

**The Commission for Legal Empowerment of the Poor**

**Legal Empowerment of the Poor – Property Rights**

**Report Prepared by**

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## **1. Introduction**

The subject of property rights is of great importance in every society, as it affects in many ways the lives of its people. However, the most affected group could be the poor. This paper aims to review the legal status of property rights of the poor in an attempt to identify the main obstacles against securing the said rights and coming up with relevant recommendations. Logically, the focus of the paper was on the laws dealing with ownership of non-movable property (real estate) as such ownership requires specific legal procedures that would enable owners to secure their ownership, on one hand, and enable them to utilize the same in various ways on another.

The content of this Paper was discussed with concerned parties including government officers at the Land Department, the Department of the Supreme judge/ *Shariaa* Judges, the Jordan Valley Authority, the Ministry of Agriculture, Agricultural Credit Bureau, in an attempt to have a realistic assessment of both the obstacles identified and the recommendations proposed.

## **2. Executive Summary**

In Jordan, ownership rights are governed by a number of legislations and are subject to different formal procedures. Such legislations and formal procedures would usually add complexities to the property of the poor, or what the poor perceive to be their property. More importantly, the poor may find themselves in a position where they have to prove and probably incur expenses to prove their ownership of the property. Such difficulties usually appear during the settlement process of lands in accordance with the Settlement Law for Lands and Water.

On the other hand, the Government through a number of legislations introduced mechanisms to enable the poor to own a land or a house. This comes in supporter of the poor through introducing different schemes which are designed to provide land and housing to the poor for no or minimal cost.

*The paper concludes that enforcement of property rights of the poor is mainly a matter of knowledge and compliance with the legal system in place. In practice, such system may not be user friendly to the poor for various reasons including social pressure, lack of knowledge, lack of financial resources, lack of legal aid and lack of access to information.*

*The paper also concludes that women may be more vulnerable to obstacles affecting protection of property as in many cases women may, due to social pressure or lack of knowledge, waive their rights in any estate or property to the favor of the male members of the their families.*

## **3. Legal Empowerment of the Poor – Property Rights.**

*“...Because the Agreement of disposing off the Land was signed between the Plaintiff and the Defendants before the Officer of the Settlement of Lands, the Agreement may not be nullified by the Plaintiff and her right will only be limited to the amount of Money stipulated in the Agreement....”.*

The above was a quotation from a ruling by the Jordanian Court of Cassation. The ruling is in line with the Laws in effect to date with regard to the enforceability of Agreements between parties thereto. The Court basically ruled that agreements on Settlement of Lands that were signed before the competent officer for Settlement of Lands may not be nullified and shall be enforceable. The Case was filed by a woman against two male members of her family. The Plaintiff demanded cancellation of the Settlement Agreement that she had signed in front of the Settlement of Lands Officer on the basis that the Defendants did not pay her the value of the Land. The Court ruled that the Plaintiff may not cancel the agreement and her right would only be limited to getting paid the price of the land as stated in the agreement.

The above case, and other similar cases, raise several questions: Why would a woman files a case to nullify an agreement that he had entered into? Did the woman sign the agreement for the sale of land, willingly? Was the Woman in a position to have a proper valuation of the Land before agreeing on the Price? Was the price of the land as stipulated in the agreement, fair as to the value of the land? Was the price of the land paid to the seller, i.e. the woman?

*A woman form the countryside in the northern part of the Kingdom complained that after few days of her father's death she was a victim of tremendous social pressures to sell her shares in the inheritance to her brothers without even knowing the market value of the inheritance. Not only this, but she pointed out that in most such cases the women are not paid for their shares whether in real estate or other forms of ownership.*

#### **4. Movable and Immovable Property:**

Property can be categorized under Jordanian legislation as **movable and immovable property**. This distinction is important to identify the requirements for protecting ownership of each type as well as the legal actions applicable to the same.

