

The Northern Africa Land tenure: challenges and opportunities of sustainable development

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1- Introduction

The land and its resources must be put to good effect. In order to meet the requirements of the new era, every state has developed and implemented a series of emerging policies according to its national specificities and to the international regulations and trends. This paper has the aim to outline the diversity of land tenure in northern Africa and to analyze the economic viability of the land governing systems and the key factors that lead to achieving social equity and economical outcomes for the region. The study will highlight features of the adopted and implemented regulations as instruments guarantying land ownerships and tenure security. The formalization of land rights has begun early and allowed significantly increasing the participation of individuals and groups in the formal land and labor markets. Landowners with the lowest incomes can borrow their lands to others without fearing to lose their ownerships. What are the challenges that constrain allowing the existing systems to integrate rights of individuals and groups in formal and informal actions to reduce transactions' costs made by investors? Do the effective land right implemented in the region contribute in reducing the danger of wasting natural resources caused by deforestation or ecological destruction? What are the offered opportunities by the regulations on land governance to enable authorities transferring land to communities and individual farmers and defining the restrictions on using forest and abandoned areas? The study of the land tenure in the Northern Africa will focus on the impact of land transaction practices. The impact-practice analysis will enable us to identify effectively the best opportunities for investors and for the government from the region states and to facilitate sharing experiences in insuring the achievement of various development projects. In Northern Africa region, as part of the big African continent, it is obviously important to analyze and understand the ongoing policies linked to land administration and land management. Various institutions are involved in dealing with a diversity of land tenures characterizing each country member of the Northern Africa. In terms of historical events, we distinguish three different groups of the state members sharing same language and civilization: (1) Sudan and Egypt, (2) Tunisia and Morocco, (3) Algeria and Mauritania. However, in terms of land tenure governance, each state of the region has usually its specific regulations and rules either in a form of customary or statutory laws.

2- The regulatory framework of land tenure in Sudan and Egypt

In Sudan, as in many North African countries, land is governed by two parallel paradigms: statutory and customary tenures (De Wit, 2004). The government authorities are ruling formal and informal land tenure in cooperation with tribal leaders across the country. According to Shazali (2002), the land tenure system in Sudan has known a stability during the Turkish period from 1821 to 1884. The leaders of the native institutions exercised the customary tenure rules in terms of administrating settlements and allocating land rights. In the beginning of nineties and during the British colonial period (1889-1930), a series of land ordinances were enacted starting in 1899 and recognized the private ownership for the cultivated lands in northern and centre of Sudan (Warburg, 1970). In 1905, a land settlement Ordinance was made in order to affect to the government forest, unoccupied, and wasteland unless claims to the contrary were proved.

In order to facilitate access to land and promote private investments, the government adopted numerous procedures such as the Land Act allowing foreign investors and citizens to get access to lands for long-term lease up to 99 years and prohibit them to purchase lands. However, in some areas of Sudan, one can perceived a low level of trust between people and government (Ayoub, 2007). The reason is that there is confusing between the federal and state governments that has resulted in conflicting decisions over land and the continuous encroachment of the federal government on land in the states. The definition of land administration as a concurrent power between the federal and states governments is a major gap in the legislative structure of land management. The prevalent centralized authoritarian mentality is really problematic. According to Mohyeldeen (2016), the “Existing legal frameworks to land are largely confused with apparent dichotomy between statutory and customary rights. Specifically, it is not at all clear whether customary rights have legal status in terms of who owns and controls land, and how access to land can be given, legitimated and contested. The lack of title to land has denied traditional farmers and pastoralists the right to access public resources, namely formal credit increasing their disadvantage and marginalization. Currently, customary land tenure arrangements are under extreme pressure caused by large-scale land acquisition, rapid population growth and increased mobility, accelerated land degradation and the rapid transition to a market economy.

