,700	1.9m	152,655
EAI	18,024		

- Return of private land that had been nationalised or expropriated during the 1970s to be returned to its former owners (with the exception of those landowners who acquired it from Colons)
- By Jan 1993, of the 24,722 proprietors whose land had been taken during the 1970s, 22,733 received their land back including the holdings of 4,158 EAC, 1,172 EAI and 10,620 individual beneficiaries.
- Those losing land were given public land elsewhere as compensation, with a further 2,100 of newly dispossessed indemnified financially for their loss.

1991: Law deregulating land transactions and eliminating the municipalities' monopoly ownership of property reserves, making them available for public purchase.

To maximise its agricultural resources, Algeria has instituted programs to increase the

Impact on agricultural productivity of capitalist reforms

Farm production has increased substantially (WB 1994) though problems remain:

- restructuring of the state sector has been racked by corruption
- reform lands have become a focus of speculation by absentee landowners with the consequence of fields be left fallow
- lack of clear title has inhibited long-term investment in the EAC and EAI holdings resulting from their undefined legal status and the confused history

sector's stability and revenues.

As of 1994 rural land was held as pilot farms under state ownership(150,000ha), EACs and EAIs (constituting 2mha of state land and 650,000ha converted to private); private land (4.7mha); and steppe grazing lands. Total arable land: 7.5mha.

FARM SIZE AND FRAGMENTATION

Farm size and fragmentation of landholdings is reflected in the overall rise in farm numbers. From 543,000 farms in 1960, number of holdings rose nearly a third by 1973 (701,234) reaching 902,729 in 1981.

The World Bank estimated in 1994 that 74% of farms were of less than 5ha with an average size 1.64ha.

Private holdings range in size and distribution. It is estimated 0.7% private producers own more than 50ha (9.6% private land)with average land size of 69ha. The remaining 99.3% of private owners hold on average 4.4ha (combined the average private holding averages 4.9ha). Holdings under EAC & EAI, are slightly larger.

Rural Algeria is still characterised by a dual agricultural structure:

- 1) Large private holders and state farms using capital intensive methods

2) Small farms using labour intensive

REGISTRATION

- 1975 (Nov. 12th - Law 75-74) Institution of a fresh cadastre and building of the ground-book coupled with card-index register
- In 1979, 100,000ha of an estimated 7m ha cover
- Negative impact of registration: large areas along the steppe margins were ploughed but never cultivated by illegal claimants who wanted to gain possession of the land.
- As of 1994, only 300 of 1541 communes have had a cadastre

CATEGORIES OF LAND

Private land

Private lands are largely restricted to the mountainous areas. The fertile northern plains, which had been confiscated by the French subsequently became reform land.

1994: 4.7mha of agricultural land held in the private sector

1994: Average farm size in private land: 4.9ha

1983: legislation abrogated earlier legislation that restricted private land transactions and, implicitly, rescinded max holding size of 43ha.

Waqf

1830s 1840s *Waqf* (habous) land status changed to enable the land's purchase in the and put under the disposal of French settlers (colons).

EVOLUTION OF CUSTOMARY TENURE

Between 1844 and 1873 the French Colonial authorities enacted various laws dispossessing customary rights holders in the better cultivated areas to the north of the country and defining within state law tenure among the tribal migratory groups of the arid south. During this period all uncultivated land and forests (totalling 3.1mha) were nationalised as a prerequisite for subsequent reforms. In the cultivated areas of the north, other laws were introduced sequestrating communally-held tribal lands both for colonial purposes, and for registration to collaborating local families.

The main law for the pastoral and agro-pastoral tribes of the south was the Senatus Consult of 1863. This distinguished between state (*beylick*), *Mulk* (individual), commune, and collective lands. The Consult delineated territories for each *douar* (tribal sections) as well as overall tribal territories while recognising and 'legitimising' private property within. Any transfer or exchange of land belonging to the *douar* should now be at the request and agreement of the *djemaa* (citizens' Council). Usage rights in every *douar*, were available for persons residing lawfully within the territory and it permitted them to make use of the rangelands in accordance with the directions of the *djemaa* regarding number and type of animals.

In 1971, the Agrarian Revolution (Ordinance 71-73) established the ascendancy of state law with the abolition of customary authorities and abrogation of previous legal and customary land tenure regimes which had previously operated in the steppe region. In its place was passed the Pastoral Code 75-43 (1975) (La Revolution Pastoral) that nationalised the steppe (areas receiving on average less than 400mm rainfall per annum) and "benefited" those (agro) pastoralists living in the semi-arid fertile areas and communally held land with settlement and the provision of individually marked holdings grouped into co-operatives.

1975: The Pastoral Code classified pastoral space in 3 types:

1. Degraded rangelands to be protected
2. Rangelands designated for the settlement of co-operatives (*Cooperative d'Elevage Pastoral de la Revolution Agraire*); 200 CEPRA est., 431,315ha, 1385 members, 124,800 sheep

3. Common rangelands used by livestock owners to be managed by Popular Common Assemblies (PCAs in place of the *djemaa* (see above)) over delineated territories.

1984: PCAs were disbanded in 1984 with management becoming the de facto responsibility of customary institutions (Bedrani 1991)

Law 87-19 (1984): allows:

- the distribution of rangelands located on Domaines Agricoles Socialistes (DASs) to individuals for collective usufruct.
- Regulation of forests: prohibits grazing in new forest plantation, burnt out and protected areas while forestry commission responsible for regulating wood harvesting. (Forests: 50% state property; 29% communal; 2% private)

Redjel (1997) suggests that despite the de facto role for customary tenure in the steppe, there has been dislocation of tribal institutions and the weakening of their regulatory power resulting a legal vacuum on the steppe. The levels of reported disputes, Redjel argues, suggests that pastoral societies in Algeria perceive an open access situation, and are continuously trying to secure their spaces. Four types of conflict:

- Access conflict (15%)
- Customary boundary conflicts (50%)
- Access to water (30%)
- Legal conflicts (30%) ambiguities of new laws have generated conflict between tribes

However, disputes are not a new phenomena, and though customary rights seem to be challenged, the level of reported conflict also reflects the resilience of customary institutions and those who care to defend them.

HOMESTEAD PROGRAM

The state's settlement drive of migratory peoples and agricultural expansion was further boosted in 1984 with a law establishing an ambitious *Homestead Program* with initial

projections to cultivate 800,000ha⁴⁶. Homesteaders were granted property rights in exchange for putting previously undeveloped land into production as well as start-up loans and various subsidies. The Homestead Program focussed on the high interior steppe lands and the southern desert region. Initially small in size, grants of several 1000s ha were under active consideration in 1993. Nevertheless by 1990 some homesteads had already been abandoned given marginal conditions or otherwise 'mined'. Not daunted the government in 1999 continued the homestead program in Saharan regions setting new targets to divide one million hectares into plots of 500-1,000 hectares for individual or collective units for which the government will provide electricity and drill for water.

⁴⁶ Arable land per person has decreased significantly over the past 40 years stimulating cultivation of marginal land. From 0.75ha per person in 1963, shares decreased to 0.4ha in 1979 and 0.14 (2000) and so.

MOROCCO

(with the assistance of Brian and
Lynne Chatterton)

<p>Population: 30,645,305 Growth: 1.71 Labour force: 11m (50% in agriculture) Land Use: 21% arable; 1% permanent crops; 47% permanent pastures; 1% permanent crops; 11% others Irrigated area: 12,580 sq km GDP from agriculture: 15% Legal system: based on Islamic law and French and</p>

EXECUTIVE SUMMARY

In Morocco the King and the 100 families own the vast majority of the best land. Private ownership is the norm. Nomadic transhumance appears to have little effect on sedentary agriculture. Rural poverty is widespread and small farms are resource poor. Villages in the rangeland and in the mountains graze their territories in a communal fashion.

The current policy debate revolves on facilitating conditions for the effective functioning of market forces based on secured tenure. The major constraint to efficient land use and development in rural areas of Morocco is the lack of an integrated market for land due to the fact that property rights are not well defined, and either remain collectively held, or are not registered (World Bank 1995). These uncertainties are militating against the transfer and consolidation of land. Consequently, the current objectives are to increase pace of land registration and increase transparency of real estate market where it does exist (urban and peri-urban areas)

POLICY AND LEGISLATION

Tracing the origins of the large estates helps explain the current concentration of wealth in rural Morocco. With profits from Morocco-Europe trade merchants in Fez invested in

agricultural land and thereby gain economic and political power and influence government (Makhzan) through control of cereal supply. Successful, the sovereign (Moulay) who held ultimate rights to land, granted additional lands of b/w 3-600 ha to influential families from the cities of Fez and Meknes, senior government officials, members of the Moulay family and to Moslem leaders. Through legal manipulation, usufruct rights were converted to private property. See Lazarev (1977) for the process as well as a list of recipients, many of whom are still influential in rural agriculture. Additional land was acquired via other means. The rest of the land cultivated and grazed held collectively by tribes including the two powerful groups: the *Guich* in the Western plains and the Berbers in the Middle Atlas Mountains.

The French colonised Morocco (1912) basically on the grounds of the agricultural potential of the land through harnessing water and expanding cultivation. By 1953, 4,270 private colon settlers owned 728,000 ha (avg. 200ha/person) mainly round Casablanca and Rabat regions Chaouia and Garb and in Mediterranean Plains of Basse Moulouya. In all 6,000 settlers and foreign companies owned nearly 1m ha along with more than half of perennially irrigated lands. By contrast, local Moroccan farmers, perhaps numbering 900,000 held 6mha of rainfed lands used for both grazing and agriculture. Of these farmers, 50% held holdings of less than 2ha with 15% possessing less than 0.5ha. Landless numbered 225,000 or 25% of the rural population. Some Moroccans fared rather better under French authority maintaining holdings of over 50ha and benefiting from 'French' irrigation.

LAND REFORM

1956-1960: Expropriation of collaborators' land amounting to 12,000ha some redistributed but the majority held by the state.

1963: (with supplementary laws in 1966 & 1973) Appropriation of foreign-owned land

- 1964-1975: 740,000ha⁴⁷ gradually acquired by the state

⁴⁷ The discrepancy between European owned land prior to reform and the amount actually appropriated by the state amounted to approximately 260,000ha. This land was sold between colon and Moroccans (including senior govt officials and city merchants) immediately after independence

- 1966-1985: 327,008ha (44%) redistributed to 23,600 families (representing 1.6% of agricultural households)
- Recipients received 5ha irrigated or 16-23ha rainfed
- The remaining 413,000ha (64%) kept as state farms.

Post Reform situation

- 1988: 74% held less than 5ha (or 35% of total area)⁴⁸
- Average farm size 1.6ha
- Farms typically fragmented into 5/7 parcels of .5ha each
- The state still the largest land holder with:
 - 440,000ha of agricultural land (or 6.5% of total);
 - ownership (*raqabah*) of nearly 1.5mha of the tribal lands
 - ownship all forest and range land

REGISTRATION

1985 (Circular No. 24 on Dec. 18th): Ordered a reduction in titling fees to promote the generalisation of titling in rural areas (signed by Ministries of Agriculture and Agrarian Reform, Justice, Interior and Financed)

EVOLUTION OF CUSTOMARY RIGHTS

1912 & 1919 Decrees recognised ownership rights to tribes on their territories. Management and control of all collective lands comes under (state) chosen local land managers (*naiibs*)

1924 Decree provided legal framework for delimiting and titling tribal territories in the name of the state

⁴⁸ Overall, high concentration of land in few hands Gini coefficient of 0.76

- Agricultural land distributed to "heads of families" according to size of family. Most were resident tribal members while those who had out-migrated missed-out.

1945 Decree (of Apr.14th) distinguished between valorised and non-valorised tribal collective lands and allowed holders, who invested in a piece of collective land, to receive an act from the Trusteeship Council recognising their perpetual use-right on the plot.

1957 Decree No. 2977 (of Nov.13th) permitted allocation of unused collective agricultural land to out-migrated members of the community

Furthermore, it regulated inheritance with the provision of equal share for women with at least one child.

It also constituted a land reserve (1/5th of the total arable lands) for land-short household heads and returnees from migration.

1997 *Guiding policy*: Official maintenance of tribal territories and the allocation of perpetual use rights to tribal members (ownership held in the name of the tribe)

There remains the underlying problem of a land shortage in tribal areas. Between 1980s and 1991 the area under cultivation jumped from its long-time position of 4.4m ha (where it has been since 1940s) to 5.4m ha. This dramatic expansion was the result of high crop prices, structural adjustment, government policy and mechanisation. Available cultivatable land in the tribal areas has now all but disappeared pushing tribal members in search of land to cultivate collective pastureland. Nassif (1997), in an analysis of disputes reported to the *naib* of three districts suggests that this has precipitated a rise in disputes. Of the disputes 93% related to transgressions on collective land. Cropping was the major source of disputes (60%). A further 22% of cases were concerned with powerful members that had established barley corridors and so enclose a pasture for effective private use. He goes on to suggest that this represents a breakdown in the customary system of periodic redistribution of cultivated plots. However the practice in tribal areas since the decree of 1957 has been that perpetual use rights were recognised for those tribal members breaking the soil in tribal areas zoned for cultivation. It would be surprising, therefore, that when cropping reached tribal pastureland it did not carry on in similar vein.

MALTA

Malta registers title deeds that indicate ownership and the existence and value of a secured loan. The land records, which are wholly open to the public, are governed by legislation [Chapter 296, Land Registration Act]. Land administration is operated at a central government level through the Ministry of Justice. The administration is financed through taxation and fees paid by customers. Land title is granted at time of transfer and guaranteed on the basis of civil law (Transferor's liability) while a system of indemnity provides guarantee when government is involved in the transaction, in dealings on guaranteed titles or on the lapse of 10 years following application. There are currently around 20,000 titles registered with the authorities. Registration remains to be completed over the pre-determined area. 5000 registrations are made a year.

MAURITANIA

Commissioned worked has not been forthcoming. For a detailed and reasonably up-to-date study on land tenure in this country it is recommended that you refer to:

BRUCE, J (Ed.) 1996, COUNTRY PROFILES OF LAND TENURE: AFRICA

<http://www.wisc.edu/ltc/rp130.html>

**An Overview of Land Tenure in
the Near East Region
Bibliography**

Jon Rae

April, 2002

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Land Tenure Review of the Near East

Part II: Individual Country Profiles

East to West

Afghanistan to Mauritania

Jon Rae

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AFGHANISTAN

(with the assistance of David Marcouiller)

Population: 27,755,775 Growth: 3.28
Labour force: 10m (70% in agriculture)
Land Use: Arable 12% permanent crops 0%; permanent pastures 46%; forests 3%; other 39%

EXECUTIVE SUMMARY

Some 85% of the population are rural and to varying degrees dependent on agriculture and livestock production. The re-establishment of agriculture will play a key role in the country's development. Much of the focus in agricultural aid will be on seed production and distribution along with improved water management, and animal production and health. The drought-stricken North of the country Hazarajat livestock has been devastated by drought (1998-2001) while in the south poppy growing continues as an important coping mechanism.

Land tenure across the country is as varied as the ethnic and sectarian landscape. In general, however, Afghanistan is a land of small farmers, with a majority of farms owner-operated. The largest average landholdings are to be found in the northern and western parts of the country where dry farming is frequently found. In the fertile and substantial Helmand Valley, landholdings are large, and sharecropping predominates. In the central and eastern regions, where there is more irrigated land, holdings are smaller than the national average. This stems from the large ratio of people to irrigated land and from inheritance laws. Tenants and sharecroppers who traditionally received a fifth of the harvest for their labour farm the larger landholdings. Often the crop is divided evenly if the tenant contributed other inputs, such as seed or fertiliser. Tenants and sharecroppers have reduced incentive to develop the land or use the best inputs. On the other side of the spectrum, a large number of small-scale holdings are often not productive because farmers can not afford nor necessarily get access to

the expensive modern inputs or efficient irrigation system. Irrigation which already accounts for 30,000 sq km, is considered a central pillar of rural development in the post-conflict era.

POLICY AND LEGISLATION

Afghanistan's climate is characterised as continental with arid to semiarid precipitation regimes, cold winters, and hot summers. With respect to terrain, Afghanistan is a mostly rugged mountainous country with plains in the north and the southwest. With respect to land uses relevant to agriculture, Afghanistan is estimated to have roughly 12 percent of its total land area classified as arable (1993 estimate of 30,000 square kilometres irrigated) with another 46 percent classified as permanent pastures. Forests and woodlands account for another 3 percent of the total land area.

Afghanistan is a developing, landlocked country, highly dependent on farming and livestock raising (sheep and goats). It is important to note that recent historical events are directly relevant to any discussion of land tenure in Afghanistan. Civil unrest and strife have been the norm in Afghanistan for the past 25 years. Afghanistan was invaded and occupied by the Soviet Union in 1979. The USSR was forced to withdraw 10 years later due to internal insurgency (mujahidin forces supplied and trained by the US, Saudi Arabia, Pakistan, and others). To complicate the situation further, post-Soviet Afghanistan has been marked by considerable turmoil and civil unrest. Since 1990, fighting has continued among the various mujahidin factions. By the mid-to-late 1990s, the fundamentalist Islamic Taliban movement was successful in seizing most of the country. Since October, 2001, Afghanistan has been the location of the conflict between a multinational force led by the United States and Taliban/al Qaeda forces. In addition to the continuing civil strife, the country suffers from high rates of poverty, a crumbling infrastructure, and widespread incidence of land mines within the rural landscape. It currently has a month-old functioning central government but is still plagued by administrative confusion and conflict among various tribal factions.

Since 1980, Afghanistan also has the nefarious reputation as home to the world's largest recorded refugee population. It is estimated that during the conflict with the USSR, roughly one-third of the population fled the country, with Pakistan and Iran sheltering a combined

peak of more than 6 million refugees (Nyrob and Seekins 1986; CESR 2002). In early 2000, 2 million Afghan refugees remained in Pakistan and about 1.4 million in Iran. This fact, when combined with a long-standing agrarian tradition of nomadism, leads to a need to identify and discuss unsettled peoples in the context of land tenure, common-pool resources, and the agricultural/pastoral situation of contemporary Afghanistan.

Until the first few decades of the 20th Century, pastoral nomadism was a way of life for rural peoples across a wide zone stretching from North Africa through the Middle-East and into the heart of Central Asia. Although the living conditions for these peoples have changed dramatically during the past 75 years, some (and many in Afghanistan) still keep livestock and continue their migratory way of life (Pedersen 1994). The two key aspects of nomadism that are characteristic involve animal husbandry (pastoralism) and the capacious notion of movement (nomadism). Historically, Afghanistan reflects the broader Asian events and represents a crossroads, of sorts. Afghanistan is where a branch of the old silk road connected eastern and western markets. Through Afghanistan is where China was linked to the Mediterranean world; where age-old caravans traveled both East-West and North-South linking Central Asia with the Indian sub-continent. Its people are made up of a complex of ethnic groups that are characterized by widely fluctuating traditions, heritage, social structures, and language.

An agricultural census carried out in 1967 showed the average size of farm holdings was 3.5 hectares with over 70 percent of the holdings smaller than this. Some 12 years later following aborted land reform the disparities were more entrenched.

1979: Government survey found:

- showing 82% of holdings had less than 3.5ha
- 80% of population owned 1/3 of total agricultural area
- 5 percent of the rural landholders owned more than 45 percent of the total arable land, having holdings of at least 10 hectares

- About a third of the rural dwellers were thought to be landless labourers, sharecroppers, or tenants

DISTRIBUTIVE LAND REFORM

Land Reform Law in 1975

- Limited individual holdings to a maximum of 20 hectares of irrigated, double-cropped land. Larger holdings were allowed for less productive land.
- All surplus land was to expropriate in return for compensation.
- To prevent the proliferation of small, uneconomic holdings, priority for redistributed lands was to be given to neighbouring farmers with two hectares or less
- Landless sharecroppers, labourers, tenants, and nomads had priority after neighbours

Despite the government's rhetorical commitment to land reform, the program was quickly postponed. Because the government's landholding limits applied to families, not individuals, wealthy families avoided expropriation by dividing their lands nominally between family members. The high ceilings for landholdings restricted the amount of land actually subject to redistribution. Finally, the government lacked the technical data and organisational bodies to pursue the program after it was announced.

1978: (Decree No. 8 of November) Further limited individual holdings to a maximum of 6 hectares of irrigated, double-cropped.

- Holding size otherwise dependent on agro-ecological zone (seven classes recognised)
- No compensation for government-expropriated surplus land.
- Projected estimated that this would free up about 1 million hectares for redistribution to landless or nearly landless peasants (though no cadastral survey had ever been completed). The authorities estimated that only 4 percent of the landowners would be affected by redistribution measures.
- Priority for redistribution: sharecroppers already working on the land had highest priority.

The central government immediately found that the scarcity of cultivable land, and especially irrigated land, made it practically impossible to grant one-hectare plots of first-grade land or its equivalent to every land-hungry peasant. Instead there was a shortage approaching 350,000 hectares of first-grade land. Later the government realised this deficit was even greater when the nomadic population was considered. The government also found that providing formerly landless peasants with plots of low-yield dryland was of little value without other resources, which were also unavailable. Part of the government's problem with the land reform project stemmed from the haste with which it began the program in order to gain political strength. President Babrak Karmal noted the government's inadequate planning in a 1984 speech:

with courage we can say that Decree No. 8 and the start of its implementation took place in an extremely hurried situation. This is an important and major point. A great step was taken without careful and profound study or collection of information from all corners of the country, without scientific study of land questions, national and historic characteristics, characteristics of the situation of peasants in the country, or the nature of the land question, although the aim of this step was lofty and sacred.