#### ***4.1 Ownership of Movable Property***

Immovable property is defined under Jordanian legislation as anything that is fixed and constant in its place and cannot be moved therefrom without damage or deformation, and anything else is movable property. For the vast majority of movable property, there are no formal registration procedures that are required for proof of ownership and said property can be freely exchanged and traded without formal registration. The general rule adopted by the Jordanian courts in proving the ownership of a movable property is that (Possession of movable property is considered as a proof of ownership).

#### ***4.2 Ownership of Immovable Property***

The legal status of immovable property is more sophisticated than the movable property. Also, the legal requirements in relation to each type of immovable properties would differ depending on various factors; nature of the immovable property, location, size and use of the same.

### **5. Property Rights in the Jordanian Legislation:**

The Jordanian Constitution of 1952 clearly states that all Jordanians are equal before the law without discrimination in their rights and duties, even if they differ in race, language or religion. Private Property is protected under the Jordanian Constitution, whereby no Private Property shall be acquisitioned except for public benefit and in return for fair compensation.

Moreover, the Lands and Water Settlement Law for 1952 aimed to achieve the settlement of all rights of disposition or the rights of ownership or the rights of usufruct in the lands and water in the Hashemite Kingdom of Jordan whether such rights were recognized or disputed. Under this Law, the Director of the Department of Lands and Survey can decide on the commencement of the Settlement works of lands or water in any area (to be known as (Settlement Area). Such decision would be published in the Official Gazette and includes all the details of the settlement of the lands or water as the area of settlement and the date of starting the settlement.

When the proposed date to start the settlement is determined, those who live in the area where the settlement will be taking place shall be informed about such settlement by a public announcement, which is referred to as (Settlement Announcement). According to the Law, all persons who claim to have a right of usufruct or ownership or disposition or any other related rights in the land shall submit their claims and any supporting documents to the authorised officer who shall investigate such claims publicly and according to the agreed methods.

After checking all the claims submitted by those living in the settlement area, a "Schedule of Rights" shall be prepared including the rights of all parties who are affected by the settlement work. When the settlement process is completed, the proving of ownership and any other actions relating to the settled immovable property becomes subject to the procedures of the Department of Lands and Survey. ***All actions taken otherwise shall be null and void if taken outside the Department of Lands and Survey.*** It is worth noting also that the Law states that contracts of crops sharing and lease contracts relating to a settled land should be registered in the Department of Lands and Survey, and the Court shall only deal with registered contracts".

***Ahmad is a villager who owns 6 dunms of land outside the city of Ajloun. The municipality decided to construct a new road. 1.0 dunms of Ahmad's land has been used for the purpose of constructing the road. However, he was not compensated for that because the Settlement Law states that if the settled area is less than 25 percent of the owner's land, then there will be no compensation as this part is used for the public interest.***

In this regard, it is useful to review some of the decisions of the Supreme Court relating to the subject: (i) "It is required for any contract relating to an immovable property to be registered with the competent Land Registration Department pursuant to the Jordanian Civil Code, the Lands and Water Settlement Law and the Disposition of Immovable Property Law, otherwise such contract shall be null and void and ineffective. Any relinquishment of ownership issued by the heirs of a dead person shall be null and void before its registration in the competent Lands Registration

Department"; (ii) "If the land is settled and a registration ownership bond is issued, such bond could only be challenged for forgery".

From the above review, it would appear the procedures for protecting an ownership of a land are clearly regulated in accordance with the Law. Dispute procedures are also available and specialized Settlement Courts are established for said purposes. ***However, the processes of Settlement of Lands depend on the people themselves who must submit their claims, prove their cases and oppose any challenge thereto.***

***For the Poor to comply with the Settlement of Lands Law including filing the required documentation, filling oppositions and appealing to the competent court within the time lines stated in the Law, would involve costs, time and in some cases, professional advice, that are unlikely to be available to the Poor.***

In line with the provisions of the Law for Settlement of Lands and Water, the Disposition of the Immovable Property Law for 1953 provides that all disposition transactions relating to public lands, dedicated lands, private lands, municipality building tax (musaqafat), and the authority to issue official bonds relating to such transactions ***shall be confined to Lands Registration Departments***. This reconfirms the provisions discussed earlier in the Lands and Water Settlement Law with regard to the disposition of immovable property.