In Egypt, even if the land tenure has the same origin of regulations and governing history as in Sudan, the fast growing population creates a huge demand on land and a necessary need on unused lands in both urban and rural areas. It is expected that the current 85 million Egypt will reach approximately 100 million in 2025 (Cornelis, 2008). The population growth creates many challenges because of the shortage of agrarian lands and force the poor people to move naturally to the inhabited land for housing and agriculture. The current regulations governing land tenure in Egypt have their origin go back to three distinguished period: the Ottoman period, the British era, and the Nasir’s revolution in 1952. The cultural background related to the land tenure is largely influenced by the Islamic laws. Theoretically, men and women have equal rights to access land and property ownership. During the Ottoman Empire (1517–1798), there were two kinds of land tenure in Egypt: the state ownership and the public ownership. However, the Ottoman Land code enacted in 1858 considered that the state is the right owner of land and categorized land tenure into five types (Tilsen, 2003):

- freehold with an unrestricted private ownership (milk);
- endowment (waqf) reserved for religious purposes;
- lands claimed by sultan (mīrī) for the state through conquest or through forfeiture of the freehold land (Milk) due to the failure of heirs to use it;
- land for general use such as lakes, roads, market places, and cemeteries (matrūk);
- wasteland (mawāt) that does not belong to anyone, but who revives it by cultivating it or building on it becomes the owner.

The forms of securing land ownership in Egypt are of three kinds. The first form is named “Wad al-Yad” as a custom practice meaning “to put a hand on” enabling the seizure of a parcel without any legal documents.

The second form is the “Urft” contract that prove unregistered legal possession of a parcel. The contract is not registered properly with the civil authorities but it allows selling, transferring, and buying a piece of land. Even if the ownership is not transferred under an official registration process, the concession of the real estate is a legal act that proves commitments on the seller. This provides legal rights to the real estate. According to the Civil Evidence Act, any unofficial “Urft” contract is recognized by the court when a ‘validity of signature hearing’ is provided by the buyers. The objective behind organizing the hearing by the court is to validate the signature not the contract. For gaining the full ownership on the

land, the holders “Urfi” contracts should attend the hearing of the contracts’ validity in order to get rights for registering their contracts (Evidence Law 25, 1968, Article 45).

The last form is the “Bedouin” referring to the transhumant pastoralists or more frequently to the descendants of nomads who are practicing farming and trading on the subareas of the old lands, the Nile valley or Delta. Bedouins are often involved in conflicts over newly reclaimed land or desert land bordering reclaimed land because these areas are subject to new settlements.

The Egypt society under these conditions has known a series of social conflicts including the problems of landless rural and urban households, small farmers’ continuing struggle to compete for limited and fragmented cropland, and pastoralists’ continuous loss of their traditional grazing areas. Since the Nasser’s revolution in 1952, the enacted legislations had the aims to limit the individual possession of land by prohibiting the excess land holding and the government allowed not more than 200 feddans (1 feddan= 1.04 acres). The agrarian reform focused on distributing expropriated lands and established an agricultural reform throughout gathering peasants within cooperatives and adopting new rules to regulate labor, tenancy, and inheritance to promote the economic development (Johansen et al., 2008 land disputes). Egypt has known numerous land reforms such as in 1961, 1969, 1981, 1991, and 1996, in order to ensure an agriculture expansion by increasing the farmland areas and.

Currently, the Egypt government has enacted a new act (May 2017) that abolishes the previous legislations such as the Law 143 of 1981 related to the desert lands, the Law 7 of 1991 governing the state private lands and all related amendments, and the Presidential Decree 75 of 2016 on the establishment of the Commission of the State Land Recovery. The main objectives of the new act are:

- to develop policies to protect the state land from encroachment or theft;
- to establish and conduct studies to promote agriculture projects and water resources development;
- To abolish the form of land ownership known as “Wad al-yad” and reorganize the Bedouin lands in order to generalize and unify the governing procedures of land tenure.

