



LEGAL EMPOWERMENT OF THE POOR

PROMOTING PROPERTY RIGHTS OF THE POOR IN EGYPT, DILEMMAS AND SOLUTIONS

EMPOWERING THE POOR TO DIRECTLY ACCESS REAL ESTATE PROPERTY RIGHTS

[UNOFFICIAL TRANSLATION]

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Introduction:

Ensuring individual ownership is one of the most important social requisites that have been safeguarded, respected and protected by all divine religions. However, achieving such protection, while guaranteeing the desired balance and harmony between the prerequisites of individual ownership protection and the needed requirements to perform its social function, has always been a target that people are striving to achieve.

This is due to the fact that organizing ownership right and the manner of protection hereof is one of the most intricate issues in any existing society upon which many disputes arise and is governed by many cross-cutting and sometimes contradicting considerations that are extremely impossible to reconcile in many countries.

This research paper aims at exploring acquisition and practice mechanisms of ownership right within the framework of the Egyptian law with a view to identifying the possible legal or physical obstacles and attempting to pursue mechanisms to smooth away such obstacles in general and for the poor in particular.

Thus, this paper is divided into 3 sections. The first section deals with the characteristics, elements and scope of property right in light of the evolution of the contemporary legal status especially the new constitutional amendments which affirmed and legalized the reality of transformation from the socialist system which ensures and promotes the right of all individuals to own wealth. The second section of the paper tackles the ways and means of registering and protecting the property right and the general hurdles facing it, while the third section focuses on the obstacles that face the poor in particular and finally, the paper outlines the mechanisms proposed to overcome these obstacles.

It is worth mentioning that this paper focuses on the property being the most important financial assets for growth and development. Indeed attestation of property and settlement of disputes represent one of the most intricate issues in the Egyptian urban and rural areas. Choosing the poor to undergo a special application concerning the obstacles to ownership acquisition and practices is due to the fact that they are the most vulnerable category. Thus, exit from this poverty cycle is difficult as far as protecting and attesting such rights is unattainable.

First section: Property right in general: Legality and Definition.

First: the basis of property right legitimacy

According to the individual approach, each one has absolute rights to ownership whereas under the socialist approach the state is the sole owner of all means of production. From these two approaches, a third mixed approach which revolves round the social function of the property right emerged in an endeavor to overcome the disadvantages of the two approaches. The Egyptian legal system swung between these approaches like so many other comparative systems. This fact is evident in the identification of property right in the current civil law which stipulates that "the owner solely, within the limits of the law" shall use, utilize and dispose of the property. Under the socialist system, the 1964 or 1991 constitution articles stipulate that private ownership shall be represented in the unexploiting capital. Capital and the law shall organize the performance of its social function in the service of the national economy within the framework of the development plan without deviation or exploitation. The ways of exploitation should not contradict with the general welfare of the people. Thus, private ownership is safeguarded.....It may not be expropriated except for the general good and against a fair compensation as defined by law. The right if inheritance shall be guaranteed in it.

From this premise, the rulings of the Supreme Court and the constitutional court and according to the social function of the ownership right, preemption has become one of the legitimate justifications for the right to own.

However in light of the change to the open market economy and the latest constitutional amendments, the abandonment of the socialistic system as a basis for the economic system of the state must have a direct impact on regulating ownership right as open market economy carries new traits that involve a developed concept of the social function of ownership right . Thus it is incumbent upon jurist and judges to rethink the philosophy that governs its protection and means and mechanisms to enhance it in view of the pressing need of the poor to understand it.

Islamic law has reaffirmed private ownership in response to man's instinct to possess. Islam also has reaffirmed women's right in inheritance. The prophet's followers have clarified the sanctity of this right as it expounded in the Qura'an and sunna.

Ownership right: traits, elements and scope

Property right is the largest of the rights in rem that entitles the owner to all the authorities specified.

1. Property right traits:

Ownership is a comprehensive right. It gives the owner all rights on his properties. The proof of ownership by legal means is the only thing required for the owner to practice his authorities over what he owns. However practicing property rights does need a proof. Therefore, he, who claims sharing the owner in his authorities, has to prove such claim. At the same time the property right, being comprehensive means that all branched or related rights thereof that may be decided for any party other than the owner have to be on temporary basis.

Moreover ownership is exclusive. It is confined to its owner and it is not permissible for any one to share it or interfere in it unless provided for by law or according to an agreement. Therefore, the right of ownership is associated with property that establishes the good as being "one's own thing" in relation to other individuals or groups.

Ownership is also a permanent right, as it is associated with the right and not with an individual. Hence, ownership remains, whether it is left, negated or not used.