Once the program began, it created social disorder in rural areas, which fuelled the opposition already under way against the regime. Under the uncertain security conditions, the land reform program was even harder to implement. There was less land redistributed in central and eastern Afghanistan not only because of the prevailing tenure structure of smaller plots but also because those regions were controlled by the *mujahidiin* and were not subject to any authority of the central government. Farmers often proved unwilling to work redistributed land because of uncertainties of ownership. The land reform measures were one of the causes for the decline in agricultural output after 1978.

By 1981 outside observers believed the government had quietly shelved the land reform program. In 1985, however, the government claimed that land reform had continued apace after the onset of "the new development stage of the Sawr (April) Revolution." According to the government, between 1978 and July 1985 about 688,520 hectares had been redistributed among 319 538 families. In March 1984 the government had announced several amendments to Decree No. 8 to enhance its acceptance in the countryside. These amendments exempted

peasants from several property taxes. The modifications also called for the organisation of village farm councils with broad jurisdiction to oversee land and water reform.

It remains unclear what agricultural policies the Taliban followed once they assumed power. They supposedly supported poppy growing with the diversion of fertiliser to those involved, but it probably can be assumed they did not continue with land reform given its wide spread support in the previous regime, a pattern not dissimilar to Iran following the revolution there in 1979.

EVOLUTION OF CUSTOMARY TENURE

There are a great many ethnic and sectarian groups in Afghanistan, each with their own, if many times shared, culture of land tenure.

Until the first few decades of the 20th Century, pastoral nomadism was a way of life for rural peoples across a wide zone stretching from North Africa through the Middle-East and into the heart of Central Asia. Although the living conditions for these peoples have changed dramatically during the past 75 years, some (and many in Afghanistan) still keep livestock and continue their migratory way of life (Pedersen 1994). The two key aspects of nomadism that are characteristic involve animal husbandry (pastoralism) and the capacious notion of movement (nomadism). Historically, Afghanistan reflects the broader Asian events and represents a crossroads, of sorts. Afghanistan is where a branch of the old silk road connected eastern and western markets. Through Afghanistan is where China was linked to the Mediterranean world; where age-old caravans travelled both East-West and North-South linking Central Asia with the Indian sub-continent. Its people are made up of a complex of ethnic groups that are characterised by widely fluctuating traditions, heritage, social structures, and language.

Pastoral nomadism is a dominant feature of the agrarian-based economy of Afghanistan. Mainly based on sheep, goats, and camels (with minor numbers of cattle), pastoral nomadism is both a form of economic sustenance and a way-of-life. Pastoral nomadism, given Afghanistan's climate and topography, relies on seasonal variations to determine migratory

routes of people. In East Afghanistan, two seasonal migrations occur. These are relatively well-defined migration patterns utilising lowlands in the winter and highlands in the summer. Pastoral nomads, in general, utilise common property land resources that are informally controlled by tribal leaders. Usufructory conflicts are common, particularly between use of lands for grazing and more permanent agricultural production.

Grazing grounds typically lie in a zone between arable land and the barren plains or mountainsides (both vast uninterrupted tracts and smaller grazing tracts interspersed amongst more arable lands). Most arable lands in Afghanistan are geographically defined where water is available (due to arid conditions, cultivation of crops is heavily reliant on some form of relatively primitive irrigation). This resulted in relatively stable boundaries between permanent agronomic activity and pastoralism. The exception to this is dry-land farming (*lalmi*) of wheat on non-irrigated lands.

Discussed here will be tenure among the majority Pashtun population who dominate around Kabul and much of southern Afghanistan, and Afghan Kafir, a relatively minor ethnic group of the Hindu Kush.

THE PASHTUNS

The Pashtuns are divided amongst clans and tribes but the system does not correspond to any territorial or political order in the steppes. Durrani Pashtuns dominate west Afghanistan but share basic cultural norms with neighbouring Timuri, Zuri, Taheri, Mahmudi, due largely to Persian influence.

- Land secured through conquest, gifts, and purchase
- *Private property* considered on irrigated and non-irrigated valley floors.

Disposal of property is not free but must be offered to patrilineal kinsmen; secondly to persons whose land borders the piece of land. Land tends to remain within particular descent groups given the political nature of land.

- *Summer grazing* and forest in surrounding mountains held by people living in the valleys who collectively own property through patrilineal descent groups. Pashtun Nomads graze on the fields paying a fee.
- *Winter grazing* (on arid plains) there are customary usufruct rights but these are only enforced when right holders are present - there is no reservation in absentia. Otherwise pastures open to all.

Such usufruct rights established by:

- Using an area for several consecutive seasons
- In the highland *summer areas* best pasture under the control of nearest village who own pastures corporately and rent out to nomads on a seasonal basis
- Nomads acquire grazing rights either through the purchase of farmland, canals or wells in or adjacent to pasture (rarely used given the unreliability of pastures across years)
- *Tenancy agreements* usually with unrelated Pashtuns (later claims based on old inheritance quarrels may well be the reason for this), are generally unwritten. Tenants can be evicted immediately following harvest. Landlords receive 2/3 tenant 1/3. Tenants supply oxen and 1/3 inputs. Often additional tasks allocated.

AFGHAN KAFIR OF THE HINDU KUSH

Local society, particularly in northern mountainous region home to the Afghan Kafir, is dependent on customary tenure that share enough characteristics to be collectively termed: "valley systems"

- Private property: Valley floor irrigated fields owned privately while tracts of uncultivated land, oak forest and pastures held as a joint estate of decent groups (rarely comprising whole lineages).
- 70% of territorial disputes on the valley floor occur within mainly agnate groups (3-5 generations)

- *Summer mountain pastures* are held collectively by valley community and often distributed by village. However rights to grazing at named camping locations (*ista*) are acquired through partrifilial inheritance transferred via continual use between generations.
 - *Regulating access*: Herding groups of agnates may also include non-agnates from different lineages (palawi). The so-called "Palawi institute" is an important feature for the herding groups that can number between 4 and 10 households, for it provides flexible access to resources.
- *Winter grazing* is individualistic with valley stables and surrounding holm oak (sacred) forest held as private.

IRAN

(with the assistance of David Marcouiller)

Population: 66,128,965 **Growth:** 0.72%

Labour force 17.3m (33% in agriculture)

Land use: arable 10%; permanent crops 1%; permanent pastures 27%; forests 7%; other 55%;

Irrigated area: 94,000 sq km

GDP% from agriculture: 24%

Legal system: the constitution codifies Islamic

EXECUTIVE SUMMARY

The Pahlavi regime neglected indigenous agriculture and pastoralism and furthermore favoured policies of tariff-protected and subsidised meat and dairy imports. This was an important contributing factor to the nations economic ills through the 1960s and 1970s, and played a role in the revolutionary movement. Prior to reforms, wealth was based on private ownership of entire villages with landlords controlling the scarcest resource, *qanats* (underground water channels). The royal family and landed elite possessed around 80% of cultivated land and *qanats*. The impact of land reform in the 1960s is disputed but it is estimated that nearly half of all tenants received title to the land they worked. Their individual rights were short-lived. In 1967 the Corporation Law pooled land to achieve economies of scale, and placed them under the government management. Following the revolution in 1979 there were some in the regime who saw land reforms as western inspired and sought the return of appropriated land to the 'original' owners but those who saw the reforms as a mechanism for social justice won-out. In 1989, the authorities distributed near 500,000ha of land left by fleeing landlords and the royal family, as well as a further 600,000ha of public land. An expanding population coupled with goals of food security has pushed agriculture to its ecological limits.

The pastoral sector was the focus of draconian interventions for much of the 20th century. the authorities pursued Settlement in the inter-World War years and again in the

1970s. Following the revolution, settlement was viewed as a policy of the old regime, and abandoned. In finding a satisfactory mechanism to partner pastoral groups in a long-term management strategy for the remaining rangelands, the authorities have for the past 15 years pursued, a participatory approach.

POLICY AND LEGISLATION

Iran's climate is characterised as mostly arid or semiarid and subtropical/Mediterranean along the Caspian coast. Its terrain is characterised by a rugged, mountainous rim; a high, central basin with deserts and mountains; and small, discontinuous plains along both coasts. With respect to aggregate land uses relevant to agriculture, Iran has roughly 10 percent of its total land area classified as arable land, and 1 percent in permanent crops. A 1993 estimate identifies approximately 94,000 square kilometres as irrigated. Permanent pastures comprise 27 percent of the total land area while forests and woodlands comprise another 7 percent.

Iran's population of approximately 66 million (2001 estimate) is roughly divided 61 percent urban (refers to within municipalities) and 39 percent rural. Approximately 221,000 people are classified as "unsettled" (Statistical Centre of Iran 2002). Historically referred to as Persia until 1935, Iran became an Islamic republic in 1979 after the ruling shah was forced into exile. During 1980-88, Iran fought an indecisive war with Iraq over disputed territory. Iran is currently classified as a theocratic republic.

Historically, rural Iran was made up of many villages and hamlets that were characterised by a highly stratified social organisation (some argue that, although highly stratified, rural Iran was less stratified as compared to urban Iran). Social structure in rural villages consisted of three basic classes: (1) the largest landowner (or owners), (2) peasants owning medium to small farms and local merchants/artisans, and (3) landless villagers. Traditionally, wealth was based on private ownership of entire villages with landlords controlling the scarcest resource, *qanats* (underground water channels). Prior to reforms, the royal family and landed elite possessed around 80% of cultivated land and *qanats*.

DISTRIBUTIVE LAND REFORM

During the early 1960's the ruling monarchy headed by the Shah (Mohammad Reza Shah Pahlavi) came under pressure from internal and external forces to develop policies to reform land ownership. Land reform (1962-71) was launched by royal decree and implemented in phases; the aim of reform was to transfer ownership of land to the cultivators. Until the land reforms instituted by the Shah in the 1960's and 1970s, Iran was dominated by large landlords exploiting cultivators who paid modest land rents. Although argued by some, the land reform program of the Shah led to a transfer of approximately 85 to 90 percent of affected lands to cultivators with original owners retaining 10 to 15 percent.

PRE REFORM SITUATION

- Prior to land reform, 39.9% of holdings were of less than 2ha;
- 65.2% of the landholders own 18.7% of the land
- 16.7% held 60.1% of the land
- Owner-operated farms were 30% of holdings, the remainder farmed largely under sharecropping arrangements (landlord 'take' ranging from 20-80% of harvest)

LAND REFORM

1962: Land reform enacted in

- Completed in 1971
- 1.8-1.9m sharecroppers received land
- Whereas prior to reform there were 1877,000 holdings after reform there were 2,312,000
- Resulted in the expansion of agriculture 11.3m ha in 1960 to 16.4m ha in 1974

Post reform farm size

(HA)	IRRIGATED %	NON-IRRIGATED
------	-------------	---------------

		%
< 1	51.74	33.32
1-2	19.81	15.14
2-5	19.05	23.03
5-10	6.51	15.73
10+	3.16	12.78

1967: Corporations Law passed to pool individual holdings within Farm Co-operatives (FC)

- Ownership of land replaced with shares
- FCs managed by government appointees with farmers in essence becoming farm labourers
- By 1979 there were 93 FC covering 850 villages and 400,000ha
- Widespread dissatisfaction with the 'share system' impeding adoption of technology and spurred the development of Rural Production Co-operatives where farmers maintained title to land.
- Thirty-nine such RPCs established by 1979.
- After the revolution 86 FCs disbanded leaving just 7; RPCs fared slightly better with 19 also making the transition

Evaluation of Iran's policy of land reform (Majd 1987) suggest that the Shah's land reform was widely beneficial and returned land to the masses of tenant cultivators on highly favourable terms. This is contrary to the popular view that the reforms were of a limited nature. Furthermore, evaluative results suggest that these reforms radically changed land ownership and resulted in significant rural socio-economic transition. It did not, as some argue, result in political stability nor did it act to strengthen capitalist institutions. It acted to

destroy the political and economic power of the landowning class transferring wealth from landlords to peasants on highly advantageous terms to peasants.

In a response to the above mentioned study (Majd 1987), others have argued (Araghi 1989) that the results of the Shah's land reform were not highly advantageous to the peasantry and appeared as a *deus ex machina*. Land reform, (according to Araghi 1989) resulted in a highly fragmented ownership pattern with average tract sizes too small and overly non-contiguous to be economically advantageous to the cultivators. Furthermore, it is argued (ibid) that land reform led to a massive increase in the number of people separated from direct ties to the land and to the creation of poor urban wage-labour sector. Furthermore, it was an important contributor to rural to urban migration leading to urban unrest and ultimately led to the overthrow of the Shah's regime.

THE IMPACT OF THE ISLAMIC REVOLUTION

Following the revolution to a fundamentalist Islamic state in 1979, the basic rural landholding structure did not change significantly. A small minority of landowners continued to profit from sharecropping and tenant arrangements. Since land reform targeted private landholdings (not lands owned by religious groups) the historical ruling religious leaders were relatively unaffected by land reform and since the revolution, these religious landholdings (*vaqf*) have grown in size. Uncertainties about future land ownership, as well as the war with Iraq, caused further disruption of agriculture through the 1980s. Indeed, 10% of agricultural land fell into Iraqi hands between 1980 and 1982, although Iran subsequently regained the territory. The war further stifled agricultural development with the diversion of funds and draining of the already shrinking agricultural labour pool through heavy conscription. Coupled with uncertainties over land reform, the war contributed to the loss of farm labour--5 million people--between 1982 and 1986. Land reform during this period was in a state of limbo. For some in the new regime land reform was a legacy of the old regime and argued for the return of appropriated lands. Others in power saw the reforms as social justice, and at the tail-end of the war this faction won-out.

1989: Continuation of land reform with the distributed near 500,000ha of land left by fleeing landlords and the royal family, as well as a further 600,000ha of public land.

CURRENT STATUS (1999):

- 50% of landholdings have less than 5ha; 33% of landholdings < 2ha
- 33% of landholders hold just 3.8% of total agricultural land
- Widespread support for Rural Production Co-operatives has fostered a further 600 with plans for an additional 600
- There remains dissatisfaction with the pace of agricultural development. Goals first articulated in the 1st Development Plans (1989) sought the development and expansion of agriculture but in spite of attempts, notes the Plan and Budget Organisation of the Iran, "the desired goals have not been achieved" (Kojidi, 1999)
- The Iranian authorities currently estimated there to be some 30mha of cultivable land of which only 18.5mha is currently being used because of:
 - lack of water
 - the practice of fallow, estimated at 4m ha annually

EVOLUTION OF CUSTOMARY TENURE

Throughout the 20th century the migratory populations, most of them non-Farsi speakers, have been the focus of draconian settlement schemes to bring them more fully under the political yoke of the state as well as to improve the productivity of the steppe.

1924-41: All pastoral population subject to enforced settlement schemes of Reza Shah With his departure some migratory groups managed to return to their former lives, amongst them the largest of them all, the Qashqa'i.

1960: Abolition of tribal Khan duties and powers to: collect taxes, assign land, supervise migration, form armies, settle tribal disputes

1962: The Land Reform Law resulted in substantial loss of pasture. The regulation of pastures were not directly addressed in the reform but the better pastures were allocated to individuals for permanent occupancy and settlement

- The widespread expansion of cultivation at the expense of grazing lands drove some migratory groups to cultivate even on an unprofitable basis in order to secure the land within their group. Such was the case of the Shahsevan in northwest Iran which ploughed to secure their customary rights

1963: Forest and Range nationalisation Law – The nationalisation of all rangelands with the exception of village pastures defined in the law as twice the size of a village's cultivated area

- This act covered 76% of the country's area.
- Pastoralists who now grazed their sheep 'free' on 'state' rangelands were now taxed for the privilege if indirectly at slaughter
- Legislation co-ordinated through Forest and Range Organisation of the Ministry of Agriculture and Agrarian Reform (MAAR)

1967 FRO supplemented with Ministry of Natural Resources with responsibility for:

- protection and correct use of natural resources (i.e. forests, range, soils, watersheds, wildlife). Exclusionary projects for re-vegetation, stabilisation or recreational (including the setting up of a hunting preserve in Dasht Arjan).
- Improve rangeland not open to use because FRO could not guarantee effective management.
- The FRO, on the other hand, favour co-operatives 'to whom large blocks of grazing land can be allocated on a fixed-term contract subject to specific development (investment) and operating (... approved management practices) conditions'

- Despite the legislation and for reasons of pragmatism when administering to widely dispersed population, the authorities continued to utilise tribal headmen (not khans) to negotiate land and migration rights.

1970s: settlement schemes re-imposed

1960s-1970s national land reform

1971 - Law prohibiting the renting of pasturelands from others (not enforced)

1971 - Law prohibiting the use of pasturelands without a permit and with flocks greater than 200 head (not enforced)

1975: Political recognition of tribes abolished. The tribes would now be considered as any rural population.

- Military control of migration and grazing ceased
- Access to pastures resources did not return to tribal structures; rather tribesmen were now required to secure individual land-use permits issued by the Ministry of Agriculture and Natural Resources.
- The licensing system, though said to be universal, covered about 40% of Iran's range and pastures in 1977 (Sandford, 1997).
- Rights to a particular area were determined by previous usage (MAAR had received the old military *Entezamat* records) but many lost out as their names or locations were not formally recorded in the *Entezamat*.
- Permits only assigned to grazing land (*marta*) above water channels; those below which had previously been grazed and cultivated by the tribesmen was denied and deeded through land reform to non-tribal members and townsmen.
- For those tribesmen who had invested in the land (built houses or planted trees or cultivated) prior to 1962 gained title to the land. Activities after this date were now, in 1975, deemed illegal

- Only seasonal and pastoral use of land is permissible on the designated pastures

With the loss of government control, tribes that had been forced to settle such as the Qashqa'i, re-assert their political autonomy and in particular their rights to use customary pastures. Many settled tribes members and those in town returned to the mountains.

Zekarat (1997)

Rangelands: 90m ha of pasture land of which 14,000ha are "good grazing", the remainder is poor or fair.

99m livestock, 60m dependent solely on grazing; the land can support 15m head (National Report 1994, Islamic Republic of Iran, Env. Protection Agency).

To achieve food self-sufficiency, agriculture has pushed onto steeply sloping areas: 66% of the grains grown on lands with slope > 20%

125m ha under threat of soil erosion.

(Beck, 1980)

The Qashqa'I are a Turkish-speaking nomadic group whose ancestors came from central Asia probably in the 15th century. They expanded with the increment of Lurs, Kurds, Arabs, Persians and gypsies. The confederation comprised 400,000 by the 20th century. Five big tribes and many small ones comprise the confederation. Herd sheep and goat in a seasonal migration of 350 miles between lowlands and highlands adjacent to and within Zagros mountains.

Qashqa'I identity is focused on political leaders and groups and on cultural, linguistic, and territorial criteria.

Customary management: tribes held and defended access to resources collectively. Although some agriculture was undertaken by some khans, control over territory depended on "political and military strength rather than written deeds" (Beck 1981). Khans allocated specific units of winter and summer grazing to the sub-tribes on a seasonal or long-term basis. Individuals and groups secured rights to tribal land through payment of taxes and other expressions of political loyalty to tribal leaders. Well organised groups were able to increase

land and members while weak groups lost land and members. Groups could change their political affiliations and territories, and land beyond confines of tribal boundaries could also be utilised. Tribal leaders were crucial in the overall pattern of land use and in negotiating land disputes between individuals, between tribal groups, and between them and the outside world. Most qashqa'I practiced careful range management by rotating grazing areas, avoiding overgrazing, restricting camel foraging, constructing water catchment basins to improve grazing and cultivating forage crop.

Policy makers at the time stated that Iran was rapidly being denuded of vegetation, that the great deserts were expanding - and that it was the pastoralists (Sandford 1977). One of the purposes of the tax on sheep sold in cities was to control numbers in the countryside. Timber collection, firewood collection, and charcoal making it is argued by Barth (1975; Bates 1973, Beck 1981) is the main cause of de-vegetation, not pastoralists. Policy makers often guilty of cultural prejudices concerning rural and especially tribal people - which should be seen in the context of the increasing gap in the rates of socio-economic change between urban and rural areas in Iran. A significant problem for effective management is commercial herds.

Circumstances encouraged economic diversification. Prior to 1960s it was normal to cultivate in winter and summer pastures. Now main avenues: agricultural labourers; charcoal production (laws not enforced or corrupt officials and tree line retreated); sale of gum tragacanth (katira) (extracted from exposed roots of the boteh shrub - those with grazing permits charged gum tappers a fee); collection of wide nuts.

TURKEY

Population: 66,493,970 **Growth:** 1.24%

Labour force 23m (38% in agriculture)

Land use: Arable land 32%; permanent crops 4%; permanent pastures 16%; forests 26%; other 22%

Irrigated area: 36,740 sq km

GDP from agriculture: 15%

EXECUTIVE SUMMARY

Agriculture remains an important but declining (due to industrial growth) part of the Turkish economy (roughly 15 percent of GDP in 1993). Commercialisation of agriculture since the 1950s has benefited from irrigation projects and now specialises in high value fruits and industrial crops. Much of the commercial agriculture is concentrated in the fertile coastal plains of the Aegean and Mediterranean Seas. There is a dramatic difference in productivity between more fertile, irrigated lands in the southwest and that from farms in the semi-arid Anatolian Plateau or in the arid southeastern part of Turkey.

Agricultural practices vary widely and are largely determined by site productivity. Whereas modern commercial agriculture can be found along the coastal plains, the Southeastern portion of Turkey remains an agriculture of self-sufficiency (in addition to suffering from civil strife brought about by the ongoing Kurdish rebellion). Efforts to improve rural life in Eastern Turkey have been significant which spills over into more modern agricultural practices with recent advances in irrigation. Large-scale hydro initiatives coupled with irrigation projects in the Euphrates and Tigris River Basins have resulted in more rapid agrarian development and hold the promise of increasing the supply of productive land into commodity production.