3- The land tenure legislation in Morocco and Tunisia

Land in Morocco and Tunisia constitutes a basic resource at the socio-economic level for many investors. It is always seen as the most profitable and assured investment. The land tenure system is dominated by two forms of regulations. First of all, we find the Islamic Law using abstract deeds to guaranty the ownership. Secondly, we find the registration system formalized by the French colonial authority based on the Torrens act principles. The objective of the system is to describe accurately the physical and juridical state of a piece of land. The physical state consists of determining accurate position of lands, their exact boundaries, their real capacity, and their consistency. The juridical state denotes all ownership related to lands. The system of land titling is based on the principles of adjudication, absolute advertisement, and the convincing force of registration that define the complete civil state of all titled lands.

It was introduced in Tunisia by the law of July 1, 1885, and amended by the Code of the real rights in February 12, 1965. Under the pretext of modernizing the traditional institutions in Morocco, a treaty of French protectorate was signed in March 30, 1912. In August 12, 1913 the same and titling legislation was promulgated (Decroux, 1977). All legislative and statutory disposals had created a variety of lawful land statutes to put properties in a secure state and preserve the rights of owners and of the central authority. The legislation defined various kind of land tenures. We distinguish the public and private state lands, the collective

lands, the Habous (endowment) lands, the “Guish” lands especially in Morocco, and the freehold land “Milk” for the private ownership (El-ayachi, 2006).

The state lands in Tunisia as well as Morocco are owned by the central authority under two forms of appropriation: public and private. The private state lands consist of lands coming from the conquest, confiscated lands, deserted and uncultivated properties, vacant lands and lands without owners, lands of absentee owners, estates qualified by the Islamic law as dead lands, and forest lands. This kind of lands are non-transferable and non-seizable, but can be subjected to expropriation for public utility. The public state lands include roads for public usage, shores, rivers, lakes, woodlands, and aquifers. They are non-transferable, non-adverse possession, non-seizable and non-expropriable for public utility. Nevertheless, the lands of private estate can be transferable in certain conditions such as lands in suburban areas, lands in the framework of agrarian reform or lands used for public needs.

The collective lands consist of an old form of appropriation. They are subject of a special legislation based on Islamic precepts and belong to a community called *jmâa* such as tribe, fraction, or ethnic group. They consist of cultivated lands, pasturelands, or forestlands. They are strictly held by communal ownership for pasturage or uniquely by individuals having the right to utilize these lands (Makdad, 2000). They are non-adverse possession, non-transferable, and non-seizable. They can be transferred to state domain, to a community or to ethnic groups with approval agreement of the collectivity owner and guardianship council or by expropriation. The Habous lands are dedicated to religious or charitable purposes. The Islamic law designates the categories of profitable owners. These lands are recognized by unanimity of Muslim lawyers (*Ijmaâ*: consensus of Muslim community). In Morocco, they consist of three kinds such as public Habous lands, private Habous lands of *Zawiya* (specific religious institution), and private Habous lands of families. However, in Tunisia the Habous land tenure was abolished by the decree of 1956 and 1957 (RP748, 2008).

The Guich lands, especially in Morocco, were properties belonging to the central authority and granted to guerilla tribes installed generally by Sultan (President) on threatened points of the territory. This kind of lands is a form of concession called *Iqt'a* (donation). This notion means another method of acquiring properties through its donation upon individuals or a group of individuals by the Sultan. The concession can be temporary, named *Intifaâ* (usufruct) and concerns uniquely the usufruct of lands. It can also be definitive, named *Tamlîk* (appropriation), and concerns the allocation of the full ownership to individuals or a group of individuals. The first forms of concession were practiced by the first caliphs of the Muslim community and concern particularly the dead and conquered lands.