However, with regard to the proving of ownership of immovable property, this Law provides that ***Registration Bonds issued by the Department of Lands shall be accepted by all Religious and Regular Courts, and all Government Departments without any further need to provide supporting evidence to the contents of such bonds, and such bonds shall not be treated as null or be corrected unless according to the Laws of Lands Settlement***". This undoubtedly emphasizes the conclusiveness of registration bonds, which amount to the level where it restricts the authority of Courts in proving the ownership of immovable property and confines all claims regarding such bonds with what has been already discussed in the Lands and Water Settlement Law.

As part of the legal materials mentioned above, it is necessary to address the Management of State Property Law for 1974, which includes the mechanism of State property delegation for all purposes including agricultural and housing purposes, which are subject to the conditions set forth in said Law. Under this Law the delegation and lease of State property shall be done according to the following priorities: (i) *Agricultural Purposes*: farmers who are engaged in agricultural work and they do not have the property registered in their names and usually reside in the area where the land is located and (ii) *Housing Purposes*: the delegation of state property for housing purposes within the organized areas or municipal areas in return for its market price for any person or his/her spouse who does not own a house and resides in the same area where the land is located and who is responsible for supporting his family, in such case it should be noted that every person is entitled for one delegated land.

It is noted that the legal status of the process of delegating the land according to the provisions of the Law is similar to the process of granting ownership of the land except for the restriction imposed on the disposal of the delegated lands before the lapse of (10) years from the date of registration at the Department of Lands Registration. In fact, the (10) year restriction protects ownership of the poor against the pressure that can be exercised by wealthy individuals who may attempt to purchase those delegated lands at cheap prices, thus relinquish the purpose of the Law.

Finally, it noteworthy that Jordan Valley Authority Law for 1988 provides for the possibility of allocating lands in the Valley to the Poor; Article (22/2) of the Law states: *"Farmers who work in agriculture in the valley and who do not own agricultural lands may be allocated, once only, an agricultural unit from the lands owned by the Jordan Valley Authority if available, and Article (23) of the Law states: "The Board of Directors of the Jordan Valley Authority may allocate to Jordanian Nationals who resides in the Valley and who do not own lands within the residential areas, residential land units from State owned lands and on an area not exceeding (1500 sqm), taking into consideration the size of the family of those benefiting from such allocation and according to the priorities and foundations set by the Board of Directors and approved by the Council of Ministers including the methods of payments for such units".*

## 6. Notes and Conclusions:

1. The Jordanian Constitution guarantees the right of every Jordanian for private ownership without discrimination between any types of ownership or between the individuals themselves. Furthermore, the Constitution clearly provides that no private property shall be acquisitioned except in the cases which serves public interest and in return for a fair compensation.
2. The ownership of movable property is proved to its owner through possession according to the general doctrine that possession of a movable property is a valid proof of ownership by the possessor.
3. The ownership of immovable property is subject to formal procedures which affect the rights and actions on such immovable property, depending also on the type of such property, size location and the like. The decisions of the Jordanian Courts are unified on nullifying all transactions relating to immovable property inside the settled areas if said transactions were not affected by the competent Land Registration Department.
4. In this context, it is apparent that the settlement of those rights relating to lands included in the settlement process requires the adherence to specific procedures and dates specified in the law. Furthermore, it can be observed that such procedures could place obstacles to some groups in the Society who either want to recover or reaffirm their rights on lands which they occupy or use.
5. The procedures for claiming the ownership of a land or objecting such ownership by others might not always be fair as a result to different social factors or influence
6. Common cases of social pressure on women are the Assignment of Rights (Takharouj) among heirs where women could be compelled, to sell in full their

shares in the inheritance to their male relatives without even knowing the worth of the Estate itself.