Although Turkey suffers from a dearth of information on land ownership (due, in large part, to that lack of a comprehensive cadastral survey), the literature suggests that current

Turkish land tenure is characterised by much more equal distribution of land as compared to most developing countries and its nearby middle eastern neighbours.

POLICY AND LEGISLATION

Land tenure in Turkey has historical roots in the Ottoman state which was characterised by central government ownership of land with habitation and cultivation rights provided to independent peasants. Under early Ottoman rule, Turkish agricultural lands were maintained by lease agreements with farmers under relatively secure tenure arrangements. This had the effect of restricting the growth of a landowning class. However, the Ottoman Land Code of 1858 facilitated a general increase in the incidence of land sales and land transfers and coupled with a reversion to Islamic practices of inheritance favoured the growth of a class of large landowners during the latter decades of the empire. By the time of the empire's demise and the subsequent successful movement toward independence (1920s), land ownership had become less equitable with a small group controlling relatively larger holdings (Akşit 1993; Zürcher 1997 217). A decline in land concentration occurred in the 1930s and 1940s resulting from an overall attraction of alternative investment opportunities and an opening up of new lands to cultivation.

Although Atatürk had stressed the need for upper and lower limits on landownership, the latter to halt the fragmentation process, little in the way of effective land reform has been carried out. Nevertheless, more than 3 million hectares had been distributed to landless farmers between the 1920s and 1970, most of it state land. At the same time, the Turkish Civil Code (1926) established the legal basis for land registration¹:

According to Metz (1996; 185) who refers to a 1980 Turkish Census of Agriculture and acknowledges some disagreement, land ownership patterns are heavily concentrated in small holdings of less than 5 hectares (78 percent of farms and 60 percent of farmland). Another 23 percent of the farms (18 percent of farmland) were categorised in the range of 5 to 20 hectares.

¹ Articles 2997 and 2015 of October, 1926; The Land registry is held by the Directorships of land registry. Only real rights are registered (as well as ownership mortgages). Personal rights such as easement, rent, tax value are not registered. There are 15 regional directorates, 1001 district land registry directorships and 315 cadastral directorships under supervision of regional directorates. The registries are open for public viewing.

Less than 4 percent of the farms (15 percent of the farmland) were larger than 20 hectares. Few farms exceeded 100 hectares in size.

Due to significant fragmentation and the need for larger plots of land to attain more efficient economies of size, leasing and sharecropping are extensive. Despite this fact, the majority of farms are owner operated. Joint ownership is also common. Owners are frequently involved in swapping (through leasing and sharecropping arrangements) distant fragmented parcels for relatively closer parcels for reasons of operational efficiency. Owners of large holdings, sometimes-whole villages, usually rent out all or most of their land. Between one-tenth and one-fifth of farmers lease or sharecrop the land they till, and landless rural families also work as farm labourers.

Tenancy arrangements are many and complex. Some leaseholds can be inherited, but many tenants lack sufficient security to make a long-term commitment to the soil they till. Sharecroppers generally receive about half of the crop, with the owner supplying inputs such as seed and fertiliser.

Village-owned common property pastures are often used by grazing groups rather than individual livestock operators. These communally owned grazing lands typically encompass less-fertile sloped lands that are generally less productive for the cultivation of grains and other crops. During the past 50 years, much of the increase in arable lands has been drawn from these common-pool lands leading to increased erosion and a general reduction in the availability of grazing lands. Forest lands are, by and large, state owned and comprise approximately 20.2 million hectares (roughly 26 percent of the total land area). Although a modest forest products industry exists and timber production is a growing interest, the forests of Turkey are primarily utilised for fuelwood production and watershed protection (World Bank 2001).

The problems of land tenure remain, and some have worsened. Many farms are too small to support a family and too fragmented for efficient cultivation. Tenancy arrangements foster neither long-term soil productivity nor the welfare of tenants. In many areas, the rural poor are becoming poorer while land better suited to grazing continues to be converted to grain

fields. At the same time, however, many large landholdings have been turned into productive modern farms that contribute to the country's improved agricultural performance. Major irrigation projects in the Euphrates River Valley and elsewhere offer the prospect of increasing the supply of productive land. The declining population growth rate has reduced the pressure for land reform, and industrialisation offers an alternative for landless farm workers.

THE REPUBLIC OF CYPRUS

Island Population 762,887 Island Growth: 0.59 Island land use: 12% arable; 5% permanent crop; 0% permanent pasture; 13% forest; other 70% Island Irrigated land: 390sq km

Republic Labour force: 291,000 (5% in agriculture) GDP from agriculture 6.3% legal system: common law with

POLICY AND LEGISLATION

A former British colony, Cyprus achieved independence in 1960 but underwent a significant multinational struggle ending in a mid-1974 separation between the Republic of Cyprus (lower 63 percent of island) and North Cyprus (comprising the northern 37 percent and recognised by the Turks as the “Turkish Republic of Northern Cyprus”). The 1974 separation was the result of historical attempts by Greece to usurp control (the “enosis” movement) which was resisted by those on the island of Turkish decent and culminating in a Greek-led military coup that led to (provided an opportunity for) an invasion of nearby Turkish forces. The line separating the Republic of Cyprus and North Cyprus (sometimes referred to as the “Green Line”) is maintained with the assistance of a long-standing United Nations military presence. Following separation, an important Cypriot land tenure issue involved the resettlement of refugees following partition in 1974. On both sides, land was forfeited by those who decided to resettle. Unfortunately, a dearth of usable data could be found that elaborated on the ultimate resolution of this situation.

Land ownership in Cyprus is descendant from the Ottoman period and consists of three basic categories: private lands, state-owned lands, and communal lands. Unrestricted legal ownership of land dates back to a 1946 British administration law that superseded the land code of the Ottomans (in which all legal ownership of land resided with the state with

usufructuary rights residing with hereditary tenants). This Immovable Property Law of 1946 affected all former state-owned lands properly acquired by individuals and those lands already privately-owned (as per Ottoman definition). Villages or towns retained ownership of communal lands with remaining vacant lands reverting into state ownership (mostly forested lands in the mountains).

The Republic of Cyprus Department of Lands and Surveys has a substantial history in operating an exact registration, titling, and land cadastral planning structure embodied in the Cyprus Land Registration and Tenure System. Fragmentation of land parcels has been an important historical artefact of land ownership in Cyprus both before and after the 1946 legal passage². The 1946 census showed 60,179 holdings averaging 7.2 hectares. By 1960 the number of holdings had risen to 69,445, an increase of 15.4 percent, and the average holding had decreased to 6.2 hectares. By 1974 the average holding was an estimated 5 hectares. Holdings were seldom a single piece of land; most consisted of small plots, an average of ten per holding in 1960. In some villages, the average number of plots was 40, and extremes of 100 plots held by a single farmer were reported. Given the problems of widely scattered land plots and small parcel sizes, efforts were made in the 1960s and 1970s to consolidate parcels (Solsten 1993). The Land Consolidation Law of 1969 was enacted which established the Land Consolidation Authority.

The government reports the following breakdown in land ownership by community group: 59.6 percent of land -- owned by Greek Cypriots, 12.3 percent – owned by Turkish Cypriots, 1.4 percent owned by other minorities, and 26.7 percent owned by various units of government. The largest private landowner is the Church of Cyprus, whose holdings before the Turkish invasion included an estimated 5.8 percent of the island's arable land.

² Both Greek and Turkish inheritance practices required the division of an estate among the surviving heirs. At the time of the 1946 law, fragmentation of land was already great, many holdings did not have access roads, and owners frequently possessed varying numbers of plots that might be separated by distances of several kilometres.

LAND ADMINISTRATION

Cyprus registers title deeds and these indicate ownership, the existence and value of a secured loan, and the purchase price. They are governed by legislation [The Immovable Property (tenure registration and valuation) Law Cap 224; The Immovable property (transfer of mortgage) Law N9/65)]but are not open to public scrutiny. The land register is administered at a regional level through the Ministry of Interior. Fees and charges relating to land registration are not ring-fenced but deposited in the consolidated fund of the Republic. Administration is financed through a budget from central government. Legal title is granted by the state at the time of property transfer but the title is not guaranteed by the state nor backed by a system of indemnity. Cyprus is still continuing towards the complete registration for all land. Around 14,000 registrations are made each year though the overall number of registered properties was not available.

The Republic of Cyprus's Land Consolidation Program

The Land Consolidation Law of 1969 established the Central Land Consolidation Authority, with the power to buy and also acquire compulsorily land and other property, which it could sell or use for land consolidation. The authority's board included members of several ministries and departments and also representatives of the farmers. At the village level, committees of government representatives and local farmers co-ordinated and supervised the local program.

Land consolidation consisted of merging fragmented holdings. Dual and multiple holdings were to be eliminated, and plots smaller than the minimum listed in the 1946 land law were to be expropriated. Government-owned land could be used to enlarge holdings; recipients could purchase the land at current market prices, paying in instalments at low interest rates. A farmer owner who lost land in the redistribution process was to receive land having the same value as his former holding. The land consolidation program also involved

TURKISH REPUBLIC OF CYPRUS

Island Population 762,887

Island Growth: 0.59

Labour force: 86,300 (20.8% in agriculture) **Land use:** 56.7% agricultural land, 19.5% forest, 4.96% uncultivated, 10.68% occupied by towns, villages, and roads, and 8.16% unusable

GDP from agriculture: 11.8%

Legal system: common law with civil law modifications

POLICY AND LEGISLATION

Similar to the Republic of Cyprus there are three categories of land ownership formerly recognised: private, state, and communal. The greatest amount of land is privately owned. Much like the south of the Island, a growing population has driven the expansion of cultivation at the cost of commonly held village grazing land. There is a dearth of information on the current land tenure system. It is known that consolidation of holdings has not been attempted.

The largest landholder is still thought to be the Muslim religious foundation Evkaf Idaresi (Turkish Religious Trust, usually known as Evkaf). Before the events of 1974, Evkaf owned 1 to 2 percent of the island's total farmland. These holdings dated back to Ottoman times and were mainly donations in perpetuity (*waqf*) from members of the Turkish Cypriot community. Much of Evkaf's land was located in parts of the island that remained under the control of the Republic of Cyprus.

SYRIA

Population: 16,728,808 Growth: 2.54%
Labour force 4.7m (40% in agriculture)
Land use: Arable land 28%; permanent crops 4%; permanent pastures 43%; forests 3%; other 22%;
Irrigated area: 9,060 sq km
GDP from agriculture 29%
Legal system: based on Islamic law and

EXECUTIVE SUMMARY

Until the mid-1970s, agriculture had been Syria's primary economic activity. At independence in 1946, agriculture was the most important sector of the economy, and in the 1940s and early 1950s, agriculture was the fastest growing sector. Wealthy city merchants invested in land development and irrigation. Rapid expansion of the cultivated area and increased output stimulated the rest of the economy. However, by the late 1950s, little land that could easily be brought under cultivation remained. During the 1960s, agricultural output stagnated because of political instability and uncertainties caused by land reform. From 1976 to 1984 growth declined to 2 percent a year. By the mid-1980s, the Syrian government had taken measures to revitalise agriculture. The 1985 investment budget saw a sharp rise in allocations for agriculture, including land reclamation and irrigation. Syria is undergoing an economic boom following several years of poor crops and foreign exchange shortages and the economy has been growing at around 7% per annum since 1990. However, Syria's development from a state-controlled economy to a market - oriented one remains cautious and the economy is still largely centralised.

POLICY AND LEGISLATION

The introduction of the Ottoman Land Code in 1958 coupled with French policy of registration and a growing penetration of the market precipitated the establishment of large landholdings among city merchants. Upon independence land ownership was highly skewed

in favour of large landholdings. It has been estimated that some 72% of agricultural land was held in holdings of greater than 25ha + while 53% of the land were held in holdings greater than 100ha. The vast majority of the landlords were absentee their farms tilled by sharecroppers. Pressure for reforms grew with the ascendancy of the Ba'th Party and their desire to diminish the power of the old political class whose influence came with control over land.

LAND REFORM

1952: Decree for the distribution of State Lands (No. 96 30th Jan 1952) as part of the "program for workers and peasants" but faltered given that the area and location of unregistered state land was unknown.

1958 (amended decree No. 88 of 1963 and No. 145 of 1966). Set the maximum size for agricultural land dependent on region, and presence and type of irrigation. Expropriated land tended to be the poorer land as landlord was allowed to chose most favour areas for himself and family. The agrarian reform laws were similar to those in Egypt

- limited the size of landholdings (see table below)
- provided sharecroppers and farm labourers with greater economic and legal security and a more equitable share of crops
- The Agricultural Relations Law laid down principles to be observed in administering tenancy leases, protected tenants against arbitrary eviction, and reduced, under a fixed schedule, the share of crops taken by landlords. It also authorised agricultural labourers to organise unions and established commissions to review and fix minimum wages for agricultural workers.

1963: (Decree Law 88) lowering the limit on the size of holdings and providing flexibility in accordance with the productivity of the land.

- ceilings on land ownership were set at between 15 and 55 hectares on irrigated land and 80 and 300 hectares on rain-fed land, depending on the area and rainfall.

- The compensation payable to the former owners was fixed at ten times the average three-year rental value of the expropriated land, plus interest on the principal at the rate of 1.5 percent for forty years
- The expropriated land was to be redistributed to tenants, landless farmers, and farm labourers in holdings of up to a maximum of eight hectares of irrigated land or thirty to forty-five hectares of rain-fed land per family.
- Beneficiaries of the redistribution program were required to form state-supervised co-operatives.
- price of redistributed land to the beneficiaries to the equivalent of one-fourth of the compensation for expropriation

Ceiling on land holdings during reforms

Ceiling ¹	Criteria
80ha of in regions	Rainfed in regions receiving > 500mm
120ha of rainfed	Rainfed in regions receiving 350-500mm
200ha (140ha) ²	Rainfed in regions receiving < 350mm
300ha (200ha) ²	In the Northwest (Muafazat Dayr al-Zawr, Hassakeh and Raqqah)
35-50ha	Orchard
15-45ha	Irrigated depending on region and type of irrigation

¹ Landlord able to dispose of up to 8% of land to wife and children prior to appropriation

² May 14th, Decree No. 31, 1980

By 1975 1.4 million hectares (68,000 hectares of irrigated land) had been expropriated and

Impact of reform on distribution of land holdings¹

Most observers credited land reform measures with liquidating concentration of very large estates and weakening political power of landowners. Some government data of uncertain coverage and reliability indicated that before land reform more than half of agricultural holdings consisted of one hundred hectares or more, but after reform such large holdings amounted to less than 1 percent. The same data showed that smallholdings (seven hectares or less) had increased from about one-eighth before land reform to just over one-half of total holdings after reform, and that 42 percent of holdings were between eight and twenty-five

466,000 hectares (61,000 hectares of irrigated land) redistributed to landless peasants and smallholder farmers. A further 254,000 hectares of land were allocated to co-operatives, ministries, and other organisations, while 330,000 hectares were flagged for sale. In all, some 50,000 family heads (over 300,000 people) had received land under the reform program

1980: Order in Council mandated additional expropriations and further reduced the size of agricultural holdings. Data from the 1970 census revealed that the average farm holding was about ten hectares, and that one-fifth of the rural population remained landless.

Syrian Land Registration System

- Syria maintains a register of deeds (rather than of title deeds).
- Register records, which are fully open to public inspection, indicate ownership, the existence and value of a secured loan/mortgage.
- Land registration / administration the responsibility of MAAR, takes place at a regional and local level. The administration is financed both by taxation and by (registration) fees paid by customers.

Legal title is granted and guaranteed by the

LAND ADMINISTRATION

1858: The Ottoman Land Code introduced general registration but was only implemented at limited sites. Registration of title and survey was carried out on a large part of the cultivated land in Syria (Iraq) hastening the disintegration of communal forms of land tenure (*mush'a*) and communal rights.

1930: The law of Immovable Property No. 3339 (1930, laid down the principles and procedure for cadastral survey and registration. Owners who received registered title

were still *miri* holders, i.e. nominally tenants of the state, but in practice they owned the land absolutely (except for inheritance following civil rather than shari'ah law).

1943: 3,544,883ha had been surveyed and registered hastening the disintegration of communal forms of land tenure (*mush'ab*) and communal rights. However, the register system soon failed with on-going hostilities

1979: 40% of the agricultural land registered with clear title given and joint possession ended. However, work was proceeding slowly.

CATEGORIES OF LAND

- Syrian Civil Code (1949) codified the legislation of the French period and retained the categories of land used in the Ottoman Land Code, with some modifications

Private land (*Mulk / Miri* tenants)

- 1970: 83% of farmers owned all land they operated; 10% rented all their fields.

Waqf land

- The French throughout their period permitted and encouraged the sale of extensive *waqf* properties to business enterprises, irrigation concessions, and large landowners
- The 1949 Civil Code prohibited the creation of family *waqf* (and finally abolished for good within a year). Charitable *waqf* continued but placed under state control.

State land (incl. *mawat* land)

1926: *'ihya al-mawat* [reviving dead land] persons who brought unregistered state land into cultivation could acquire registered title by proof of a period of (3yr.) Enacted with an eye on encouraging the expansion of cultivation particularly in the northeast of the country.

1949: Syrian Civil Code, ownership rights in *mawat* land could be established if the claimant could satisfy the Department of Public Domain that possession occurred in good faith and was based on a proper cause, and that the land had been tilled for five consecutive

years. If individuals in fact bothered with the procedure, which many did not, or if they lacked documentary proof, the influence of urban businessmen or shaykhs closed the gap.

1952: decree no. 135 – all unregistered land including *mawat* land (consequently all steppe land) brought under the Directorate of State Domain and classified state land (*amlak dawlah*). The decree abolished all prescriptive rights in the ancient land category of *mawat*

1970: Decree No. 140 (July 20th 1970): first attempt to prevent appropriation of rangelands unless secured prior to the act. Decision No. 13 (1973) eased restrictions on cultivation of state land policy climate that encouraged cultivation

1987: No.96/T (November 11th) formalised the use of non-irrigated steppe lands by issuing licences to grow cereals based on an obligation to plant a proportion (20%) of fodder shrub. The objective not to limit cultivation in the steppe but rather to utilise 100% of cultivatable steppe land as well as to raise revenue through fees. There was a government commitment to cultivate 30%.

1992: Decision No. 17 (Sept. 15th) "To observe strictly the prohibition of the cultivation and growing the non-irrigated steppe lands, which remain dedicated for natural and planted rangelands" - based on a gradual decrease over five years

1994: December 6th - Circular No. 4553/1) immediate ban on steppe cultivation

1995: December 3rd, Decision No.27: terminated right to steppe irrigated lands

TENANCY

- 1949 Land Law of May 18: Emphasised leasee responsibility to "keep the land productive, to avoid making radical modifications, to respect customary use, and to keep it in good condition"

- 1958 Decrees No. 134 (Amended No.218 of 1963 The Agricultural Relations Act) - Clarified covers the rights of the owner in the harvest in share-cropping arrangements specifying (20% of rainfed and 25% in irrigated)
- 1979 (post reform): 26.9% of farmers took partners to supply land, work, machinery or financing (ICARDA 1979)
- In 1980 an estimated 1/5th of the agricultural labour force

EVOLUTION OF CUSTOMARY TENURE

Control of the migratory tribes of the Syrian steppe and desert has been an active policy of (city) state powers for a long time and achieved by the Ottoman authorities in the latter part of the 19th century. The French subsequently used the tribes as a balance to nationalists in the cities and settled areas. Upon independence nationalists sought to wholly subdue and break the tribes through settlement. Though unsuccessful in this quest, the governments that have followed independence have nevertheless excluded tribal structures and institutions from formal government policy. This policy has suffered the same problems as the settlement schemes, and in actual implementation of the state has reluctantly dealt with tribal entities to facilitate interventions.

1870: Ottomans establish a desert province for the administration of the desert tribes; later adopted by the French

1920s: the French and English establish zones of control for each of the major desert tribes over which recognised shaykhs are made responsible

1940: *Arrete* No. 132/LR4th (of 4th June) The so-called Law of the Tribes, which brought together previous laws associated with steppe administration and introduced additional provisions to establish a “special system” for land grants outside of the cultivated areas (*ma`murah*). Whereas it had been the responsibility of the civil authorities to sanction these grants in the past (i.e. the city authorities), it was now the job of the steppe-based military (*Controlé Bédouin*). There were three principal ways the *Controlé Bédouin* were to do this. The officers needed to confirm:

1. That the land being claimed fell within the “moving area” (*manatiq al-tajwal*) of the tribe making the application;
2. That the land was suitable for cultivation, and;
3. That the claimant had suitable funds to carry out the venture.

1942: The articles from the Law of the Tribes relating to land grants lasted just over one year on the statute books before being annulled its applicability and stipulated that no new grants outside of the *ma`murah* could be given

The Law of the Tribes permitted substantial land grants were made to tribal shaykhs in the northeast of the country in the Jazirah. The law also precipitated disputes between the mainly camel breeding tribe (Sba'ah) and those raising sheep (Hadidiyin and Mawali) in the near steppe outside Aleppo and Hama.

1944: Despite the abolition of the land grant clauses the tribes, with the consent of the *Controle Bedouine*, agreed to the division of the better pastures (and so end the dispute). These divisions where extended further into the steppe in 1956 covering some 2mha. Only some land was suitable for cultivation; this and additional areas were eventually ploughed but large areas were reserved for grazing.

1949: Proclamation of the Constitution. The use by the French of the moving tribes as a leverage against the nationalists gave further impetus to the authorities to pursue an aggressive tribal policy aimed ultimately at abolishing all tribal privileges and power. The constitution proved unfavourable towards the tribes. In Chapter X – Transitory Measure: Article 158 of the Constitution stated that

- (1) The government shall undertake to settle the nomads.
- (2) Pending settlement a special law shall be enacted safeguarding bedouin custom among nomads, and it shall specify the tribes that shall be subject thereto.
- (3) A programme for progressive settlement of the bedouin shall be laid down in a law that shall be voted together with the funds necessary thereof.