The “Milk” lands designate possession of a private property over which full right of possession and alienation are exercised. They can belong to individuals or to a group of individuals and can be subjected or not to a titling system. The lawful foundation of Milk lands is based on peaceful and public occupation (adverse possession), as ownership, non-interrupted possession for ten years during which the use of lands is not claimed by the third parties and for 40 years during which the use of lands is not claimed by parents. The applicable law to lands, which are not subject of the titling system, is the Islamic law, taking in account local customs in certain regions. The “Milk” lands subjected to titling system are governed by Islamic law and by various disposals defined by the regime of land titling. The Milk lands are transferable, seizable and laid to prescription. They can be subject of expropriation for public utility.

4- The land tenure legislation in Algeria and Mauritania

Before the French colonial era, the land tenure system in Algeria knew two mainly type called respectively the collective lands “Arch” for the agro-pastoralists and the private ownership “Milk” belonging to the peasants or traders. The private lands are governed by Islamic laws while the collective lands are governed by a mix of Islamic laws and customs of the local tribes. In 1830, the French colonization introduces a new corpus of rules inspired by the Napoleonic Code, which recognize the rights of tribes on collective lands and introduce the principle of the francization of property regimes and the right of private ownership. In 1962, Algeria gave rise to the nationalization of the lands left vacant by the settlers (Decrees of March 1963). After the agrarian revolution in 1971, lands qualified “habous” have been transferred to the National Agrarian Fund and a private state land regime was created progressively. The other forms of land regimes such as collective lands and private ownership were also generalized with the nationalization process. In 1989, a new constitution has been adopted and recognize for the first time the right to the private ownership. Therefore, three major land tenure were guaranteed such as the state domain encompassing both the state private and state public lands, the “Habous” lands, and the private ownership “Milk”. Various rules were enacted to enable the restitution of the nationalized lands and define clearly the concession steps to develop the national domain lands for agriculture (Law 08 -16 of August 3, 2008). In order to promote and develop agricultural activities, Algeria has established a series of legislations starting by the law 10.3 related to transforming the perpetual right of usufructs to the concession right of 40 years for the regular beneficiaries. The new legal framework introduces new promotional acts to allocate lands for developing agriculture.

In Mauritania, the land is always the property of a community and is never the exclusive property of an individual (Boutillier and Schmitz, 1987). Mauritania has also the same origin of its land legislation. In June 5, 1983 the Ordinance 83-127 was promulgated by colonial authority to introduce their land reform strategy. Three main objectives targeted by the law are: the strengthening of the State, the abolition of customary tenure and individualization, the economic development incentives for private investment. Even if a dual system is running in Mauritania the land tenure is guaranteed by two instruments. In the countryside areas, we find the customary instrument in which the system of guaranteeing the private rights is based essentially on a general consensus accepted by all parties. This consensus included many forms varying from simple arbitration to the most complex litigation procedures. The conflicts are generally resolved within the tribe or between tribes either by the arbitration commission or by the cadis (leader) of the tribe. In case there is land conflicts between two tribes and in case of a situation threatening the security of the region, the other tribes will arrange to take the two parties to an agreement whose execution will guaranteed both by the two parties concerned and by the grouping of tribes that will help to realize it. The second instrument called "modern" guarantees are the whole guarantees introduced by the French colonization; which, upon its arrival, extended all the texts regulating land ownership in West Africa France and Mauritania. Also the inscription on the land register and the cadastre of the region that have resulted in the issuance of a land title which is the only valid in the eyes of the colonization.

5- Challenges and opportunities of the land tenure system in North Africa

5.1- Tracing of the social development indicators: efficiency, equity, and sustainability

The land tenure system has social as well as economic impacts on the society and individuals. Better the system is defined better it leads to achieving efficient, equitable, and sustainable social outcomes (Table 1). As an instrument of guarantying land ownerships and tenure security, it reduces the amount that landowners and government are spending to defend and preserve land related resources. The formalization of rights on land allowed significantly increasing the participation of individuals and groups in the formal land and labor markets

(Field, 2002). With greater definition of land rights, the individual owners with the lowest incomes can transfer their lands to others without fearing that they will lose lands during their temporary absence.