Elements of ownership right:

This right authorizes the owner to exploit it, use it or dispense with it. There is not much distinction between exploiting and using. The owner uses the property, while others exploit the property. The owner might damage the property, but others are required to safeguard what they exploit since they are not the owners. Moreover the owner can use what he owns in whatever manner he or she sees fit whereas the non-owner is committed to use property according to law..

In addition authorities to operate properties, the law allows the owner to dispense with his or her property he owns by transferring ownership partly or in its entirety. Thus no restrictions are imposed upon the owner unless what the law stipulates.

2. Scope of ownership:

Scope of ownership extends to the essential elements of the thing owned. Thus if what is owned is land, then property includes the surface, what is under and what

is on the land. It also extends to include the annexations,, the fruits and the land products.

Ownership acquisition justifications:

Articles 870 to 984 of the civil code define ownership acquisition justifications. We shall herein tackle the acquisition of property and in the second section we will discuss in details the obstacles that face verification and protection of ownership right.

Taking possession -of a non-owned property whether uncultivated or non-built land by one of the citizens , then he or he cultivated or built it., and continued using it for a long time – is the first reason or justification of ownership acquisition which protection faces many difficulties.

Inheritance is considered one of the most important justifications for property acquisition with least problems in verification, as the inheritor becomes the new owner according to the shares declared in the inheritance declaration.

As for a threat which is an arrangement for the holding or controlling of property for someone after his death. It is standard practice that the original owner of the property sometimes delegates one of inheritors to control the holding and utilize it for the entire holder's life.

The Will is adjunct to the inheritance, which means the legal disposition of a person for a non-owner gratis, provided that it is implemented only after the death of the testator, and also adjunct by the act concluded by the owner to one of his heirs to retain eye possession disposed and the right to benefit for life.

Adherence represents one of the causes of gaining private ownership only where not lapsed on a transferee, where they are linked to two major foundations that concerns the property without regard to the transferee, the first is linked to the fact that the owner of the land owns what is within and above, and the second is associated with the possibility of standing on the property without causing damage.

The contract represents the most important cause in gaining ownership, and the most problem maker in the property, where the law prohibits transfer of ownership of property and all rights in rem associated with the property only through one route, which is the registration and proclamation provisions and procedures outlined in the law regulating the property, which are the provisions and procedures that represent the largest stumbling block in the face of the acquisition of citizens in general and low-income people in particular to the ownership of property.

Preemption is also a special cause to gain property ownership, which aims to ensure the standardization of authority ownership in the hands of one person, and seeks to overcome many of the problems that might arise from neighboring tightly.

Tenure is also one of the most important property ownership acquisition for the low-income and poor people since the law states that property ownership could be gained by the long possession of the property (15 years) or short one (5 years) in case of good will. The State public property is not subject to tenure and this applies also to corporate persons or economic units of the institutions or public bodies or charitable Endowments, which may not earn any kind of right on these funds by time.

Section II: Establishing and protecting the right of property ownership: mechanisms and constraints

First: Mechanisms for the protection of the right to property ownership:

Constitutions of countries that adopt a free economy system reaffirm the imperativeness of protecting public and private property ownership right and organizing various means and mechanisms for such protection.. These laws have looked at providing mechanisms to prove property rights and resolve disputes over those rights to ensure the rights of individuals without infringing on the rights of others or the State. Those laws also organized cases where those rights are ripped-off and curbed into the goal of the general benefit of society as a whole. In these cases, those laws have drawn methods to compensate rights holders. Means of protecting ownership rights are confined within two matters: entitlement and conditional forced dispossession.

The entitlement lawsuit: is the lawsuit in which ownership of the property in dispute is being claimed and all claims held by the owner for properties in the hands of others can be used in this case usually the defendant in this case is the extorter holder.

Usually the property owner does not demand the recovery of property if the money is in his possession and under his hand. In this case, he may use another lawsuit called the pretext which is one of the three tenure lawsuits. Perhaps the most important characteristic of a lawsuit accrual is that it is no statute of limitations, for they are permanent entitlement, and therefore may be used to claim ownership at any time, even after the long period of limitation (15 years).

The issue of property ownership proof is one of the most intricate matters especially when improbable on a property, where the onus of proof is on the defendant. The hardship is that the law knows only one title to show proof of property ownership in a direct and decisive way, namely registration, only in addition to the limitation or short-term gain recognized by law as a means of transfer of title to property, and thus was considering these routes the significant technical evidence to prove title and beyond that there is nothing more than hear evidence. The ownership deed and the property tax certificates are also tangible ownership proofs to be presented especially when the property is contested by time parties or owners. Property negotiation is also difficult to achieve since there are many agencies involved in this process. Thus the need for property negotiation has become vital in the inability of the poor to protect their property ownership at the time when there is a high demand on land in both urban and rural areas. The growing demand on property is due to the rapid urban growth , as the citizens in general and low-income people in particular, are unable to protect their property due to the absence of documents proving this right or to the difficulty of proving that right, which leads to a continuance of these groups to exist in the poverty cycle.