(4) The electoral law shall contain provisional stipulations for bedouin elections, which shall take into consideration their present condition with reference to the civil register and voting procedure.

1953: The “Law of the Tribes [1940] promulgated by the foreigner during his abhorred mandate” was annulled in its entirety and replaced with a new Law of the Tribes, Decree No.124³. Legal distinctions remained, and guns could be carried in the *badiyah* (Art. 17). But now the law only applied to those tribes that had previously been listed as “nomadic”⁴. These included the `Anezeh factions as well as a further seventeen mostly sheep raising (*shawawi*) tribes, among whom were the Hadidiyin and the Mawali. The Minister of the Interior was empowered to remove tribes from this list as and when he saw fit, and if he did so “the tribe [would] thus become a settled community ... no reversion to nomadic life [would] be possible”.

1952: decree 135 (October) Along with the nationalisation of all unregistered land in the country, this decree made provisions for the allocation of 50ha plots to settling tribal households⁵.

1955: The Extraordinary Development Budget of, drafted in light of the IBRD report, earmarked close on \$2.8 million over a seven-year period for tribal settlement. What was envisaged in government policy was that families would be settled on individual 50ha plots, 20ha of which would be reserved for improved pasture. The size of any one settlement was to be restricted to 5,500ha on which it was estimated that 120 households, including 10 non-farming families, could be settled; these numbers would be allowed to double if all land allocated for grazing was ploughed.

1956: Government aims of tribal settlement coalesced with demands from the tribes to clarify provisions, and expand the geographical coverage of the 1944 tribal territorial treaty⁶ which had divided lands in the near steppe among the Sba`ah, the Hadidiyin, and the

³ The Nationalists original policy vis-à-vis the moving tribes was to substitute the *Contrôle Bedouin* with a Syrian organisation of the Council of the Desert, similar to that existing in Iraq at the time (Charles 1942: 86).

⁴ Thirty-five tribes lost tribal privileges under this decree.

⁵ International Bank for Reconstruction and Development (IBRD) (1955: 56)

Mawali. Cultivation in a part of the area covered by the 1944 treaty (see above page), a continuing shift away from camels to sheep, and a doubling of sheep numbers in the intervening period stimulated the same tribes to seek further definition of their moving areas. The resolution, reached through tribal arbitration did just that. Government demands for division of the land into 50 ha plots and distribution of these plots in such a way that the tribes were mixed in settlement did not appear in the final agreement. The problem that was ultimately being resolved was among the tribes themselves and not between the state and the tribes. Settlement and cultivation, as Rakan (Shaykh of Sba'ah) said, was only possible in a few scattered sites in the steppe, not over all of it⁷. What the tribes wanted was clarity about their moving areas in order to stem rising levels of conflict and provide a secure atmosphere for investment in water for animals and for agriculture. As a *mukhtar* of the Abraz clan (Hadidiyin) said, “the borders were drawn between the tribes because the insecurity without them was causing much violence”⁸. Like the 1944 treaty, this one in 1956 largely reflected a logical unfolding of the customary land tenure system. The details and impact of the treaty will be discussed at length in following chapter on customary land tenure.

1958: (28th of September), President Jamal ` Abd Al-Nasir (President of the United Arab Republic combining Syria and Egypt 1958-61) repealed the Law of the Tribes of 1956 and proclaimed that henceforth tribes would cease to possess any separate legal identity. This was of historic importance for it was the last legislation to deal specifically with the tribes and marked the final act in the long struggle by central governments to eliminate the tribes and the shaykhs, in law, as rivals to their own power and jurisdiction.

STATE REGULATION STEPPE PASTURES

1970 Law 140: Decision 140 (15.7.70) and its amendment Decision 13 (1973): formally recognised in law the *bema* co-operatives as the basis for the “National Range Development

⁶ See Chapter 3, section 'The final years of the mandate'

⁷ Expert Committee Report to the Damascus Conference (1956)

Programme". Co-operative members received the exclusive right to use the co-operative grazing areas. A penalty against trespassers on co-operative land was imposed, two Syrian lira per head the first time and five lira thereafter. Those solely identified in law to enforce these *hema* co-operative rules were the judicial police of the Steppe Directorate; tribal authorities were not re-empowered. The committee themselves could not change the co-operative rules. That decision was reserved for those at the highest levels of authority within MAAR and the Ba`th Party, and in some cases, such as the penalty structure, by acts of law.

In 1974 the Peasants' Union took control of the well-established co-operative movement from the Ministry of Agriculture. At the time the co-operative network was ubiquitous in the settled areas, and though the same was not true in the steppe, a bridge-head of eight *hema* co-operatives had been established covering 700,000 ha or roughly 6.8% of the steppe area⁹. The slow progress of *hema* co-operative establishment reflected dissatisfaction among herders at government appointees filling all positions on the co-operative boards. Under the Peasants' Union this changed and the position of co-operative leader became an elected one. Officially, the Peasants' Union considered the co-operatives as an important vehicle for the social revolution among the moving tribes but this objective was not in keeping with local political realities or with Asad's move to inclusion and national unity. In a dramatic reversal of policy it was decided that the heads of individual co-operatives would be elected. The shaykhs and other notables of the tribes rapidly assumed the helms of existing co-ops. With the shaykhs' encouragement together with a vigorous recruiting drive by Peasants' Union officials, the organisation of new co-operatives soon took-off¹⁰. Through the latter half of the 1970s, *hema* co-operatives spread from the steppe of Hama, Homs and Damascus to Aleppo, Raqqah and Dayr al-Zawr. In 1983 there were 50 *hema* co-operatives, while some twelve years later in 1995

⁸ Conversation with a *mukhtar* of Bu Ṣalah of the Abraz, the Hadidiyin at Abu al-Fayad: 21st February 1996

⁹ Six in Hama Province covering the whole of the Hama steppe, and one each in Homs and Damascus provinces.

¹⁰ Unlike the procedure for any other type of co-operative, it was a requirement that a Ba`th Party representative be directly involved in agreeing the establishment of a new *hema* or camel breeding co-operative. There are a handful of camel co-operatives, most located in the eastern steppe.

this had rocketed to 424, claiming close-on 200,000 members and covering approximately five million hectares of the steppe¹¹.

The rapid expansion of the co-operatives did not mark a widespread acceptance of the *hema* concept among the tribal groups. The co-operative range management rules were never adopted by members or enforced by official personnel, largely because the restrictions involved were too inflexible and many times inappropriate. The incentive for the herding households to join the co-operatives was not one of access to pastures but rather to more immediate resources. In 1979, to speed up the process of co-operative establishment, the authorities monopolised the supply of animal feed; if herders wanted feed they had to join a co-operative¹². From the author's 1995/96 survey among herders on the Aleppo and Hama steppes, 96% of them said they had joined the co-operatives to access the subsidised feed on offer. The other 4% said they had joined on the instruction of their shaykh¹³. When asked if the co-operatives managed the grazing and water resources, only 6% professed to even knowing this was a responsibility of the co-operatives. And of this 6%, none thought that the co-operatives actually carried out its responsibility. In an interview with the PU official responsible for the *hema* co-operatives in Aleppo province, he acknowledged that the co-operatives had a mandate for steppe protection but frankly admitted it was not a reality on the ground, and never had been in Aleppo or elsewhere¹⁴. Others had already reached the same conclusion. In the first independent review of the *hema* co-operatives conducted by ICARDA in 1982, the report concluded that "very few of the [*hema*] co-operatives have actively become involved in the improvement and control of their range areas" (in fact in their survey they found none)¹⁵. Officials within MAAR were of the same opinion. A three-year internal MAAR study on the state of the range in four selected *hema* co-operatives (1980-

¹¹ SAR - Steppe Directorate (1996)

¹² Manzardo (1980: 30)

¹³ This population was largely made up of those Bu Ghazal households interviewed. Under the instruction of Faysal al-Sfuk, Shaykh of Bu Kurdy, Bu Ghazal joined the al-Adam co-operative, which was otherwise dominated by Bu Kurdy.

¹⁴ Conversation with the Mudir of the PU's regional office at Sefireh, Aleppo Province: 3rd July, 1996

¹⁵ Nygaard, Martin and Bahhady (1982: 116).

1982), concluded “that the co-operatives needed real protection through well organised grazing”¹⁶.

The *hema* co-operative system, then, does not and never has played a role in regulating access to steppe pastures¹⁷. With their take over by the Peasants’ Union the co-operatives became a part of the ubiquitous network of patronage which included subsidised feed and cash loans through the National Feed Revolving Fund.

STATE FODDER PLANTATIONS

Despite the tentative beginnings of shrub plantations in 1983, greater government and agency funding became apparent in 1988 and the following four years saw their rapid spread across the steppe. In 1996 125,000 ha had been planted with shrubs and in 1999 this had risen to 220,000 ha. Though *Atriplex* species dominate these plantations, the Steppe Directorate does not know the exact shrub composition of each. However, production from the Steppe Directorate nurseries during their five-year plan (1990-94) gives a clear idea of what has been available to the plantations.

Two interrelated goals are sought by the SD in following the plantation concept: first, the rehabilitation of degraded rangelands, and second, the growth and stabilisation of agro-pastoral incomes. After a period of shrub establishment, averaging five years, the plantations were opened to the public for use during restricted periods in the winter and spring. Those that trespassed and were caught were fined 5,000 Syrian Lira, the equivalent of around \$100 or the price of a two-year old ewe¹⁸.

Plantations were to be located where SD officials judged the steppe to be degraded. Each provincial SD office was responsible for identifying sites in their region and, in collaboration

¹⁶ Battika *et al.* (1983: 4)

¹⁷ Jaubert and Bocco (1994: 17)

¹⁸ The trespass penalties are decided on in each province by the Provincial Agricultural Council composed of the representatives from the Party, Peasants’ Union, Governor’s Office, and from each ministry with an interest in agriculture. The figure given here is for Aleppo only. Ten individuals were fined for trespass violations in Aleppo plantations in the nine months January through September 1996.

with the Head Steppe Directorate in Palmyra¹⁹, the size of the plantation. Only private steppe land could not be included within a plantation; otherwise all other land was technically state land, including cultivated fields and co-operative pastures, and could be and was appropriated²⁰. With the site and size determined, a committee²¹ was established under the authority of the Minister of MAAR, to produce a technical and economic feasibility study for the proposed plantation. No socio-economic impact assessment of the likely effects the plantations would have on the herders was required or ever carried out. If the committee, which usually had around one month to report, gave the go ahead, MAAR provided financial support for plantation establishment.

Between 1983 and 1995 the Aleppo Steppe Directorate established four separate plantations covering 22,420 ha. The vast majority of the area consisted of lands held and grazed by the Abraz clan of the Hadidiyin, with Haib accounting for the rest²² (see map 7.1). When the Steppe Directorate of Aleppo and Hama then announced in 1995 that they wanted to establish another plantation²³, this time of some 50,000 ha between Wadi al-`Azib, Maraghah and Abu al-Naytel, the shaykh of Abraz, Faysal al-Nuri, complained to the Governor of Aleppo on behalf of his tribe. Faysal al-Nuri explained to the governor the customary land tenure situation, the pressures that had recently been imposed upon it by past plantation

¹⁹ Amongst other considerations, the Head office had information on the number of shrub seedlings available from the nurseries.

²⁰ The first plantation ever to be established in the country, that at `Ein al-Zarqah, took in over 80ha of licensed cultivation, all belonging to one steppe village (conversation with the *mukhtar* of Samamra clan of Abraz, Adami Village: 10th April 1996). This was by no means the exception: 12% and 14% of the Abu al-Naytel and Abu al-Fayad plantations respectively were cultivated under license prior to establishment. At Maraghah there was no prior cultivation.

²¹ The committee should be composed of an Agricultural Economist, a geologist, and representatives from the provincial departments of the MAAR and the Steppe Directorate.

²² For further information on the impact of `Adami and Maraghah plantations on the local households see Rae *et al*, 1996.

²³ The committee formed by the Ministry of Agriculture and Agrarian Reform to study the proposals put forth by the Aleppo and Hama Steppe Directorates was established on 7th September 1994 (decision No. 680 of the Minister of Agriculture, Assad Mustafha).

establishment²⁴ and the inevitable outcome should the new plantation go ahead. On the 13th February he wrote to the governor:

Once these lands are annexed and the said reserve is established ... we would no longer have lands for our sheep to graze. We were moved from `Ein al-Zarqah and Maraghah where two reserves were established. To the north of us is the al-Haib tribe ... with whom we have a bloody dispute ... [and consequently] we are not welcome on their pasture. Moreover, the establishment of the reserve would cause hundreds of herders to move away, many of whom have houses in the area.²⁵

The Governor asked Ghassan Eimesh, the director of the Aleppo MAAR, what could be confirmed. Eimesh reply not only confirmed what Nuri had said but went on to question the plans of the plantation on technical grounds. He wrote that the site in question was in fact “one of the good sites in our steppe in terms of plant cover”²⁶. He went on to say that there “are about 100 [tent and house dwelling] families living there all of the Abras clan” a number of which had been “moved from Ein al-Zarqah and Maraghah sites due to the establishment of reserves there”. The Director also noted that “there are no alternative lands for the Abras clan” and that there was “a dispute between them and the neighbouring al-Haib clan”. The Aleppo authorities abandoned the joint venture between the two provinces, and instead they switched their focus to the establishment of a smaller plantation at Dabourah, a site held by clans of Ghanatsah, Hadidiyin. In 1998 the land there was appropriated and planting begun.

²⁴ Apart from the cultivation and pasture lost through the plantations, thirteen households were dislodged from Maraghah lands, and twelve from `Adami. All these households were from Abras and none was compensated in any way by the authorities (Plantation Survey Results).

²⁵ Letter to H.E. The Governor of Aleppo from Faysal al-Nuri and companions on behalf of the Abras tribe: 13.2.1995

²⁶ Letter from the Mudir, Directorate of Agriculture and Agrarian Reform to the Governor of Aleppo, No. 1942/16: 21.2.1995

The role of family, clan, tribe and patron-client networks, remain some of the strongest institutions in the country. Concerted efforts to de-tribalise the steppe areas faltered at the start and since then an informal policy of accommodation has developed. A regime governing a new state with a diverse population and seeking military success against Israel needed a strong home front, something Asad forged through inclusionary mechanisms, patronage, and a powerful police state. This in part relieved the ideological attack on the moving tribes but it was the practicalities of steppe administration that reinforced tribal institutions. The tribe has proved a resilient and adaptive concept and a persistent feature of the political landscape. The social, political, and

IRAQ

Population: 23,331,985 **Growth:** 2.84%
Labour force: 4.4m (15% in agriculture)
Land use: Arable land 12%;
permanent crops 0%; permanent
pastures 9%; forests 0%; other 79%
Irrigated: 25,500 sq km
Legal system: based on Islamic law in
special religious courts, civil law
system elsewhere

EXECUTIVE SUMMARY

The build up land property in the hands of city merchants and tribal shaykhs took shape in the latter half of the 19th century under Ottoman control and subsequently during the British Mandate. Such were the distortions in ownership of land and power that reforms were hastily pursued in the wake of the Ba’thist revolution in 1958. In the proceeding 40 years Iraqi agriculture travelled full-circle in land reforms. It looked to Egypt and copied land reforms enacted there but results were small farm size and fragmented holdings. Collectivisation seemed the answer in the latter part of the 1970s but this soon showed its hand and since the mid-1980s the state has returned to a privatisation program in all but name. The changing status of land under the era following the Gulf War remains unclear though reports suggest a build-up, once again, of large land holdings.

POLICY AND LEGISLATION

The Ottoman Land Code of 1858 attempted to impose order by establishing categories of land and by requiring surveys and the registration of land holdings but only limited surveys were completed and tenure remained insecure.

HECTARES	NUMBER
< 1	24,270
1-5	25,849
5-25	41,905
25-150	27,555
150-250	1,847
250-500	1,702
500-1,250	,1221
1250-2500	424

1930s: Large landowners became more interested in secure titles because a period of agricultural expansion was underway. In the north, urban merchants were investing in land development, and in the south tribes were installing pumps and were otherwise improving land. In response, the government promulgated a law in 1932 empowering it to settle title to land and to speed up the registration of titles.

- Under the law, a number of tribal leaders and village headmen were granted title to the land that had been worked by their communities. The effect, perhaps unintended, was to replace the semi-communal system with a system of ownership that increased the number of sharecroppers and tenants dramatically.

1933: law provided that a sharecropper could not leave if he were indebted to the landowner. Because landowners were usually the sole source of credit and almost no sharecropper was free of debt, the law effectively bound many tenants to the land.

REDISTRIBUTION REFORMS

By 1958, two-thirds of Iraq's cultivated land was concentrated in 2% of the holdings. The collective holdings of 86% of the farmers amounted to less than 10% of the cultivated land. The Ba'athist revolution articulated the mood of the majority and enacted land reform, which not only surd up political support but greatly diminished the old political class.

1958: Land Reform law, modelled after Egypt's law, limited the maximum amount of land an individual owner could retain to 1,000 dunums (100 hectares) of irrigated land or twice that amount of rain-fed land.

- Compensation was to be paid in state bonds, but in 1969 the government absolved itself of all responsibility to recompense owners
- The law provided for the expropriation of 75 percent of all privately owned arable land.
- The expropriated land to be distributed to individuals in parcels of between seven and fifteen hectares of irrigated land or double that amount of rainfed land

- The recipient was to repay the government over a twenty-year period
- The recipients also required to join a co-operative..

Ten years after agrarian reform was instituted, 1.7 million hectares had been expropriated, but fewer than 440,000 hectares of sequestered land had been distributed. A total of 645,000 hectares had been allocated to nearly 55,000 families although several hundred thousand hectares of government land were included in the distribution. The situation in the countryside became chaotic because the government lacked the personnel, funds,

Impact of reforms

Although Iraq claimed to have distributed nearly 2 million hectares by the late 1970s, independent observers regarded this figure as greatly exaggerated. The government continued to hold a large proportion of arable land, which, because it was not distributed, often lay fallow. Rural flight increased, and in the late 1970s, farm labour shortages had become so acute that Egyptian farmers were invited into the country.

and expertise to supply credit, seed, pumps, and marketing services--functions that had previously been performed by landlords. Landlords tended to cut their production, and even the best-intentioned landlords found it difficult to act as they had before the land reform because of hostility on all sides. Moreover, the farmers had little interest in co-operatives and joined them slowly and unwillingly. Rural-to-urban migration increased as agricultural production stagnated, and a prolonged drought coincided with these upheavals. Agricultural production fell steeply in the 1960s and have since never recovered fully.

1970: law reduced the maximum size of holdings to between 10 and 150 hectares of irrigated land (depending on the type of land and crop) and to between 250 and 500 hectares of non-irrigated land. Holdings above the maximum were expropriated with compensation only for actual improvements such as buildings, pumps, and trees.

- The government also reserved the right of eminent domain in regard to lowering the holding ceiling and to dispossessing new or old landholders for a variety of reasons.

1975: law enacted to break up the large estates of Kurdish tribal landowners (in the north of the country). Additional expropriations such as these exacerbated the government's land management problems.

COLLECTIVISATION

1978: To resolve problem of farm size the authorities turned to collectivisation

- By 1981 Iraq had established twenty-eight collective state farms that employed 1,346 people and cultivated about 180,000 hectares.
- In the 1980s, however, the government expressed disappointment at the slow pace of agricultural development, conceding that collectivised state farms were not profitable.

1983: law encouraging both local and foreign Arab companies or individuals to lease larger plots of land from the government.:

- By 1984, more than 1,000 leases had been granted
- As a further incentive to productivity, the government instituted a profit-sharing plan at state collective farms.

1987: the wheel appeared to have turned full circle when the government announced plans to re-privatise agriculture by leasing or selling state farms to the private sector

Forms of tenure (circa 1957)

1932 - All land not classified as mulk, matruka or waqf should be classified miri either granted tabu or lazma, or retained in state ownership as miri sirf. On miri state retained raqaba while granting the tasarruf. In practice, both grant what in english law would consider absolute ownership, since they confer rights of disposal and inheritance with minor restrictions.

Lazma is a customary institute and was recognised in the:

- 1932- Law of Granting Land on Lazma. Recognised in Ottoman times, the law was formalised as a way of establishing individual tenure while maintaining tribal solidarity. Enabled individuals to claim land if cultivated over the previous 15 years. Once secured it could be transferred though only with the approval of the Ministry of Justice (Tabu Dept.) which would ensure that the land did not leave the tribe. However, was found to be yet just another mechanism for appropriation of land by pump-owners to the loss of prescriptive right holders.

LEBANON

Population: 3,627,774 Growth: 1.38 Labour force: 1.3m (? in agriculture) Land use: Arable: 18%; permanent crops 9%; permanent pastures 1%; forests 8%; others 64%; Irrigated area: 860 sq km GDP from agriculture: 12% Legal system: mixture of Ottoman law,

POLICY AND LEGISLATION

Lebanon's land tenure system is characterised by many smallholdings, but the number has declined over the years. In 1961 about 127,000 farms were reported operating. The partial census of 1970 recorded some 75,000 farm holdings, of which 46 percent were smaller than 2 hectares while only 12 per cent had 10 hectares or more. In 1981-82 there were some 64,000 active farms, with only 50 in the 100-to 1,000-hectare range.