In a region like Northern Africa, the land tenure systems are very similar because its country members are sharing the common religion and the common history. By analyzing the previous parts of this paper, we find that all countries have inherited multiple informal land rights known as “*Urf = Orf*” mixed with Islamic rules as well as colonial legislations. The current situation in Northern Africa within which formal and informal land rights are coexisting is a very serious challenge for the society, government, as well as for national and foreign investors. Throughout the region, it is necessary to design new trends permitting to integrate humans in formal actions and reduce the costs of informal measures. The dualism of land registration systems observed in the region in terms of regulations and procedures does not guarantee setting up a sustainable land resources. The effective property rights ensured by formal system will reduce the danger of wasting natural resources in terms of deforestation and ecological destruction. The regulation of land rights will enable authorities to transfer land to communities and individual farmers and define the limits of using forest areas and ecological spaces.

For the whole North African countries, one could observe that lands mainly named collective lands belonging to the communities or tribal groups, and the endowment lands called “Habous or Waqf” are governed by similar rules. The community shares the land resources for agriculture, pastoral, and social protection purposes. These lands known as collective lands enable the communities to face any risky circumstances caused by dry periods or by any intrusion of foreigners. The members of a community “tribe” use jointly owned lands to practice crop farming and exchange outcomes between individuals. The collective lands are playing a major role in Morocco, Algeria, Sudan, and Mauritania. In the other countries, there are a series of shortcomings linked to the level of instability of regulations the inducing conflicts between the governments and communities.

Another kind of land tenure that is generally similar throughout the whole region is the so-called “*waqf=habous*” lands for the endowment lands. This kind of land tenure is an opportunity of the North African countries to ensure an inclusive system that could respond positively in supporting education, health, and social purposes. The nature of this system is a sustain category of land rights that encourage individuals to afford land to the religious institutions to be pleasant to God. The land cannot be sold, given, transmitted in inheritance. Its incomes are only distributed for the benefit of the poorer of the society. Therefore, the endowment lands with their characteristics to have ultimately the religious foundations are a beneficial mechanism involving the contributions of thousands of families and ordinary citizens. They are persisting in the whole countries except in Algeria, Tunisia, and Egypt where they become progressively nationalized, limited, or abolished. If the endowment lands management are enhanced and adapted to the modern regulatory framework, they will ensure a cohesive social development at many levels. The endowment lands have a significant role in terms of efficiency, equity, and sustainability in Mauritania, Morocco, and Sudan.

For the whole North African countries, the major issues are linked to the urban development. The fundamental keys of reaching this goal is to administrate secure land tenure by means of reinforcing the titling and registration process. The state land regime in its private and public forms is the unique guarantee in promoting urbanization and building on the ensured ground and plots. The aspect of the municipalities and cities has completely changed by enabling the appearance of new commercial quarters, industrial districts or habitat. Municipalities use registration information on titled land against unlawful or doubtful land use. Thus, the state

land tenure furnish an economic fact, which makes it possible to standardize the urban development. In Egypt, Sudan, Tunisia, and Algeria, the state land tenure is the basis of conducting national debates on land policy for more efficiency and sustainability in increasing the inhabited areas, building new settlements, and founding mega projects.

Table 1: social development indicators

	Algeria	Egypt	Mauritania	Morocco	Tunisia	Sudan
Formal titles	■ ■	■ ■	■	■ ■ ■	■ ■ ■	■
Milk	■	■	■	■ ■	■ ■	■
Waqf / Habous	■	■ ■	■ ■ ■	■ ■	■	■ ■ ■
Collective	■	■	■ ■ ■	■ ■	■	■ ■
State lands	■ ■ ■	■ ■	■ ■	■ ■	■ ■ ■	■ ■

Legend: ■ Efficiency
■ Equity
■ Sustainability

5.2- Land tenure and land market

At the economic level, land rights are critical determinants of the investments. A World Bank report shows that the greater security associated with registered titles permit to bring the level of investment closer to the optimum and increase the value of land by almost 30% (World Bank, 2003). Secure land ownership and land clearly defined can be controlled and legally transferred. This will enable increasing the supply of credit from formal credit system. The inadequacy in managing and administering the land tenure such as lack of cadastral mapping, inexact titles, and inaccurate land information pose severe constraints on land transactions, land consolidation, and property taxation.