7. In addition to the above, the process of Settlement of Lands could last for long period as its procedures are subject to the authority of all degrees of Courts as indicated in the Lands and Water Settlement Law.
8. It is believed that Land settlements needs to be more frequent, especially that ownerships outside the settled areas is considered in terms of guarantees and value lower than those ownerships in the settled areas. In this regard it should be noted that the Council of Ministers issued a recent decision on 26/3/2006 to put on hold any new settlement processes until the completion of the Map for Lands Uses in the Kingdom. I believe that the completion of the Map for Lands Uses in Jordan is extremely helpful as it enhances people's knowledge on the value of their lands and thus minimizes the risks of them being deceived by influential parties. However, I believe that such process is long overdue and therefore should be expedited in order for settlement works to be completed without further delay.
9. The importance of having access to lands whether for housing or agriculture, has been and remains a major challenge to the Government. The Articles of the Management of State Property Law included the possibility of delegating State's lands to the poor for the purposes of housing or agriculture. However, it is perceived that the mechanisms and foundations of delegating such lands need to be activated, and more importantly, work need to be started on encouraging those who live in less fortunate areas to take advantage of such lands which could become a growing source of income for them..
10. In addition to the above, the relevant Laws permit the use of delegated lands as collateral for loans provided to the owners of such lands. In this regard Credit Corporations (public and private) should participate in an active role in developing suitable programs for small projects as a way of fighting poverty and unemployment.

11. The (10) year restriction period provided in the Management of State Property Law can be considered a protection for Poor land owners against pressure that can be exercised by influential or wealthy land owners who are interested in said acquiring said delegated lands.
  
12. Finally, the issue of property prices is of great significance for the poor who do own a property. In many cases where the States decides to invest in some areas or reorganize the use of lands in certain areas, property prices would typically appreciate. However, it was noted in a number of cases that information on such Governmental Plans would be leaked to certain influential or connected people who would in turn acquire said lands from their original owners before the announcement of Governmental Plans. Therefore, both Transparency and Confidentiality in this respect should be observed and the Government is encouraged to put in place mechanisms to stop such actions to ensure fairness and equal opportunities to all citizens.

## **7. Recommendations:**

1. Utilize the opportunities available under the Law of Management of state Property for delegating lands to the Poor. Efficient utilization of said opportunities require that relevant government departments reach targeted segments of the society and educate them on the available opportunities to own a land and benefit from the initiatives that support land owners to utilize those lands.
2. Expand initiatives to support farmers and land owners to benefit from grants available by governmental departments. In this regard, relevant government departments must enhance their efficiency in collection of accurate data and follow up on progress.
3. Expedite and complete actions from the Settlement of Lands in the entire Kingdom. This may also include simplifying the procedures for objections and appeals that would consume time and effort that are not available to the Poor.
4. Increase awareness of the Poor of the Laws governing Property in order for the poor to make use of the rights extended under said Laws and on the other hand, protect their property against loss for non compliance with said Laws.
5. Ensure Transparency on Government Plans that would typically affect the value of the Property in order to minimize Deception against the Poor by Influential Parties. In this Context the Map For Lands Use that was referred to in the Cabinet recent Decision in 2006 is a step towards the right direction and should be expedited.
6. Put in Place mechanisms that ensure fairness to the poor and Women in the Settlement process of lands to ensure that the Poor, especially Women are not subjected to social pressure that would waive their rights as a result thereto. A possibility for this is to have as a precondition an Independent Assessment of

the value of the Property before any Assignment of Right is affected (Takharouj).

7. Encourage Public and Private initiatives that would enable the Poor to utilize their Property or the Property that they can acquire through the Management of State Property law, the Housing and Urban Development Corporation Law, the Jordan Valley Authority Law and the like.