Landholding patterns were also affected by massive population movements in the 1970s and 1980s. Lebanon's internal refugees strove to maintain title to their lands, many of which came to be controlled by rival sectarian or political groups. A case in point was in southern Lebanon. After the 1978 Israeli invasion, many Muslim landholders fled to other parts of Lebanon, hoping to reclaim their land following Israel's withdrawal. But instead of handing the land over to the United Nations Interim Forces in Lebanon (UNIFIL), as was expected, Israel turned it over to the Christian South Lebanon Army (SLA). The effect was to dispossess many of the former landholders.

Two important socio-economic trends made it difficult to evaluate the farming structure in the 1980s and 1990s. The first trend was consolidation of holdings, as Beirut-based

professionals began buying up small farms before the 1975 fighting. The war may have slowed this development, however, because it complicated long distance supervision of land. At the same time, the trend toward large families, especially in the south, made the old system of dividing holdings among male offspring less feasible, although in many cases this factor was offset by the migration of males to the city or emigration abroad.

The number of farms dropped during the war, resulting in more tracts of untilled land rather than in more ownership transfers. Small freeholders who choose to continue farming often lived in poverty. Even before the 1975 Civil War, the average annual income for the head of an agricultural household was estimated at L£500, compared with L£1,100 for a counterpart working in industry or L£8,060 in the services sector. One report noted that 56 percent of those engaged in agriculture in southern Lebanon, most of whom were landowners, also had second jobs in the late 1960s.

EVOLUTION OF CUSTOMARY TENURE

Ottoman Land Code of 1858 has had a lasting impact on customary land tenure in Lebanon:

1. Ottomans gave local municipalities the power to rent common mountain range and forest to individuals
2. Use rights granted to those cultivating abandoned or virgin land were transformed into ownership rights if the farmer planted trees, crops or fenced (Baalbaki 1997; Jordan Conf.).

The 1858 law Art 10 was used by influential leaders to allege first occupancy and laid claim over large areas of common forests and pastures. The French continued the status quo.

1971: Government claimed ownership of rights (*haq al-raqabah*) over rangelands while granting use-rights to local communities. At the same time (1) the local municipalities and village committees empowered to manage access to these lands, and (2) Dept of Forests of the Ministry of Agriculture vested with the right to grant cutting licenses.

Current assessment of the rangelands: None of the provisions altered encroachment on the rangelands, poor management by municipalities and dominance of local leaders to appropriate large areas.

JORDAN

(Eric Patrick)

<p>Population: Growth: 3%</p> <p>Labour force: 1.15m (in agriculture: 7.4%)</p> <p>Land use: Arable land 4%; permanent crops 1%; permanent pastures 9%; forests 1%; other 85%</p> <p>Irrigated area: 630 sq km</p> <p>GDP from agriculture: 3%</p> <p>Legal system: based on Islamic law</p>

POLICY AND LEGISLATION

Land tenure in urban, and to a lesser extent peri-urban, areas has been well established, at least in the higher rainfall areas, for some time. Again, in the areas historically used for arable production, institutions have developed which are relatively stable, and the interaction between the peasant producer and the state has been regulated in ways which evolved gradually. In the case of rangelands, however, which until relatively recently were either seen to be of little value or were too difficult or uneconomic to exercise control over, the state and its codified system of land tenure - which is based on the need to tax a sedentary population working arable land - was never systematically applied.

At the present time in the *badia*, or desert areas, of Jordan the privatization process, not just of land but also of government services, which has been rapidly proceeding in the arable and urban areas, is being applied as well. This is causing tensions, in the social, economic and ultimately political realms, due to differential abilities of local (and in many cases non local, speculative urban) actors' ability to gain the ear of the state in the land adjudication process. This question is examined also in the case study.

LAND ADMINISTRATION

An excellent summary of the role and operation of the Department of Lands and Survey (DLS) can be found in Amer (1997) and which serves as the primary reference for this section. Note that the author is a director of the DLS. For an examination of the importance of the DLS records during the Mandate period as an historical document regarding changing land use and tenure see Amawi and Fischbach (1991). The DLS is the government organization entrusted to maintain cadastral records and to perform surveys for the entire Kingdom of Jordan. It was established in 1927 and currently DLS employs over 1400 staff. These include: registration of land property rights; settlement of land ownership disputes; conducting field survey work to delineate property boundaries; development of cadastral maps and the archiving of all legal documents related to land ownership. There are 31 registration offices spread throughout the country

Currently, DLS maintains records on 812,000 land parcels, associated with 2,285,000 ownerships' owned by 96,500 land owners. The DLS processes approximately 15,000 transactions each year and collects not less than U.S. \$100,000,000 annually as revenues. Of particular interest to this study is the fact that the DLS administering state domain lands through appropriation, leasing, authorization, and designation and assists in developing regions and developing plans for land management. Furthermore, Land Surveying and settlement Groups operate in various locations in Jordan on demand, and are responsible for the land survey fixing of owners rights. The DLS is the only authority responsible for providing cadastral information (maps & registers) to public or private users. This information is compulsory for management of development schemes. The DLS cadastral database is used as basis for development projects by a number of ministries in Jordan as well as by all municipalities in Jordan.

A Geographic Information System (GIS) is now being installed at the DLS and all of the owner registers are now stored in digital forms. At the **country level**, most important objectives of this project are given by Amer (1997) as:

- Certainty of ownership
- Security of tenure
- Reduction in land disputes
- Encouragement of the land market by introducing fast, cheap, secure and effective system for recording and transferring land transactions.
- Monitoring of the land market and control of land transactions and ownership.
- Successful land reform through the permanent availability of information regarding who owns what rights on what land.
- Better management of state domain lands. This gives a rise to improved revenue collection from the land which it leases, gives for rent or otherwise authorises.
- Support for land taxation
- Improvements in physical planning.
- Improvement of lands settlement and surveying for new developing areas prevents population migration to big cities

Interestingly, the description of land registration from the perspective of the state given by Amer (1997) is frank in acknowledging control and surplus extraction and/or rent on transactions by the state as being objectives of the exercise, a point which shall be returned to in discussing conflicts in ‘common property’ areas. Unfortunately, the belief that registration of rural areas will reduce migration to urban areas has not been borne out to date, as the attractions of regular employment outweigh the irregular benefits of cultivation or herding in areas with irregular rainfall, according to many Bedu interviewed in my own fieldwork in the *Badia*. In fact, most users / former users of ‘common property’ lands maintain some traditional economic mode of production even if part of their production unit (the extended family, and more broadly kin network) gains a regular cash income in a settlement. This has led to a pattern of rapid development of small towns (Millington *et. al.* 1999, Dutton *et. al.* 1998) in a ‘transition zone’ between the *Badia* proper and the economic poles such as Mafraq, along roads. Where subsidised groundwater is also provided by the state, however, the

opposite effect occurs; there is a migration of urban capital to develop cheap land and water in the periphery, by well connected absentee landlords (see case study).

To the **individual or citizen**, the merits of the national systematic register result from four effects of a cadastre which is authoritative, complete and gives guarantees, according to Amer (1997):

- The documented evidence of land ownership, which a cadastre provides, supplies security, reduces or eliminates the risk of eviction and thus enhances the incentive to invest in the land or real estate.
- This legal security affects the availability of resources for financial investment by increasing the possibility of mortgage-based loans.
- Dealing in land becomes easier, cheaper, faster and safer. Access to land is consequently improved.
- Increased legal security will result in a decrease of title and boundary disputes and related litigation, which saves costs for both government and citizen and promotes good relations between neighbours.

The concept of citizenship is introduced here, which though subtle is important, as it specifically relates to the Western concept of a nation-state, something which existed even in theory in the rangelands concerned since the early twentieth century. This point, and the question of borders and the definition of territory and access to land, shall be revisited. At this point, however, it is salient to note that, at least in the case of state land or common property, the access listed above as an advantage may in fact be *preferential* access by those with financial and/or social and/or political capital, a point which shall be returned to. Similarly, whilst disputes may be lessened in areas which have historically been held in private title, the policy of land registration on either an individual or group basis has been shown to have the opposite effect, at least presently / in the short term.

Amer (1997) recognises that there are a number of obstacles in implementing a GIS at the DLS in Jordan, or more broadly a systematic land registration procedure. These include,

At the national level:

- Lack of a national steering committee to monitor, evaluate and control the plans, operation and co-operation between government agencies.
- Lack of unique social security identification numbers for each individual. This leads to the existence of multiple name sets for the same landlord. This leads to loss of credibility in information systems.

At the administrative level:

- Interpersonal and interdepartmental political struggles that are native to many organisations severely limit the organisation's ability to reorganise itself to apply an innovation or to get the long term interdepartmental support and co-operation it requires.

At the operational level:

- Existence of *masha* ownership. This means that one parcel is owned by large number of owners, so that any individual owner shares in a tiny unusable piece of land. This leads to having a land that no owner have the right to invest in or sell or split. Moreover, the number of owners increases dramatically due to multiple transfer of inheritance transactions.

EVOLUTION OF CUSTOMARY TENURE

This last point by Amer (1997) leads our discussion to the question of constraints on 'optimal' land management resulting from indigenous tenure systems, which is often the perspective taken by the state, but will also examine the functional logic and advantages of these systems as well as the constraints created by imposing a formal, codified tenure registration system, particularly in rangelands. For an excellent discussion of indigenous land

tenure systems (as they are multiple) and the evolution of the relationship between local land users and the state, see Lancaster and Lancaster (1999). This work is the *magnus opus* of the former director of the British Institute for Archaeology, who spent several decades in Jordan and knows many of the Rwala (northeastern Jordan) very well. For an historical examination of land tenure and agriculture in northern Jordan see Palmer (1999).

Razzas (1994) argues that for the last two decades, land to the northeast of Amman, Jordan, has been the locus of fierce contestation among the state, the tribes, and new urban settlers. The roots of conflict can be traced to the colonial era, when the British transformed tenure in commonly held cultivated lands into individual ownership, but treated commonly held pastoral land as unowned 'state land'. Today, the ownership and control of pastoral, but rapidly urbanising, land is being contested by tribes claiming traditional rights, Palestinian refugees claiming use rights, and the state claiming legal ownership. In fact, 'legal property rights' represent only one aspect of the complex normative and institutional arrangements used to control land. Two other aspects of land control should be considered: 'property claims' (reflecting the plurality of competing and conflicting claims) and actual 'property status' (reflecting the plurality of control mechanisms).

Historically, Bedu concepts of territory were expressed by the term *dirab*, meaning the area throughout which a group migrated, mainly pastoral but often including some cultivated zones (Dutton, 1998). The effective boundary of the *dirab* were necessarily fluid, as they were dictated at a given point in time by such factors as the size of the group and its alliances, the number and type of livestock owned, the nature and reputation of their leader and the weather. The relative strength of their neighbours was an important factor, which in turn may have been influenced by any groups' relationship with external forces / authorities, which themselves were typically in flux. Thus the Bedu developed a *contextual* concept of land tenure which distinguishes between claims and controls (*i.e.* an effective claim) and between right of access and right of disposal. 'Right of disposal' is the close to a Western legal concept of ownership; the ability to buy and sell in a land market. In an arid, sparsely populated landscape it is difficult to enforce claims, resulting in constant disputes even if land would have been registered, and the right of disposal was not until recently a practical aspect

of land use. With the integration of the Badia into the market economy, which has intensified since the 1970's, with an explosive growth in demand from the newly oil rich Gulf countries for meat, fruit and vegetables, land speculation based on claims of absolute ownership has become problematic (see case study).

CUSTOMARY TENURE SYSTEMS AND RELATIONSHIP TO THE STATE

In the tribal concept of land tenure in Jordan, which we can call customary law, ownership means preferential access to resources and control over the surplus they generate, as opposed to absolute ownership with the right of disposal (*i.e.* sale) of that resource (Lancaster and Landcaster 1999). Ownership is strongly connected to use, but contains longterm rights of access. Furthermore, land tenure is land use specific. This is another important distinction *vis-à-vis* Western legal concepts of property ownership. Once again, the land tenure philosophy is pragmatic and contextual, probably due to the lack of a central authority who was able to impose an universal codified law, as happened in riverine environments such as Mesopotamia and Egypt, which produced sufficient surplus to support a permanent authority bureaucracy.

In the case of irrigated land, which represents a substantial capital investment in associated infrastructure, land is owned by those who develop it (Lancaster and Landcaster 1999). Rainfed land under cultivation is associated with a particular descent group, however other individuals or groups may have usufruct rights and preferential claim over the surplus (production from) that land resource. Rangeland have land claims which are the least easily enforceable for practical reasons, meaning that they are subject to potential conflict. Traditionally a particular group was understood to have priority in given area(s), whilst making numerous, often informal and *ad hoc* arrangements to use other groups' traditional areas. This is feasible given a low population: usable resources ratio; but may breakdown temporarily during years of drought, but remains a resilient social institution, as good years will follow.

In terms of categories of land tenure recognised in Jordan, one can distinguish between *mulk* or owned land, which is developed in some way such as with buildings, orchards or

gardens around a village; *musha'a* or communal land held by peasants, which is periodically redistributed; and *waqf* land, owned by a religious body and the income from which goes to charitable enterprises. There is also state land, *miri*, of which the state has the right of disposal but for which the population has usufruct rights. The state or central authority can control land under Islamic law (Lancaster and Lancaster 1999); *miri* land can be rented for cultivation, may be released for purchase and can also be withdrawn. The latter in the case of Jordan has been for forest reserves, nature reserves, range reserves, protection of antiquities etc., but of these the most resented are forest and range reserves, as they affect larger areas and are potentially productive resources. The legal concept of *musha'a* land ended when the DLS began registering land under the Mandate government, but registration never went east of Mafraq. The Jordanian government, at the end of the Mandate, declared that all uncultivated land belongs to the state (Dutton 1998). This was an incentive to sedentarization, building upon the opportunity created by the stability of the Mandate period which allowed pastoralists around Mafraq to settle, the land furthest east in the country to be registered (Jaradat *et. al.* 1993 IN DUTTON).

To appreciate the potential subtlety and complexity of tenure in practice, in the context of a society where the appropriate unit of analysis may be the kin network rather than the individual, in contrast to assumptions behind Western concepts of property rights, the following description from Lancaster and Lancaster (1999: 190) is salient, as well as highlighting the role of the DLS:

A young man is a builder and part-time farmer and gardener. In 1993 he grew onions on family land with their agreement; the onions will be shared around the family, with himself having extra shares...This year no one else in the family was interested in the land, which is owned by his father and two uncles, with eighteen male offspring between them, and registered in the name of the dead grandfather. Next year an uncle is retiring from his job in Amman, returning to the village and wants to garden. "So when my uncle returns, we will see how matters go between him and me, and when we have sorted out the working of

the land, and the claims on its produce, we will call in the Dept. of Lands and Surveys, and re-register the garden.”

The relationship between local people who have customary and usufruct rights to an area and the state claim over *miri* land is illustrated by the case of the RSCN nature reserve at Dana, which may soon become an international biosphere reserve. The state, using its prerogative to take *kharaj* or reserve land out of *miri* land, created much resentment with the concept of an absolute reserve, based on Western ideas about exclusivity of ownership, access and use. This has created much resentment locally due to alienation of much grazing land. In an interesting development, advocates for local pastoralists used archaeological and written sources to support the local view that the area was not a wilderness but rather had always been used by tribal families, which had rights under both customary and Islamic law (Lancaster and Lancaster 1999).

As can be seen from this brief characterization of traditional tenure arrangements outlined above, customary law has the advantage of flexibility, the ability to constantly renegotiate arrangements, while agreeing on principals (everyone has a right to a livelihood). Wahlin (1994 IN LANCASTER) examines this in one rural area of Jordan in terms of the structure land ownership and the pattern of inheritance. This flexibility, however, has limits, either when the presuppositions behind the system (relatively equitable power between competing interests) and/or, in the case of common property grazing land, when the mobility which the system grew out of is restricted. Both such shocks, both from outside the system, have disrupted the relative equilibria of the system and the understandings / ‘rules’ / even culture which governs it and out of which customary law, as a pragmatic problem solving mechanism, evolved. Use of land has changed, in part because of new technology (such as drilling rigs) and new relationships between one system and the nation state which embodies it, an ideology which imposed itself on the tribal communal lands at the end of the First World War. The concept, imperatives, logic and instruments of the nation state often contradicted and overwhelmed the traditional economic practice and cultural worldview. The

dirah, referred to above, was crisscrossed with national borders which (to a greater or lesser degree, depending on the border and the point in time) restricted mobility.

A POLITICAL ECOLOGY OF GOVERNANCE IN JORDAN

Tribal peoples in the *badia* distinguish between concepts of governance (*kukuma*) and of the state (*daulut*) (Lancaster and Lancaster 1999). States are not the only bodies which can govern; indeed any reputable individual can potentially provide specialized services such as dispute resolution which allow live their lives. The state is potentially an enabler of social practice and the pursuit of livelihood however, in practice, it is usually seen to be an agent of surplus extraction. Furthermore, it is seen as rule by might rather than authority derived from legitimacy growing out of the moral premises of the community. As when state legislated tenure usurps customary law, the state is seen as an external actor; its agents are not known individuals, accountable to the community.

Naturally, a political entity predicated on a fixed spatial extent of jurisdiction is suspicious of, yet needs to enlist the support (Tell, 1994; IN DUTTON) of individuals and groups who pass at least some time in their state on a regular basis. Similarly, the new concept of citizenship meant that one could owe allegiance to one state, and by definition to be seen to owe allegiance to another state instead may be treasonous, and the benefits of belonging to one state cannot be repeated in others. Finally, the right to extract surplus / rent, implicitly in exchange for the benefits of being governed by this political entity, are again mutually exclusive. Accordingly, Jordan, along with her neighbours, attempted to restrict movement and encourage sedentarisation. This resulted in pastoralists, many of whom had 3 or so passports (Lancaster and Lancaster 1999) to 'shop around' for the best policy environment, *i.e.* nation state, in the realm of land tenure and other policies affecting their ability to make a living. The centralist, authoritarian Ba'thist nationalist socialist regime in Syria from 1958 abrogated customary laws (Rae et. al. 2001) as one of its first acts in the 'steppe zone' and organised co-operatives.

A similar regime took power in Iraq, whereas in Jordan and Saudi Arabia regimes dependent to some extent upon and sympathetic to the Bedu, at least as symbols of their own

desert roots, held sway, and in Jordan participation in state sponsored co-operative production schemes was essentially voluntary. Nevertheless, the fact that the state was becoming directly involved in the means of production represented an important stage in the 'capturing the peasantry', resource capture and the entrenchment of a particular type of power typically associated with the 'development'/ incorporation of peripheral regions (Ferguson 1994), bureaucratic state power. Glubb set up the Desert Patrol Force in the 1930's (Dutton 1998), partly as a make-work program during the depression as well as to suppress raiding (Lancaster and Lancaster 1999), partly to directly engage these groups into the state system, in a logic of traditional patron-client relationships, together with payments to local Shaykhs. Interestingly, this mobile group also served to collect the animal tax from mobile subjects. The Jordanian army has always been composed of a disproportionately large fraction of desert tribal members. Interviews of Bedu by the present author recorded several comments along the line of "we keep the King in power"; whether or not this is accurate, it reveals a keen awareness of the nature and *quid-pro-quo* of the patron-client system.

The logic of patron-client relationships was not new to land users in common resource areas, or indeed in arable areas of Jordan. Shaykhs and other local notables had traditionally accumulated power, or more accurately reputation and influence, within this logic by offering gifts, hospitality and protection, as well as successfully resolving conflicts. They became natural intermediaries between local land users and external forces interested in exerting control over these difficult to pacify sparsely populated arid lands with mobile populations. The Ottomans (Lancaster and Lancaster 1999) and British after them (Tell 1994) both used subsidies (or bribes) in order to woo the local population, or at least to keep them in line. The Hashemites in particular, having been placed as they were on the throne of a 'foreign' territory to compensate them for the loss of the Hejaz to ibn Sa'ud and Wahabiism, naturally coveted the support of indigenous groups. This insecurity was compounded as Jordan became surrounded as Jordan was with socialist, Arab nationalist neighbours in from the time of Nasser, with the added threat of a disloyal Palestinian state-within-a-state with the mass exodus from the West Bank after the Israeli victory in The Six Day War. The legitimacy of a

monarchy, though possibly inimicable to a strict interpretation of Islam, was not outside the logic of patron-client relations, and particularly as the claim to authority was based on religious grounds.

Furthermore, the state has more recently begun to view the *badia* as a great untapped resource (Dutton 1998), much as the Brazilian government with the Amazon, the latter having produced such massive and disastrous development programs as the World Bank backed Noroeste Project. In the case of Jordan, which is bereft of a petrol income with which to purchase or maintain loyalty, similar investments on a smaller scale include the Badia Research and Development Programme (see case study), again funded by Western monies. This lack of oil revenues has implications for land tenure in communal areas. Just as the Hashemites / the state acts as a patron with respect to local populations, so the authorities are clients of international patrons. Jordan has generally received support from conservative oil rich monarchies in the Gulf, partly as compensation for maintaining Palestinian refugees (Lancaster and Lancaster 1999) and partly, together with the United States, as a buffer against radical Arab nationalism, communism and, more recently, Muslim fundamentalism.

Since the fall of the Soviet Union, espousing private ownership of property / the means of production is no longer sufficient to ensure the foreign aid which affords the largesse used to oil the patron-client system within the state. Structural Adjustment programs, made necessary after remittances from expatriate Jordanians dried up with the expulsions from the Gulf for declaring neutrality during the Gulf War, have been imposed upon Jordan by the IMF (Harrigan and El-Said 2000), together with a new policy environment. Amongst other reforms, the elimination of subsidies for *alef*, concentrated animal feed, and deep boreholes have enormous implications for rural land use in the *badia*. This is accompanied by strong pressure to privatize nationally owned / run means of production and services (Wils 2000), such as the telecommunication system, and this logic naturally extends to land tenure where land is not already privately held. Note that private, in this sense, is understood to mean both private *and titled to individuals*, as opposed to the 'group ranches' of earlier, more socialist

influenced policy environments. Private land titled to individuals facilitates a market for land, indeed this is precisely the objective of this policy.