In the region of North Africa, the whole countries are very aware of the importance of rationalizing land use and land management to meet the requirements of the new market economy. According to the theoretical principles of the land tenure systems in Northern Africa, one could conclude that all categories of economic operations are certainly ensured for the formally titled lands and private lands “Milk” (Table 2). They are more suitable for land market transactions. The operations related to the other land tenure forms vary from country to country. According to Terranti (2003), there is lack legislation governing land transactions in Algeria.

Table 2: land market transactions

	Selling	Lease	Mortgage	Inheritance	Transactions
Formal titles	Yes	Yes	Yes	Yes	Formal and Informal
Milk	Yes	Yes	Yes	Yes	Formal and Informal
Habous/Waqf	Yes, under conditions	10-20 years	No	Yes, for usufruct only	Government
Collective lands	Yes, under conditions	Yes	No	Yes, for Usufruct	Internal
Private state lands	Yes	Yes	No	No	Government
Public state lands	No	No	No	No	No

The “habous=waqf” lands, the collective lands and the state lands create many obstacles to land transactions. Currently, four countries, Algeria, Mauritania, Morocco, and Tunisia are implementing strategies to facilitate the mobility of lands especially in the irrigated areas in order to increase land productivity. A privatization process of the collective lands has been launched to allocate more resources for farmer investors and control the subdivision of the small parcels (less than 5 ha).

6- Conclusion

The goal of this paper is to provide scientists and policymakers with an inception study for highlighting the behavioral aspects of land tenure systems in Northern Africa. The driving forces behind are the new customer needs, the new global changes around the world, the technology evolution, and the state requirements. The needs of the individuals and the society are significant and should be dealt with great and specific attention. The major demand of many customers is the system efficiency, which means the ability of the land tenure system to determine exactly their properties and provide in a short time the related ownerships. The global changes affect, on the other hand, the nature of the land policy to develop. Serious efforts must be conducted to improve the certainty of land rights and the security of tenure. Under the globalization, the land tenure should serve the on-going reforms around the world and serve the urgent requirements of land and territory planning to support international and national investors. In North Africa, a new vision must be developed to increase security on land and to allow its use with respect to local land formalization regarding obligations and restrictions. The current technology has seen major increases in different domains. The land tenure management system is concerned by these new technological improvements. Varieties of instruments will in the future accelerate the processes of surveying, land titling, registration, and mapping.

The State, as a primary landowner, needs to establish an efficient system to increase the security on land and facilitate land administration. This will allow for monitoring of land market, the improvement of planning in urban and rural areas, the regulation of legal framework and statutes of land, and the introduction of new technology to maintain land reform such as redistribution, consolidation, valuation, and assessment. Recently, many economic operators are facing enormous difficulties in their investment projects related to the lands and properties. The difficulties can be summarized in the diversity of the land regulations and the bureaucratic management of the real estate by several institutions. But, the land tenure forms developed throughout the history have supported the social stability in the history of the North African countries despite their diversities. This effect can be noticed by the role of the collective lands, habous lands, or the public estates in ensuring the individual ownerships around the large farms of the communities. Their characteristics of being non-transferable can be seen as a same coin of two sides. They can be considered as a crucial form of protecting the families against the dispossession of their lands. They also could be a serious barrier of the development projects because of their diversity. The form of the estate warranty as instituted by the formal regulations is expensive and time consuming.

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