Unfortunately, preliminary experience and observations has shown that private land titling is not successful in terms of equity, should that be a criteria in policy making, but is successful in a perverse way with respect to the stated objective and theoretical rationale of encouraging investment. This investment has often come in the form of land speculation by largely urban buyers (see case study). This is not a new process. Lancaster and Lancaster (1999) cite the case of the area of Safi, where, until it was forbidden in 1975, land was sold largely to outsiders from Irbid and Amman. Similarly, in wadi Fainan local land users developed irrigated gardens in order to occupy tribal, favourably sited land before it could be usurped by outsiders. Once again, this time in the Dana gardens, which have been cultivated by the current owners since the 18th century and are considered to be a major tribal resource, there is little commercial production for the market. This is similar to what Lichtenthaler (1999) describes for the Sada'a area of Yemen, where it is considered shameful to sell (or at least to be seen to be selling) oranges; they must be given away. In spite of the market orientation of land use throughout Jordan, it is important not to overlook what could be termed the moral aspect of economics. This is particularly true in tribal areas, where reputation is a key element in developing and maintaining social capital and therefore is taken into account when considering a course of action.

Even if land titling is in place, however, this does not necessarily prevent a better connected individual from simply occupying that property, as has been occurring even in the peri-urban area of Amman (Razzaz 1993), let alone in a remote area of the country. The policy of land titling for the purpose of encouraging investment assumes a politically neutral state, a purely technical administrative body interested in maximising utility for the society as a whole and thereby guaranteeing access to land and security of tenure in an even-handed manner. In reality, of course, the state is often and to various degrees the captive of interest groups, yet as the 'representative and servant of the people', according to political theory developed in a very different historical-cultural setting has the legitimacy to arbitrate between these groups, either directly or indirectly. In spite of democratic reforms recently in Jordan,

and particularly under King Abdullah, Jordan can still be considered to be a rent collecting hierarchy. The 'civic myth' monarchies, of which Jordan and Morocco are prime examples, have found it necessary to embark on limited but highly trumpeted processes of political liberalisation, if only as a necessary survival strategy (Kamrava 1998). The incentive therefore exist to invest in accumulating political capital in order to obtain collective funds (state funds) for individual profit. This has clearly been happening with subsidies for deep wells and the nature in which permits for drilling / lack of enforcement of drilling policies for well connected individuals, often from outside the area, in the *badia*.

SAUDI ARABIA

Population: 22,757,092 Growth: 3.27%
Labour force: 7 m (12% in agriculture)
Land use: Arable land 2%; permanent crops 0%; permanent pastures 56%; forest 1%; other 41%
Irrigated area: 4,350 sq km
Legal system: based on Islamic law,

EXECUTIVE SUMMARY

The Ottoman land code of 1858 was implemented in limited areas of the Hejas and was subsequently adopted by the Saudi authorities with the establishment of the nation state. Prescriptive rights on unused land remains a running problem in the kingdom for though no longer recognised by the state, it remains persistent in custom and a ruling by the Mufti in the late 1950s supporting custom still carries resonance. Uncontrolled development around urban areas is a clear manifestation of the continuing legitimacy of this ancient right.

The King maintains another ancient right to bestow rights to land to individuals or groups. This privilege was widely used by King Abdul Aziz in his marshalling of bedouin support in the first half of the 20th century. In lieu of land and services the bedouin were expected to settle and sell their herd. This so-called Hejar principal in land distribution was again deployed in the 1960s with the added incentive of a monthly cash stipend and free irrigation. The program peaked in the mid-1970s. Land concentration is high with the skewed distribution in landholdings reflected in the Gini index at 0.83, one of the highest in the Middle East.

POLICY AND LEGISLATION

The Ottoman Land Code of 1858 was applied for a short period in small but spatially important areas in the Hijaz. With the establishment of the Saudi state in 1932, modernisation

of law incorporated elements and procedures from the Ottoman System according to Shari'ah. The power of the new state to initiate change or to plan development were designed to be compatible with traditional ways and not lead to the neglect of the Islamic concept of the beneficial use of previous (Ottoman) regulations.

The persistent issue for the new state, and one that remains contentious to this day, is the right of prescriptive rights on *marwat* land. Article 85 of the Ordinance governing the organisation and functions of Shari'ah law (1952) insisted on the illegality of any land claim on *marwat* land made without state permission. Appropriation deed only issued once the following had been consulted: Municipality, the *Waqf* Department, Ministry of Finance and Ministry of Agriculture and Water. Disputes arose as to the legality of this law and it was left to the Chief Mufti in 1957 to make a ruling. He confirmed that dead land can be owned and utilised:

"He who utilised the land claimed it as his own, whether or not he had permission from the authorities. He own surrounded a land by stones, it became his own free of charge. When an interested person got it he had to utilise it or leave it. Any dispute or interpretation by municipality or another will refer to the shari'ah. Anybody trying something else is not going in the right direction"

The Mufti's rebuff of state authority was challenged in the following decade first in 1967²⁷ and conclusively the following year in a decree that nationalised undeveloped land and transferred the power to issue deeds from the Islamic courts to the state. The decree ruled "that undeveloped lands are owned by the government, that appropriation of such land was recognised, and that any deed supporting appropriation are invalid".

State land or not, the King and by extension his government, maintain the ancient right to bestow land to individuals or groups. This right was employed by King Abdul Aziz in his efforts to marshal bedouin support for Wahabi military forces and at the same time assert central control 1912-1932: the so-called Hejar principle. By using the right, the king established settlement nucleuses, one or more for each tribe. Between 122 and 550 hejars were

created scattered through central and northern-eastern parts of the peninsula settling parts of 13 tribes²⁸. Their remoteness underpinned their dependence on outside support. Many have since collapsed their land unfit for agriculture or water insufficient.

The Hejar principle was employed again by the state a generation later in response to the severe drought 1958-61. The scheme aimed at settling the migratory tribes as cultivators assisting them financially and in skills. The scheme had its apogee in 1970 with a budget near-on 13 million Saudi Ryals. Drought-stricken areas were targeted, principally in the Northwest of the country, and Hejar established within each tribal territory²⁹, typically along Wadi Sarhan, Tabuk and Al Ula). However, it suffered from the temporary nature of the scheme and the indefinite dating of its execution period led to an unstructured approach being adopted. Consequently, no soil surveys were conducted. Nevertheless 10,253,266 dunams came under cultivation³⁰ by 644 citizens and 259 government pumps installed (293 private pumps). Given this poor start and the salinity of the soil³¹, the Hejars have become administrative and social welfare centres and the summer residence for migratory groups.

Facilitating this distribution of public lands was the Public Land Distribution Ordinance³² of 1968 (1388H). Apart from nationalising unregistered lands as mentioned above, the decree allowed for the distribution of between 5ha and 10ha to supposedly qualified individuals for an initial trial period of 2 or 3 years (reflecting *shari'ah*). If 25% of the land was satisfactory development during this period title deed was granted. Companies were permitted to hold up to 400ha and there was a limit of 4,000 hectares for special projects.

In 1989, the total area distributed stood at more than 1.5 million hectares. Of this total area, 7,273 special agricultural projects accounted for just less than 860,000 hectares, or 56.5%; 67,686 individuals received just less than 400,000 hectares or 26.3%; 17 agricultural companies received slightly over 260,000 hectares, or 17.2%. Judging from these statistics, the average

²⁷ Decree 1387H ruled that anybody who alleges land appropriation will have his allegation disregarded

²⁸ Among them Utaiba, Motir, Harb, Shammar, Al-Awazim and Al-Murrah

²⁹ Tribes 'benefiting' included Howeitat, Bani Atiya, 'Anaza, Sharrarat and Rwala

³⁰ Current cultivated lands at some of these sites are: Wadi Sarhan (1,230ha) and Tabuk (2,400ha)

³¹ In this early period the project was sustained through irrigation and subsidies to public well guards, as well as judicious private investment in wells

³² Royal Decree No. M/26 (6/7/1388)

fallow land plot given to individuals was 5.9 hectares, 118 hectares to projects, and 15,375 hectares to companies, the latter being well over the limit of 400 hectares specified in the original plans. Today, the establishment of new Hejar is seldom given unless the supply of water is sustainable and guaranteed and the soil fit. Further restrictions on settlement and customary claims are found in defined oil and gas zones. Nevertheless, the Hejar coupled with regular, wage-based, or urban commercial employment have reduced the proportion of migratory people in the country from 70% in the 1930s to between 20 and 25% in the 1990s.

The government also mobilised substantial financial resources to support the raising of crops and livestock during the 1970s and 1980s. The program prompted a huge response from the private sector, with average annual growth rates well above those programmed. These growth rates were underpinned by a rapid increase in land brought under cultivation and agricultural production. Private investments went mainly into expanding the area planted for wheat. Between 1983 and 1990 the average annual increase of new land brought under wheat cultivation rose 14 percent.

In the 1970s, increasing incomes in urban areas stimulated the demand for meat and dairy products, but by the early 1980s government programs were only partially successful in increasing domestic production³³. Bedouin or more often hired expatriates continued to raise a large number of sheep and goats. Payments for increased flocks, however, had not resulted in a proportionate increase of animals for slaughter. Some commercial feedlots for sheep and cattle had been established as well as a few modern ranches, but in the early 1980s much of the meat consumed was imported. That not, remained dominated by customary methods.

HEMA LAND

- Known since pre-Islamic times, Hema is a custom whereby communities maintained large areas of land surrounding their central territory to be their own tribal grazing reserves, for their sole benefit. It was consider community or tribal land and defended by them with the use of force.

³³ Subsidies for animals owned by Bedouin were initiated in 1979; further benefits included water trucks and other transport

- The practice of Hema was modified by the Prophet who is reported in a *hadith* to have said "there is no hema except for Allah and his Apostles". During his life hema was used to pasture horses and camels of war. Later, during the days of Caliph Omar, hema was made available also for animals of poor Muslim individuals as well as for the common interest of the community.
- In the modern state the practice of Hema was banned in 1953 following a dispute between tribal groupings. Only private hema used for working animals are now permitted.

LAND ADMINISTRATION

Saudi Arabia registers titles to land, though the registers are not open to public scrutiny. The register only recognises ownership, not the existence or amount of a secured loan, nor purchase price. There is no register of deeds. Law governs registration. The Ministry of Justice administers the land register. The system is financed partly through real estate and the remainder through the state. Public authority grants legal title at the time of property transfer; and this title is guaranteed by the state and backed by a system of indemnity. The number of titles registered (either in total or on average each year) was not apparent from the Saudi Government. The register is now complete within pre-defined limits of territory.

BAHRAIN

The agricultural sector typically accounts for 1 per cent of GDP and employs 5 per cent of the workforce. Development of agriculture is limited by labour shortages, lack of water and salinity of the soil. The major crop is alfalfa for animal fodder, although farmers also produce dates, figs, tomatoes and other fruit and vegetables for the local market. Over 60 per cent of cultivable lands is held on three-year leases discouraging the stability for needed development. The lack of grazing inhibits livestock production.

KUWAIT

Agriculture has seen minimal development in Kuwait. The country's desert climate sustains little vegetation. Kuwait has no rivers, only a few wadis that fill with winter and spring rain. Scant rainfall, little irrigation water, and poor soils have always limited farming in Kuwait. Before the discovery of oil, several occupations contributed to the economy--nomads moving livestock to the sparse forage in the desert, pearling, and fishing--but none of these occupations provided much beyond subsistence. Once the government began receiving oil revenues, the contribution of other sectors to national income was reduced still further.

Detail information on land tenure in Kuwait is not available

QATAR

Population: Growth: 3.18%
Land use: Arable land 1%; permanent crops 0%; permanent pastures 5%; forests 0%; other 94%;
Irrigated area: 80 sq km
GDP from agriculture: 1%
Legal system: discretionary system of law controlled by the Amir, although civil codes are being implemented; Islamic law

Small-scale farming, nomadic herding, pearling, and fishing were the predominant means of subsistence in the region for the centuries before the discovery of oil. Although the relative importance of these activities has declined as a means of livelihood (with commercial pearling disappearing completely), the government has attempted to encourage agriculture and fishing to provide a degree of self-sufficiency in food.

1960 - 1970: The number of farms increased fourfold to 411. Severe conditions, such as extremely high temperatures and lack of water and fertile soil, hinder increased agricultural production. The limited groundwater that permits agriculture in some areas is being depleted so rapidly that saltwater is encroaching and making the soil inhospitable to all but the most salt-resistant crops. According to estimates, groundwater will be depleted about the year 2000. As a partial solution, the government plans to expand its program of using treated sewage effluent for agriculture. Parkland and public gardens in Doha are already watered in this way.

Qataris who own agricultural land or properties generally hold government jobs and hire Iranians, Pakistanis, or non-Qatari Arabs to manage their farms. The government operates one experimental farm.

UAE

Population: Growth: 1.59%

Labour force 1.4m (8% in agriculture)

Land use: Arable land 0%; permanent crops 0%;
permanent pastures 2%; forests 0%; other 98%;

Irrigated area: 50 sq km

Land tenure information unavailable

OMAN

Population: 2,622,198 **Growth:** 3.43%
Land use: Arable 0%; permanent crops 0%; permanent pastures 5%; forests 0%; other 95%
Irrigated area 580 sq km
GDP from agriculture: 3%
Legal system: based on English common law and Islamic law

EXECUTIVE SUMMARY

Agriculture is restricted to limited areas and is heavily reliant on the input of artificially derived water sources (typically falaj). Tribal custom with the assistance of the state maintains and regulates these traditional sources of water while private ownership of fields is widespread. Areas of rangelands are also identified with particular tribes and though the state abolished tribal borders and nationalised such lands in the mid-1970s, an understanding of management without reference to custom would clearly be inadequate. Alternative sources of livelihood are diverse around the major urban centres though less so in the interior. The oil and gas industry offers some limited opportunities but often they have relied upon expatriate staff. The industry also has rights to restrict land investment and development in the oil and gas concession areas that cover some two-thirds of the country. Given the complex tenure map over much of the rangelands a coherent management policy has yet to evolve. In some instance, such confusion has resulted in the depletion of rangeland resources most notably in Dhofan to the south of the country.

POLICY AND LEGISLATION

Oman has five distinct agricultural regions³⁴. Going roughly from north to south, they include the Musandam Peninsula, the Al Batinah coast, the valleys and the high plateau of the eastern region, the interior oases, and Dhofar region, along the narrow coastal strip from the border with Yemen to Ras Naws and the mountains to the north.

In the early 1990s, interior farming areas accounted for more than one-half of the country's cultivated land. Rainfall, although greater in the interior than along the coast, is insufficient for growing crops. Most of the water for irrigation is obtained through the *falaj* system. A *falaj* requires tremendous expenditure of labor for maintenance as well as for construction. Because private maintenance efforts during the 1970s and early 1980s proved inadequate, the government initiated repair and maintenance of the *falaj* system to increase the quantity of water available to cultivated areas.

The cooler climate on the high plateau of the Al Jabal al Akhdar enables the growing of apricots, grapes, peaches, and walnuts. The Al Batinah coastal plain accounts for about two-fifths of the land area under cultivation and is the most concentrated farming area of the country. Annual rainfall along the coast is minimal, but moisture falling on the mountains percolates through permeable strata to the coastal strip, providing a source of underground water only about two meters below the surface. Over farming has resulted in a number of conservation measures including the freeze on new wells, delimiting several "no drill zones", and the building of recharge dams.

Apart from water problems, the agricultural sector has been affected by rural-urban migration, in which the labour force has been attracted to the higher wages of industry and the government service sector, and by competition from highly subsidised gulf producers. To counteract this trend, the government encourages farming by distributing land, offering subsidised loans to purchase machinery, offering free feedstock, and giving advice on modern irrigation methods. As a result, the area under cultivation has increased, with an

³⁴ Information on Oman is limited. Much of what is here is derived from the Library of Congress

accompanying rise in production. But extensive agricultural activity has also depleted freshwater reserves and underground aquifers and has increased salinity.

The area under cultivation increased by almost 18 percent to 57,814 hectares over the period from 1985 to 1990. Fruits were grown on 64 percent, or 36,990 hectares, of the area under cultivation in crop year 1989-90.

Oman is a sultanate and ultimate power to decide on matters of tenure rests with the Sultan. The sultan, much like the King in Saudi Arabia or the Sultans along the Persian Gulf maintain the ancient right to bestow state land at will.

Article 11 of the Omani constitution stipulates:

- All natural resources are the property of the state
- Inheritance is a right governed by the Shari'ah of Islam
- Private property will be protected. No one prohibited of disposing of property within the limits of law

Rangelands are wide spread and though nationalised in the mid-1970s regulation of access is controlled through customary channels. This said, two-thirds of the country constitute concession areas to oil and gas companies and though they have little interest agriculture and herding it is they through the Ministry of Oil and Gas that has ultimate say on any investment in the land.

YEMEN

Population: **Growth:** 3.38%
Labour force: most employed in agriculture and herding
Land use: Arable 3%; permanent crops 13%; permanent pastures 33.5%; forest 4%; other 45.5%;
Irrigated area: 5,674 sq km
GDP from agriculture: 20%
Legal system: based on Islamic law, Turkish law, English common law,

Work commissioned for this tenure profile has not materialised.

SUDAN

Population: **Growth:** 2.79%
Labour force: 11m (80% in
agriculture)
Land Use: Arable land 5%;
permanent crops 0%; permanent
pastures 46%; forests 19%; other
30%;
Irrigated area: 19,460 sq km
GDP from agriculture: 39%
Legal system: based on English
common law and Islamic law; as of

Commissioned worked has not been forthcoming. For a detailed and reasonably up-to-date study on land tenure in this country it is recommended that you refer to:

BRUCE, J (Ed.) 1996, COUNTRY PROFILES OF LAND TENURE: AFRICA

<http://www.wisc.edu/lrc/rp130.html>

Djibouti

Commissioned worked has not been forthcoming. For a detailed and reasonably up-to-date study on land tenure in this country it is recommended that you refer to:

BRUCE, J (Ed.) 1996, COUNTRY PROFILES OF LAND TENURE: AFRICA

<http://www.wisc.edu/ltc/rp130.html>

EGYPT

Population: 69,536,644 Growth: 1.69%
Labour force: 19.9m (29% in agriculture)
Land use: Arable: 2%; permanent crops: 0%; permanent pastures: 0%; forests: 0%; other: 98%
Irrigated area: 32,460 sq km
GDP from agriculture: 17%
Legal system: based on English common law, Islamic law, and Napoleonic codes

EXECUTIVE SUMMARY

Agriculture remains a dominant sector in the Egyptian economy. It employs about 35% (4.4m) of the labour force and accounts for 20% GDP and merchandised exports. Agricultural land base is 7.5m feddans (97% of the country not suitable). Holdings are consequently small averaging 0.8%. Even with impressive gains in agricultural output there is the potential for further significant gains by the widespread adoption of technology and credit services suitable to small farmers and the introduction of post-harvest technology and marketing services in a liberalised economic environment.

The earlier system of 'feudal' tenure was replaced by co-operatives and state organisation of inputs and outputs. These arrangements together with the provision of credit promoted the use of modern inputs. The government invested heavily in expanding irrigation and drainage infrastructure and the reclamation of desert lands. However, the rapidly rising population, the dependence on food imports, the new reforms are seen as essential.

POLICY AND LEGISLATION

Egypt's period of modernisation was initiated by Mohamed Ali and his break with Ottoman authorities in 1820. He set about nationalising land property (1820-30) and took control of all *waqf* land (600,000 feddans). Furthermore he forced nomads to settle along the Nile valley though more for security reasons than for agricultural labour. He subsequently granted land use rights to power base groups (army officers, religious leaders and favoured

Egyptian families (500-8,000 feddans each). This basic structure was maintained through to Gamal Abdul-Nasser's revolution 1952. Fiscal crisis in the late 1800s precipitated the conversion of land use grants to private property³⁵, and the sale of land, at the cost of six-times the land tax, to foreign owned individuals and companies. European ownership constituted 11.5% of all agricultural land by 1890³⁶. In addition:

- Egyptio-Turkish landlords took advantage of sale taking 300,000 feddans (in 1879 estimated that the royal family held 1/5 of all land most of it the best land). The fellaheen cultivated plots of 2-5 feddans against payment of tax.
- Furthermore, because of debt land taxes rose from 1/4 to 1/3 to 1/2 driving many fellaheen off the land and into the city with the land falling to the government, businessmen, village shaykhs etc. It is estimated that 2-300,000 feddans released this way.

On the eve of the 1952 Revolution, ownership of land was heavily concentrated in a few hands. About 0.1 percent of owners possessed one-fifth of the land and 0.4 percent controlled one-third, in contrast to the 95 percent of small owners with only 35 percent of the land. In addition, 44 percent of all rural inhabitants were landless.

REDISTRIBUTION LAND REFORM

The 1952 and subsequent reforms (1961 and 1969) aimed to redistribute rural resources, shift the balance of rural political power, and desire to drain surplus from agriculture to subsidise urban growth and industrialisation.

- Ceiling set in 1952 at 200 feddans reduced to 100 feddans in 1961 and to 50 in 1969 (supplemented in)

³⁵ 1867 & 1884: decrees also permitting privatisation of reclaimed land upon prior request and approval by government, a rule adopted in *Article 57* of Egypt's civil law and expanded in *Article 874 of 1948* which accepted the cultivation of land as property even in the absence of prior approval.

³⁶ Between 1840-1870 improved technology for the control of floods made it possible to grow 2-3 crops each year rather than one. Input of technology expands cultivation by 60% by the 1900

- Royal estates confiscated and foreign ownership outlawed
- Waqf (11% of arable land) acquired by the state
- Sharecropping restricted to 50% harvest

Some 864,521 feddans were distributed, or about 12 percent to 14 percent of the cultivated area, and more than 346,469 families (1/10th of rural population) received land in 2-5 feddans plots. The pyramid of land ownership was truncated at the top and widened at the base: whereas large holdings were not entirely eliminated, the share of those owning fifty *feddans* or more dropped to 15 percent, and 95 percent of owners came to control 52 percent of the land instead of the 35 percent they had owned before the reform.

The reforms were reasonably successful, perhaps because of their modest aims. However, the impact of population growth and fragmentation through inheritance continued to make an effect. By 1984 the number of small owners (those with fewer than five *feddans*) increased to nearly 3.29 million in 1984 from 2.92 million in 1961, while the area they owned dropped from 3.17 million *feddans* to 2.9 million *feddans*. Furthermore, the number of landless families also rose. In 1988 it was estimated that nearly 1/3 of rural pop remain tenants and another 35% landless wage earners. This was despite an additional 1.4mha of *reclaimed* land becoming available for distribution at the time, though only 15% had been allotted in 4 feddan units to 54,000 households.

LAND MARKET REFORMS

One of the barriers to further productivity gains was the Egyptian tenure regime. On 1952 Land reform laws tenants enjoyed the security of capped rents, secure tenure and the right of inheritance. The tenancy map in Egypt as elsewhere is complexity. A profile of land holdings suggest familiar patterns of access to land such as owner-operator, share-cropping, tenant-cultivator (cash rent-in) or owner only cash rent-out. But most profiles are a multiple of interrelated tenancy relationships which involve a combination of two or more of the above. According to agricultural census 1989/90 the number holdings totalled 2,910,279 with the following forms of tenancy:

- Farms under ownership: 7%
- Cash rented: 13.3%
- Sharecropped: 1.5%
- Mix of holdings: 17.5%

Others put the figure of rented holdings nearer 24% while the number of individuals affected range from 1 to 5 million³⁷.

It was argued at the time that restrictive contracts between tenant and landlord provided insufficient incentives to optimise productivity. Rent capping typified the inefficiencies. Disparity between official rental price of £E80 per feddan and the market value was estimated in 1993 at close to £E20, 000 (Bush 1993). Above all, rising populations were clearly placing a heavy burden on limited available land and this was coupled with the repeated failure of government polices relating to excessive intervention and inadequate price incentives.

In order to address the problem Law no. 96 was passed in 1992 as part of wider structural adjustment legislation:

Law no. 96 (amendment to Law no. 178, 1952) 'The law regulating the relationship between owners and tenants of agricultural land', 'The law stipulated the imperative to increase land rent amounts to more than three-fold (22 times the land tax).

- Furthermore, the law gave landowners the right to evict tenants after five years transitional period, which lapsed in 1997.
- Inheritance of tenancy was also cancelled.
- The new tenancy contracts starting this date are subject to market forces and regulation of civil law.
- Safety measures include the assurance to the tenant that (s)he will not be evicted from the house on tenancy land until the government can provide alternative.

³⁷ The agricultural Committee of the People's Assembly claim the lower figure while other higher figures are reported by Aal (1999).

- The evicted tenant will have priority in reclaimed land projects.

It remains unclear what the impact of this shift from equity to efficiency has been. It was estimated in 1998, that 99% of the country's agricultural contracts had already been renegotiated. Some Human Rights groups have pointed up the rise in rural conflicts, injuries and indeed deaths following evictions or raises in rents though no official figures are available. The American University in Cairo is holding a conference in March 2002 to discuss the impact and reference should be made to their website for details of papers.

A predicted consequence of Law 96 is a rise in landless numbers and rural poor. Some have argued (Adams 1999) that such problems would have been inevitable with or without the new law given rising populations and fragmentation of holdings. He points to the fact that 60% of income of the rural poor comes from non-farm income and that such income is an inequality-reducing source of income in land-scarce settings such as rural Egypt because inadequate land "pushes" poorer households out of agriculture and into no-farm sector. A focus on agricultural incomes is misplaced as it contributes most to rural income inequality since it is highly correlated with land ownership.

EVOLUTION OF CUSTOMARY TENURE

The Desert law No. 124 (1958) Introduced modern practice and the legislation of land. It removed all legal recognition of customary rights, including customary ownership even in the presence of improvements, insisting instead on the cadastral registration of title. Some six years later Law No. 100 partially reversed this provision and acknowledged recognition of customary ownership of lands where trees were planted prior to 1956 (permitting sale or transfer of up to 50 feddans for enterprise and up to 10 feddans of arable land for households). Come 1969, the state nationalises all unregistered land, establishing its to sell or lease such land to individuals or companies for projects of national interest. Despite this, customary claims (*wad' al yid* - lay on hands) continued to be made on what was now state land and 1981 Law 143 (supplemental implementation regulations Decree 198 of 1982) legitimised such claims

where land had permanent improvements and sometimes without. Article 18 of the same law also provided recognition of land with a minimum of 40 seedlings/feddan, provided a system of irrigation was in place prior to 1981. In addition Art. 19 recognised land cultivated at least 3 years prior to application.

NORTHWEST COAST

As the adjustment to laws above indicate there is de facto recognition of customary rights. The actual operation of customary rights in contemporary Egypt is limited. The following discussion will focus on the Awlad 'Ali, a tribal confederation of 40 tribes occupying a territorial strip running the length of Egypt's Northwest Coast from Alexandria to Libya. The rapid expansion of tourist developments in this region has precipitated some detailed studies on the customary system (Rabenau: 1994; Mohsen 1975).

The customary system among the Awlad 'Ali as been shaped by two objectives:

- 1) it secures survival of the tribal community in a risky environment by providing mutual access to communal land and water during times of need; and
- 2) it raises overall welfare, by offering individual households the property rights needed to secure the fruits of their labour.

Conflict resolution is resolved through mutually agreed mediators either at the level of the clan or tribe as is suitable. Nevertheless territorial boundaries between the clans and tribes are apparently well established as are customary land right types:

- *Communal land rights*: land rests with the clan (*aila*) with rights to a specific geographical region (*watan*) recognised by other clans. Land rights not absolute however and is restricted by the right of neighbouring clans to graze their herds in time of need. This does not always follow ecological rational but also follow the fluid political map between clans and tribes.
- *Right of annual cultivation*: distributed lands to individuals with usufruct rights largely for barley production, which requires no long-term investment. The land is not permanently owned by the household, even if the household cultivates over years the same plot. Others

may use the land during the off season. The practice is believed to result in topsoil loss. Increase in herds has raised the demand of supplementary feed. The weakness of customary law in this respect is that since individuals can cultivate land at no cost, yet have no permanent right to the land, there is a tendency to over consume valuable resources with little incentive to conserve top-soil. One of the issues for future development is whether community laws and property rights can be adapted to guarantee a more sustainable pattern of land use.

- *Rights to permanent use*: capital improvement to the land in the form, for example, of housing construction, orchard planting or construction of a wall around a spot, confers rights for permanent use (*wad' al-yid* to lay hand on). Traditionally, there were few improvements par a cistern but as the tribes have become more sedentary it has come to include these other forms of investment. Minor rock diversions dykes used in rainwater harvesting apparently do not qualify.
- *Grazing rights*: all members of clan have a right to graze their herd on uncultivated communal land. Other clans have similar rights in times of need though this does not include access to water where it has been artificially derived such as cisterns. Individual clans own most of the land within 40km from the coastal zone. Beyond this land is hyper-arid (> 100mm per annum) open range and access to pasture is unrestricted at any time.
- *Traditional water rights*: water derived from a cistern is owned by the family who constructed it. Others may use the water for personal use though dependent on season might be required to pay (L.E. 50-90). There were 2,500 cisterns on Awlad 'Ali territory in 1986 rising to 4,000 in 1994. Given the continued growth in human and animal populations and especially in orchards, the number of cisterns is likely to increase in future.

The above suggests an intensification in the customary system. Population is increasing 50% faster along the coast than in others parts of Egypt. Customary tenure is evolving in response but remains to address the following issues:

- Temporary Cultivation

- As water harvesting becomes more common, increase upstream harvesting may reduce amounts for those downstream. There is no local precedent for the resolution of this problem though procedures evolved among tribes in Yemen to deal with such problems may be useful.
- Given acute flood events the maintenance of wadi terraces needs to be maintained and indeed the maintenance of those in the upper valley is extremely important and represents a community service. In Yemen where the customary system has evolved shaped by terracing, strict regulations exist and make up-stream farmers responsible for down-stream fields.
- Ground water is modest along the coastal strip, and the recent arrival of pumps are likely to lead to excessive use and customary law has not yet developed means to resolve the issue.

Those clans close to fast growing urban centres and roads are attempt to improve lands to secure it even if such improvements are merely the act of building a stone wall around a site (i.e. Bourg El Arab). Outsiders seeking to invest and develop land are finding that they have to pay for the land twice. The developer first seeks the agreement of, and compensates, the bedouin owner and then they purchase the property again from the state in order to receive formal title (in urban areas from the Governorate, and in rural areas usually the Central Development Authority). Transaction costs are perhaps higher given they are probably more cumbersome and more risky given the customary owner has no written proof ownership.

Other land is being appropriated without reference to customary ownership, particularly by the state which sees no need to compensate bedouins for land the state already claims. This is a particular problem on communal lands since the law does not recognise land claims by tribes or clans. As a result, some clans are now distributing all their land to individuals.

Rapid development along the coastal strip is raising questions of equity:

- With most development taking place along the coast, clans and households with traditional claims to the areas both suffer the greatest displacement of land uses, but also enjoy the greatest windfall profits from the sale of the land. Most of these are of the *Saadis*, who traditionally have been wealthier and more powerful than others. As a consequence, current developments exaggerating older disparities.
- Governments recognition of individual claims will only accelerate privatisation since it is the only way for a tribe to maintain the land within the group. This can weaken communal use.
- Clans living inland, mostly *Murabitins*, will gradually loose access to summer grazing lands along the coast increasing pressure on in-land rangelands
- With substantial windfalls to be made, those with the greatest access to formal legal system are likely to benefit the most. Among these are the *umda* shaykhs as well as the government itself and larger developers.

LIBYA

(with the assistance of Brian and Lynne
Chatterton)

Population: 5,240,599 Growth: 2.42%
Labour force: 1.5m (17% in agriculture)
Land use: Arable land 1%; permanent crops 0%; permanent pastures 8%; forests 0%; other 91%
Irrigated area: 4,700 sq km
GDP from agriculture: 7%
Legal system: based on Italian civil law system and Islamic law, common religious courts

EXECUTIVE SUMMARY

Agriculture is largely restricted to the coastal plains and mountains with desert predominating south of this strip supporting occasional oasis cultivation and sparse pastures. The Ottomans, Italians, French and British attempted to supplant custom with a modern tenure system but were largely unsuccessful. The Italians did displace some tribal sections from the more fertile areas in the north and these became the focus of redistribution following independence. In order to consolidate power after 1969, Qadafi heavily restricted custom on paper if not in practice. Nevertheless, private ownership of cultivated lands is now widespread. Depletion of water sources for irrigation did not spur conservation tenure measures rather the authorities placed their focus on bringing aquifer water from the south in the Great Man-Made River scheme, which is yet to become operational despite vast sums and seventeen years of construction. Its impact on oasis development and the growing population in the south has not been fully gauged but are likely to be detrimental. Tenure on the rangelands is unclear. The state has initiated a number of rehabilitation schemes over the years though these have been limited. It is assumed that custom prevails.

POLICY AND LEGISLATION

Although statistics vary, only a very small percentage of Libyan land is arable--probably under 2 percent of total land area. About 4 percent is suitable for grazing livestock and the rest is agriculturally useless desert³⁸. Most arable land lies in two places: the Jabal al Akhdar region around Benghazi, and the Jifarah Plain near Tripoli. The highest parts of the Jabal al Akhdar receive between 400 and 600 millimetres of rain annually, whereas the immediately adjacent area, sloping north to the Marj Plain, receives between 200 and 400 millimetres. The central and eastern parts of the Jifarah Plain and the nearby Jabal Nafusah also average between 200 and 400 millimetres of rain annually. The remaining Libyan coastal strip and the areas just to the south of the sectors described average 100 to 200 millimetres of rain yearly. In addition, the Jifarah Plain is endowed with an underground aquifer that has made intensive well-driven irrigation possible. Between these two areas and for a distance of about 50 kilometres south, there is a narrow strip of land that has enough scrub vegetation to support livestock. Desert predominates south of this strip, with only occasional oasis cultivation, such as at Al Kufrah, Sabha, and Marzuq.

The Ottoman Land Code, which required registration of individual land rights for tax purposes, was not successful in Libya. The colonising Italians did attempt to free the fertile coastal strip and settled poor Italian farmers and were successful in securing 210,000ha along the coast with tribes expelled to the south, but in general, efforts to change de facto land tenure failed. Nevertheless, the Italians did establish nominal state-controlled over land and, between 1951 and 1961, this gradually became absorbed by the government of the independent state of Libya. Since coming to power in 1969, the Qadhafi government has been very concerned with land reform. Shortly after the revolution, the government confiscated all Italian-owned farms (about 38,000 hectares) and redistributed much of this land in smaller plots to Libyans.

1970: Series of laws repossessing all remaining Italian and foreign land, along with that held by the deposed monarch (King Mohammad Idris al-Senousi) and anti-revolution Libyans.

- Outlaws future ownership of land by foreigners. About 115,000ha repossessed.
- Lands redistributed at 2-8ha irrigated or 40-60ha rainfed or 20ha mixed
- Sale of the land is forbidden and if a farmer wants to quit for whatever reason he must return the farm to the government for its reallocation.

The state retained some of the confiscated lands for state farming ventures, but in general the government has not sought to eliminate the private sector from agriculture as it has with commerce. It did, however, take the further step in 1971 of declaring all uncultivated land to be state property. This measure was aimed mainly at certain powerful conservative tribal groups in the Jabal al Akhdar, who had laid claim to large tracts of land.

Another law passed in 1977 placed further restriction on tribal systems of land ownership, emphasising actual use as the deciding factor in determining land ownership. Since 1977 an individual family has been allotted only enough land to satisfy its own requirements; this policy was designed to prevent the development of large-scale private sector farms and to end the practice of using fertile "tribal" lands for grazing rather than cultivation. This law nevertheless meant a gradual reassertion of private rights with regard to land, and small farmers are once more allowed private ownership of land and other property. Studies published in the late 1970s indicated that at any given time, about one-third of the total arable land remained fallow and that as many as 45 percent of the farms were under 10 hectares. The average farm size was about 11 hectares, although many were fragmented into small, non-contiguous plots. Most farms in the Jifarah Plain were irrigated by individual wells and electric pumps, although in 1985 only about 1 percent of the arable land was irrigated.

Partly as a result of these policies as well as the dictates of Islamic rules of inheritance, in 1986 Libyan farms tended to be fragmented and thought too small to make efficient use of water. This problem was especially severe in the long-settled Jifarah Plain, which has been Libya's single most productive agricultural region. Rather than address the water problems directly the country initiated "the great man-made river" project. Begun in 1984 with the

³⁸ Given the paucity of information on land tenure in Libya, a substantial part of this country profile was derived from the Library of Congress

objective of carrying water in a large diameter pipeline from well-fields in the south to the northern coast, and from thence to Benghazi in the east and Sirt³⁹ in the west, the scheme, which is expected to take 25 years to complete has had little noticeable effect so far on the overall shortage, partly due to the high operational costs.

On the rangelands, the government has, Over the last 20 years, has establish nine major range development projects⁴⁰ trailing a variety of technologies including rehabilitation, shrub plantations (Atriplex), medic production, and fencing (range protection).

³⁹ Qadafi's home region

⁴⁰ Gharian-Jabu, Bir El-ghanam, Benghazi Plain, Jabal El-Akhdar, ElKharruba, Zlieten, Middle Zones, wadi sasson and El-assa range

TUNISIA

(with the assistance of Brian and Lynne Chatterton)

Population: 9,705,212 **Growth:** 1.15

Labour force: 2.65m (22% in agriculture)

Land Use: Arable land 19%; permanent crops 13%; permanent pastures 20%; forests 4%; other 44%; irrigated 3850 sq km

GDP from agriculture: 14%

EXECUTIVE SUMMARY

In Tunisia, the land tenure system was similar to that of Algeria, with large cooperative farms and some state farms. Nomads in steppe areas have transhumance rights to grazing paths and informally establish grazing rights to small sown crops. They have the right to graze stubbles in arable zones and practice common grazing. There are small and large private farmers with legal tenure and communities in non-arable, hilly and or mountainous regions that have tenure based on tradition and who practice community use of their resource.

Tunisia under President Ben Ali is pursuing a policy of privatisation of land together with forms of subsidy to encourage large-scale plantings of olives and spineless cactus and reforestation in both fertile and marginal zones. Political protest at this development is not obvious although low prices and drought have caused hardship for small farmers in the last several years. It is, however, leading to the private cultivation of huge tracts of land formerly considered marginal and belonging to the state and will no doubt create a land market that may force many small farmers to leave agriculture in return for cash for their small holdings.

POLICY AND LEGISLATION

The introduction of a land registration system in 1885 eased colonial expropriation of much of the better land notably in the valley of Majerdah and certain areas around Bizerte and Tunis. Immediately prior to Tunisia's independence some 6,500 French held 800,000ha⁴¹ (100-200ha per settler) of fertile land (20% of total). A further 1mha were held under arrangements of *Waqf* (habous) but poorly farmed and a further 2.5m ha of marginal land in the central and southern regions held customarily by semi-nomadic tribes under communal ownership.

Land reform was instituted in 1958. Initially a ceiling on farm size of 50ha was imposed in Mdjerdah valley only, with excess confiscated and losers compensated before the land was turned over to tenant farmers with irrigation experience. These were required to pay for the land over a 20-year period as well as join a production co-operative. Furthermore, the recipients were charged for costs of public irrigation scheme according to land productivity and ranged b/w 25 and 60% of value added. The reforms also instituted a scheme for consolidation of scattered parcels of land.

Initial reforms were undermined by the distribution of land among family members prior to expropriation. To address this, the Agricultural Land Property Law (1964) removed all land from colons (roughly 700,000ha of the best land). A small proportion was subsequently distributed to landless farmers but the major share was organised into state farms. The law also tried to force all holders of *mulk* and leased lands to be grouped into collective production co-ops but this element was shelved in 1969 following much discontent.

Since the mid-1970s the authorities have pursued a land market policy "to create modern, regularly shaped, continuous holdings of optimum size adapted to take advantage of technological progress and modern farming techniques". Of some 918,000ha of state land, 300,000ha had been transferred into private hands by 1991. A similar process was taking place on collective land. Of the original 3mha (50% cultivated rest pasture), 1,200,000ha of agricultural land had been privatised by 1991 together with 600,000ha of pasture.

⁴¹ 75% of this amount was owned the rest held under rental agreement

The agricultural census of 1980/81 census shows 85% of total farming population had access to land (owners, tenants, sharecroppers, agro-pastoralists). Out of total arable land: 87.6% was *mulk* in units of 13 ha (average number of plots per farmer: 3.2) and 12.4% was state-owned (including 48 state farms averaging size 4,500ha each). Of the private, 7.4% of the holdings had less than 5ha (average size of 2.2ha), the owners of which represents 43 % of total owners. At the other end of the scale about 1% of private owners possess 17.5% of total private land. This has changed little through the 1990s⁴².

Fresh registration of land was decreed in 1964 (Decree No. 64-3 of February 20th) compelling complete and systematic registration and cadastre, free of charges. However many institutional, legal and administrative constraints have made it difficult to achieve land registration objectives. The cadastre covers only 35,000ha/yr - a slow pace when there is 3.5mha to cover. Those farmers that could prove continuous cultivation for 5 or more years could receive "possession certificates"⁴³ with presumption of eventual registration. Despite state interest in registration, the majority of land users, commonly accepts informal transfers that function outside legal and administrative constraints.

Current concerns in land tenure focus on halting rural - urban migration, consolidating property rights and speeding up registration. Among the measures being pursued is the liquidation of *waqf*⁴⁴ (*habous* both *enzel* and *kirdar*) and the final dissolution of collectively-held land.

EVOLUTION OF CUSTOMARY PROPERTY RIGHTS

1901: (January 14th) decree ordering the delineation of collective tribal lands consisting of approximately 3mha (all in south and central [excluding oasis] Tunisia)

⁴² In 1998 it was reported that the bottom 46% landholders possess 8% of land; top 3% hold more than 35%; 85% of farmers cultivate less than 20ha

⁴³ Officially at least, these are sufficient for collateral

⁴⁴ This follows on from extensive legislation dealing with *waqf* including its supposed abolition in 1965: 1898: Jan 31st - Decree permitting the rent of *habous* via adjudication for periods of 10yrs - total appropriated by colons 40,000ha

1956: About 1mha under arrangements of *waqf* (*habous*)

1918: (Nov 23rd) decree conferring responsibility for the southern collective lands on military authority

1935: (Dec 30th) decree relating to civil (rather than military) collective lands - states the definitively the legal status of these lands as belonging to the state with the perpetual usufruct right common to the communities.

1957 & 1959: Regulation of the communally held tribal land rights. Changed into individual ownership of settled cultivation in units of 10-20ha, mostly with olives with remainder remaining communal. In both cases farmers organised into co-operatives (law May 1963). Grazing lands were assigned to co-operatives to control the number of livestock and improve pasture.

1964, June 1964 - Act 64-28 (modified Act No. 71-7 of Jan. 4th 1971 & No. 79-27 of May 11th 1979 and No. 88-5 of February 8th 1988) permitted the privatisation of collective lands

1956: (Mar 31st & 1957) Abolition of public *waqf* or *habous* with land transferred to the state. Private *habous* lands divided amongst legitimate claimants. These changes affected 29% of total arable land of 4.2m ha.

ALGERIA

(with the assistance of Brian and Lynne
Chatterton)

Population: 31,736,053 Growth: 1.71%
Labour force: 9.1m (25% in agriculture)
Land Use: Arable land 3%; permanent crops 0%; permanent pastures 13%; forests 2%; others 82%;
Irrigated area: 5,550 sq km
GDP from agriculture: 11%
Legal system: socialist, based on French and Islamic law

EXECUTIVE SUMMARY

In Algeria the socialist revolution resulted in the large French farms in the arable zone being turned either into cooperatives or state farms. Most of these were reallocated in the early 1990s and distributed to either individual families or to small groups of private individuals. Some state farms remained but were designated “model” farms. Transhumance is of great importance and there is a feed transaction between the pastoralists and the sedentary farmers during late summer and early autumn, which is regulated and administered by the Ministry of Agriculture at a local level.

Individuals and nomads obtain an informal tenure over small pieces of land when they plant a crop of cereal during the transhumance in the rangeland and marginal zones. This informal tenure lasts from the working of the land until the harvesting of the crop. It has adopted as a means of obtaining more lasting tenure over land in marginal areas for drought-sickened herders, for families the government wishes to settle in a marginal area and for opportunistic landowners who wish to establish rights to a piece of land.

In the rangeland and through the marginal to the coastal belt there exists common grazing by specific communities or tribes on traditional lands and grazing paths. Communities in

marginal areas where hillside precludes arable crops often have an informal traditional tenure over areas of forest and hillside where common grazing takes place. Small, medium and large farmers who farm in the mountainous arable zone have tenure based on family possession that is legally recognised and documented.

POLICY AND LEGISLATION

In colonising Algeria in 1830 the French aimed to integrate the Algerian economy and landed property legislative framework into those of the home country. Through nationalisation and the proclamation of various laws in the mid and latter 1800s, the French colons were able to secure for themselves and their local collaborators much of the more fertile agricultural lands. Prior to their expulsion from the country in 1962 land distribution and landholding status in Algeria was:

- 23,000 French controlled 2.6m ha (30% of cultivatable land)
- Average farm size among the French: 373 ha/person mostly in fertile north
- Average farm size for holdings of indigenous population: 11.6ha / person in the less fertile mountainous areas.
- Private sector accounted for 80% of Algeria's farmers and 60% of the country's agricultural land.
- Rainfed farming was largely restricted to in the interior away from centres of colonisation

LAND REFORM

Algeria has initiated a series of land reforms since winning independence from the French. These reforms have been broken in to 4 distinct periods.

Redistribution Land Reforms: Phase 1

At independence, the newly installed government took over for its own use, farms vacated by the French and other foreigners though the lands remained legally owned by the settlers.

This arrangement lasted until October 1963, when the authorities decreed that all land abandoned by the colons would be owned by the state. By mid-1966 all remaining unoccupied properties had been nationalised and turned over to workers under a self-management system. A small portion of farmland had been occupied by Algerians claiming to be previous owners, as well as by labourers who had worked for the colons. The authorities also gave some land as a reward to veterans of the War of Independence. Most of the expropriated 2.7 million hectares, however, were turned into state farms run by workers' committees, under a socialist sector that received almost all of the funds allocated to agriculture but that suffered from a cumbersome central government bureaucracy and a lack of motivation.

1962 - July - Colon farms spontaneously released (amounting to 2.6mha)

- Ownership transferred to the state
- The unity of the farms were maintained
- Individual farms, managed by salaried committees usually of seven individuals within the guidelines of the national development plan.
- By 1966 nearly 1m people absorbed within the scheme

1964: Landed property of Algerian colonial collaborators confiscated amounting to 100,000ha

The traditional subsistence agricultural sector (6mha (4 m cultivated)) was not socialised. These were farmed by small and large land owners as well as *fellabeen* (poor tenants, share-croppers and landless waged labour estimated at 920,000).

Redistribution Reforms: Phase 2 (1971-1978)

The then prime minister, Boumediene, announced dissolution of the state-farming sector in 1971 with the introduction of an agrarian reform program that called for break up large state-owned farms, a ceiling on land holdings, and their redistribution to landless peasants. The only condition with which these peasants had to comply was to join government-organised co-operatives, which would provide them with state loans, seed, fertilisers, and agricultural

Impact of Reforms on Agricultural Productivity

Reforms were still born in their impact::

- progress in productivity gains did not match that of Algeria's neighbours Tunisia,
- Farm incomes fell
- The area of wheat diminished

Why?

- Institutional transformation in agriculture not backed by adequate investment to meet production requirements

equipment. Boumediene's agrarian revolution (1974-78) resulted in 98,000 peasants receiving ten hectares of private land each and the organisation of 6,000 agricultural co-operatives.

1971 *La Reforme Revolutionnaire* (Ordinance 71-73): The Charter of Agrarian Revolution and subsequent legislation permitted:

- abrogating previous legal and customary land tenure regimes
- Establishment of the National Fund of the Agrarian Revolution (NFAR) created through the nationalisation or donation of collective lands:
 - expropriation without compensation of all land held by absentee landowners;
 - expropriated lands in excess of 43ha of 25,900 larger landowners
- Result: approximately 11.3m ha had been distributed to about 98,000 beneficiaries with plots between 10-15ha.

With the death of the long-time President Boumediene in 1978 the reform program ended presumably because of the heavy financial losses it had incurred. Other contributing factors may have been the new government's concern over poor agricultural productivity, rising costly food imports, and the generally unsatisfactory performance of communal farms. In response the new government of Bendjedid sought moves away from socialist models to capitalists modes of production. In conjunction with these reforms, the new government allocate more public funds to agricultural infrastructure, especially dam construction and water projects.

Mixed Capitalist and socialist land Reforms: (1978 - 1986)

Objectives:

- satisfy food needs through expansion of agriculture and irrigation
- ensure freedom by removing dependence on food imports
- promote interests rural masses
- relieve the state of heavy financial burden

Tenure Reforms⁴⁵

- In attempt to establish economies of scale, self-managed and agrarian revolution sectors were merged and reorganised into 3,239 state farms (*domaines agricoles socialistes (DAS)*). DAS comprised 2,539,000ha and 148,500 farmers.
- A further 436,500ha of state agricultural land divided into 108 experimental farms
- 45,500 small privatised landholdings established on approximately 700,000 hectares increasing the total private-sector area to 5 million hectares.

With these reforms having little impact on productivity 2nd wave of reforms initiated

Capitalist Reforms: (1987-)

Objective to restructure and privatise state sector:

- Conversion of DAS into smaller autonomous units of two types:
 - *Exploitations Agricoles Collectives* **EAC**

Formed voluntarily with a minimum of 3 members and not exceeding 2,000ha (667ha each as opposed to 43ha max).

EAC first rent the fields but after five years members receive the right to sell their share

⁴⁵ At the same time, Agrarian reforms liberalised the system for marketing agricultural products and gave incentives for intensive farming

1990 law permitted that EACs no longer had to be kept together and most subsequently evolved into EAI

EAC land shares based on 99yr lease though farmers "authorised to treat this land as their own" (WB 1994)

- *Exploitations Agricoles Individuelles* **EAI**

3,400 state farms (about 700 hectares each) into privately owned farms averaging eighty hectares each.

Individual farmers gained permanent and transferable right of ownership provided the farm remained undivided to ensure adequate cultivation size

Status of EAC & EAI in 1992

	No. created	Total Area	Members
EAC	28,700	1.9m	152,655
EAI	18,024		

- Return of private land that had been nationalised or expropriated during the 1970s to be returned to its former owners (with the exception of those landowners who acquired it from Colons)
- By Jan 1993, of the 24,722 proprietors whose land had been taken during the 1970s, 22,733 received their land back including the holdings of 4,158 EAC, 1,172 EAI and 10,620 individual beneficiaries.
- Those losing land were given public land elsewhere as compensation, with a further 2,100 of newly dispossessed indemnified financially for their loss.

1991: Law deregulating land transactions and eliminating the municipalities' monopoly ownership of property reserves, making them available for public purchase.

To maximise its agricultural resources, Algeria has instituted programs to increase the

Impact on agricultural productivity of capitalist reforms

Farm production has increased substantially (WB 1994) though problems remain:

- restructuring of the state sector has been racked by corruption
- reform lands have become a focus of speculation by absentee landowners with the consequence of fields be left fallow
- lack of clear title has inhibited long-term investment in the EAC and EAI holdings resulting from their undefined legal status and the confused history

sector's stability and revenues.

As of 1994 rural land was held as pilot farms under state ownership(150,000ha), EACs and EAIs (constituting 2mha of state land and 650,000ha converted to private); private land (4.7mha); and steppe grazing lands. Total arable land: 7.5mha.

FARM SIZE AND FRAGMENTATION

Farm size and fragmentation of landholdings is reflected in the overall rise in farm numbers. From 543,000 farms in 1960, number of holdings rose nearly a third by 1973 (701,234) reaching 902,729 in 1981.

The World Bank estimated in 1994 that 74% of farms were of less than 5ha with an average size 1.64ha.

Private holdings range in size and distribution. It is estimated 0.7% private producers own more than 50ha (9.6% private land)with average land size of 69ha. The remaining 99.3% of private owners hold on average 4.4ha (combined the average private holding averages 4.9ha). Holdings under EAC & EAI, are slightly larger.

Rural Algeria is still characterised by a dual agricultural structure:

- 1) Large private holders and state farms using capital intensive methods

2) Small farms using labour intensive

REGISTRATION

- 1975 (Nov. 12th - Law 75-74) Institution of a fresh cadastre and building of the ground-book coupled with card-index register
- In 1979, 100,000ha of an estimated 7m ha cover
- Negative impact of registration: large areas along the steppe margins were ploughed but never cultivated by illegal claimants who wanted to gain possession of the land.
- As of 1994, only 300 of 1541 communes have had a cadastre

CATEGORIES OF LAND

Private land

Private lands are largely restricted to the mountainous areas. The fertile northern plains, which had been confiscated by the French subsequently became reform land.

1994: 4.7mha of agricultural land held in the private sector

1994: Average farm size in private land: 4.9ha

1983: legislation abrogated earlier legislation that restricted private land transactions and, implicitly, rescinded max holding size of 43ha.

Waqf

1830s 1840s *Waqf* (habous) land status changed to enable the land's purchase in the and put under the disposal of French settlers (colons).

EVOLUTION OF CUSTOMARY TENURE

Between 1844 and 1873 the French Colonial authorities enacted various laws dispossessing customary rights holders in the better cultivated areas to the north of the country and defining within state law tenure among the tribal migratory groups of the arid south. During this period all uncultivated land and forests (totalling 3.1mha) were nationalised as a prerequisite for subsequent reforms. In the cultivated areas of the north, other laws were introduced sequestrating communally-held tribal lands both for colonial purposes, and for registration to collaborating local families.

The main law for the pastoral and agro-pastoral tribes of the south was the Senatus Consult of 1863. This distinguished between state (*beylick*), *Mulk* (individual), commune, and collective lands. The Consult delineated territories for each *douar* (tribal sections) as well as overall tribal territories while recognising and 'legitimising' private property within. Any transfer or exchange of land belonging to the *douar* should now be at the request and agreement of the *djemaa* (citizens' Council). Usage rights in every *douar*, were available for persons residing lawfully within the territory and it permitted them to make use of the rangelands in accordance with the directions of the *djemaa* regarding number and type of animals.

In 1971, the Agrarian Revolution (Ordinance 71-73) established the ascendancy of state law with the abolition of customary authorities and abrogation of previous legal and customary land tenure regimes which had previously operated in the steppe region. In its place was passed the Pastoral Code 75-43 (1975) (La Revolution Pastoral) that nationalised the steppe (areas receiving on average less than 400mm rainfall per annum) and "benefited" those (agro) pastoralists living in the semi-arid fertile areas and communally held land with settlement and the provision of individually marked holdings grouped into co-operatives.

1975: The Pastoral Code classified pastoral space in 3 types:

1. Degraded rangelands to be protected
2. Rangelands designated for the settlement of co-operatives (*Cooperative d'Elevage Pastoral de la Revolution Agraire*); 200 CEPRA est., 431,315ha, 1385 members, 124,800 sheep

3. Common rangelands used by livestock owners to be managed by Popular Common Assemblies (PCAs in place of the *djemaa* (see above)) over delineated territories.

1984: PCAs were disbanded in 1984 with management becoming the de facto responsibility of customary institutions (Bedrani 1991)

Law 87-19 (1984): allows:

- the distribution of rangelands located on Domaines Agricoles Socialistes (DASs) to individuals for collective usufruct.
- Regulation of forests: prohibits grazing in new forest plantation, burnt out and protected areas while forestry commission responsible for regulating wood harvesting. (Forests: 50% state property; 29% communal; 2% private)

Redjel (1997) suggests that despite the de facto role for customary tenure in the steppe, there has been dislocation of tribal institutions and the weakening of their regulatory power resulting a legal vacuum on the steppe. The levels of reported disputes, Redjel argues, suggests that pastoral societies in Algeria perceive an open access situation, and are continuously trying to secure their spaces. Four types of conflict:

- Access conflict (15%)
- Customary boundary conflicts (50%)
- Access to water (30%)
- Legal conflicts (30%) ambiguities of new laws have generated conflict between tribes

However, disputes are not a new phenomena, and though customary rights seem to be challenged, the level of reported conflict also reflects the resilience of customary institutions and those who care to defend them.

HOMESTEAD PROGRAM

The state's settlement drive of migratory peoples and agricultural expansion was further boosted in 1984 with a law establishing an ambitious *Homestead Program* with initial

projections to cultivate 800,000ha⁴⁶. Homesteaders were granted property rights in exchange for putting previously undeveloped land into production as well as start-up loans and various subsidies. The Homestead Program focussed on the high interior steppe lands and the southern desert region. Initially small in size, grants of several 1000s ha were under active consideration in 1993. Nevertheless by 1990 some homesteads had already been abandoned given marginal conditions or otherwise 'mined'. Not daunted the government in 1999 continued the homestead program in Saharan regions setting new targets to divide one million hectares into plots of 500-1,000 hectares for individual or collective units for which the government will provide electricity and drill for water.

⁴⁶ Arable land per person has decreased significantly over the past 40 years stimulating cultivation of marginal land. From 0.75ha per person in 1963, shares decreased to 0.4ha in 1979 and 0.14 (2000) and so.

MOROCCO

(with the assistance of Brian and
Lynne Chatterton)

<p>Population: 30,645,305 Growth: 1.71 Labour force: 11m (50% in agriculture) Land Use: 21% arable; 1% permanent crops; 47% permanent pastures; 1% permanent crops; 11% others Irrigated area: 12,580 sq km GDP from agriculture: 15% Legal system: based on Islamic law and French and</p>

EXECUTIVE SUMMARY

In Morocco the King and the 100 families own the vast majority of the best land. Private ownership is the norm. Nomadic transhumance appears to have little effect on sedentary agriculture. Rural poverty is widespread and small farms are resource poor. Villages in the rangeland and in the mountains graze their territories in a communal fashion.

The current policy debate revolves on facilitating conditions for the effective functioning of market forces based on secured tenure. The major constraint to efficient land use and development in rural areas of Morocco is the lack of an integrated market for land due to the fact that property rights are not well defined, and either remain collectively held, or are not registered (World Bank 1995). These uncertainties are militating against the transfer and consolidation of land. Consequently, the current objectives are to increase pace of land registration and increase transparency of real estate market where it does exist (urban and peri-urban areas)

POLICY AND LEGISLATION

Tracing the origins of the large estates helps explain the current concentration of wealth in rural Morocco. With profits from Morocco-Europe trade merchants in Fez invested in

agricultural land and thereby gain economic and political power and influence government (Makhzan) through control of cereal supply. Successful, the sovereign (Moulay) who held ultimate rights to land, granted additional lands of b/w 3-600 ha to influential families from the cities of Fez and Meknes, senior government officials, members of the Moulay family and to Moslem leaders. Through legal manipulation, usufruct rights were converted to private property. See Lazarev (1977) for the process as well as a list of recipients, many of whom are still influential in rural agriculture. Additional land was acquired via other means. The rest of the land cultivated and grazed held collectively by tribes including the two powerful groups: the *Guich* in the Western plains and the Berbers in the Middle Atlas Mountains.

The French colonised Morocco (1912) basically on the grounds of the agricultural potential of the land through harnessing water and expanding cultivation. By 1953, 4,270 private colon settlers owned 728,000 ha (avg. 200ha/person) mainly round Casablanca and Rabat regions Chaouia and Garb and in Mediterranean Plains of Basse Moulouya. In all 6,000 settlers and foreign companies owned nearly 1m ha along with more than half of perennially irrigated lands. By contrast, local Moroccan farmers, perhaps numbering 900,000 held 6mha of rainfed lands used for both grazing and agriculture. Of these farmers, 50% held holdings of less than 2ha with 15% possessing less than 0.5ha. Landless numbered 225,000 or 25% of the rural population. Some Moroccans fared rather better under French authority maintaining holdings of over 50ha and benefiting from 'French' irrigation.

LAND REFORM

1956-1960: Expropriation of collaborators' land amounting to 12,000ha some redistributed but the majority held by the state.

1963: (with supplementary laws in 1966 & 1973) Appropriation of foreign-owned land

- 1964-1975: 740,000ha⁴⁷ gradually acquired by the state

⁴⁷ The discrepancy between European owned land prior to reform and the amount actually appropriated by the state amounted to approximately 260,000ha. This land was sold between colon and Moroccans (including senior govt officials and city merchants) immediately after independence

- 1966-1985: 327,008ha (44%) redistributed to 23,600 families (representing 1.6% of agricultural households)
- Recipients received 5ha irrigated or 16-23ha rainfed
- The remaining 413,000ha (64%) kept as state farms.

Post Reform situation

- 1988: 74% held less than 5ha (or 35% of total area)⁴⁸
- Average farm size 1.6ha
- Farms typically fragmented into 5/7 parcels of .5ha each
- The state still the largest land holder with:
 - 440,000ha of agricultural land (or 6.5% of total);
 - ownership (*raqabah*) of nearly 1.5mha of the tribal lands
 - ownship all forest and range land

REGISTRATION

1985 (Circular No. 24 on Dec. 18th): Ordered a reduction in titling fees to promote the generalisation of titling in rural areas (signed by Ministries of Agriculture and Agrarian Reform, Justice, Interior and Financed)

EVOLUTION OF CUSTOMARY RIGHTS

1912 & 1919 Decrees recognised ownership rights to tribes on their territories. Management and control of all collective lands comes under (state) chosen local land managers (*naiibs*)

1924 Decree provided legal framework for delimiting and titling tribal territories in the name of the state

⁴⁸ Overall, high concentration of land in few hands Gini coefficient of 0.76

- Agricultural land distributed to "heads of families" according to size of family. Most were resident tribal members while those who had out-migrated missed-out.

1945 Decree (of Apr.14th) distinguished between valorised and non-valorised tribal collective lands and allowed holders, who invested in a piece of collective land, to receive an act from the Trusteeship Council recognising their perpetual use-right on the plot.

1957 Decree No. 2977 (of Nov.13th) permitted allocation of unused collective agricultural land to out-migrated members of the community

Furthermore, it regulated inheritance with the provision of equal share for women with at least one child.

It also constituted a land reserve (1/5th of the total arable lands) for land-short household heads and returnees from migration.

1997 *Guiding policy*: Official maintenance of tribal territories and the allocation of perpetual use rights to tribal members (ownership held in the name of the tribe)

There remains the underlying problem of a land shortage in tribal areas. Between 1980s and 1991 the area under cultivation jumped from its long-time position of 4.4m ha (where it has been since 1940s) to 5.4m ha. This dramatic expansion was the result of high crop prices, structural adjustment, government policy and mechanisation. Available cultivatable land in the tribal areas has now all but disappeared pushing tribal members in search of land to cultivate collective pastureland. Nassif (1997), in an analysis of disputes reported to the *naib* of three districts suggests that this has precipitated a rise in disputes. Of the disputes 93% related to transgressions on collective land. Cropping was the major source of disputes (60%). A further 22% of cases were concerned with powerful members that had established barley corridors and so enclose a pasture for effective private use. He goes on to suggest that this represents a breakdown in the customary system of periodic redistribution of cultivated plots. However the practice in tribal areas since the decree of 1957 has been that perpetual use rights were recognised for those tribal members breaking the soil in tribal areas zoned for cultivation. It would be surprising, therefore, that when cropping reached tribal pastureland it did not carry on in similar vein.

MALTA

Malta registers title deeds that indicate ownership and the existence and value of a secured loan. The land records, which are wholly open to the public, are governed by legislation [Chapter 296, Land Registration Act]. Land administration is operated at a central government level through the Ministry of Justice. The administration is financed through taxation and fees paid by customers. Land title is granted at time of transfer and guaranteed on the basis of civil law (Transferor's liability) while a system of indemnity provides guarantee when government is involved in the transaction, in dealings on guaranteed titles or on the lapse of 10 years following application. There are currently around 20,000 titles registered with the authorities. Registration remains to be completed over the pre-determined area. 5000 registrations are made a year.

MAURITANIA

Commissioned worked has not been forthcoming. For a detailed and reasonably up-to-date study on land tenure in this country it is recommended that you refer to:

BRUCE, J (Ed.) 1996, COUNTRY PROFILES OF LAND TENURE: AFRICA

<http://www.wisc.edu/ltc/rp130.html>

**An Overview of Land Tenure in
the Near East Region
Bibliography**

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