With regard to the protection of the property rights of citizens and the non-expansion of the scope of exploitation of the forced expropriation right guaranteed to the State under the Constitution. Systems of both development planning Law No. 3 of 1982 and Law No. 10 of 1990 regarding the expropriation for the purposes of public benefit. The Development Planning Act of expropriation of property for the purposes of planning has defined the criteria and principles under which expropriation can be

conducted in accordance with the guarantees, provisions and procedures of the law regulating expropriation in the public interest and in which a decision by the Ministers' Cabinet is taken. The law also limited the way the property and property are covered by the draft text of the expropriation law. The law stated that owners and rights holders are eligible to compensation for their land located in the region covered by the project, based on the value at the time of estimation through a special committee constituted by the relevant governor and notifying owners by advertising. The law also regulated the right of appeal to owners and occupants of property and rights holders on those resolutions.

The Law No. 10 of 1990 on the expropriation of property for the public interest was drawn to emphasize the Urban Planning Law that stated that the identification and enumeration of establishments and properties that is needed for the public interest shall be decided according to a committee chaired by the body performing the procedures for expropriation and which is the Egyptian General Authority of Survey in addition to the local administration.

The compensation shall be determined by a committee constituted in each governorate by the Minister of Public Works and Water Resources and a delegate from the Survey Authority as president, and a delegate member from each of the Department of Agriculture and Department of Housing, Utilities and the Directorate of property taxes in the governorate. The compensation is estimated according to the prices prevailing at the time of expropriation (and estimated according to the sale contracts of the lands adjacent to the lands which will be owned and registered at the registry office at the Ministry of Justice.

This last step of estimating fair compensation for landowners and rights holders is one of the most real problems that face the affected owners and rights holders after the poor in degraded areas in obtaining their rights, where most owners and buyers state lower values in their sales contracts than the real price in order to avoid payment of fees and the amounts assessed for the registration, which was defined as a percentage of the sale price. This has led to the inability of many of the poor to get the real value of their property, especially with their inability to resort to legal channels to challenge those estimates due to their ignorance of procedures followed in this regard (whether the legal period specified to challenge those resolutions or who should the

complaint be submitted to), or their inability to bear the financial burden required by the lawyers to defend their rights.

Second: Proof of ownership:

Despite the presence of many laws that confirm the right of ownership, but the issue of proving ownership or resolving disputes concerning it is one of the most complex issues in Egypt, whether in urban or rural areas as a result of the weak property registration system, its ineffectiveness or the diversity of regulations, laws and procedures for documenting property or legalizing possession and the conditions that lead to the need to obtain approvals from several agencies and governmental bodies, as well as the high cost of documentation or proof of right especially for the poor and low-income people, in addition to a number of other constraints, at the foremost the unawareness of the steps and procedures to be followed or the length of the litigation period to prove that right. The following paper presents the patterns of tenure and ownership in rural and urban Egypt and the constraints that face citizens, particularly low-income citizens to prove or documenting property or possession or resolving the dispute concerning their properties.

1. Patterns of Ownership and Possession in Egypt:

According to the constitution, there are 3 types of ownership: private, public and co-operative in addition to other forms of possession or ownership related to the governing laws and legislations.

Those types can be recapitulated to private property, which is documented or recorded, and which its ownership could be circulated among individuals and institutions as identified by the Islamic Sharia for the method of inheritance and on which the foundations of civil law are also invoked under which property is distributed among those who have the right of inheritance. This way of distribution over many generations and the lack of clarification or accurate documentation of properties that has led to the apportionment of properties and the disintegration of those lands and properties over a large number of owners and rights holders. Then comes the public ownership of the land secondly, which gives the State the right to lease, sell or dispose of those lands, whether for individuals or others. Finally comes the endowments, which includes land and property subject to a system of endowments for long periods of time for charitable, religious or the inheritors' benefit. The

management of those properties is transferred to the Ministry of Religious Endowments.

In addition to those main types, there is the special customary ownership of lands situated in border areas. A range of specific ordinary citizens such as nomads or Bedouins who claim those territories without any formal documentation that proves this right benefit from this ownership. The civil law also defined the right of tenure as one of the branched laws of property rights to protect the rights of various groups benefiting from these acquisitions especially the low-income. The process of seizing state land, especially in desert areas outside the reins for land reclamation, residential construction or for work is considered one of the recognized forms of tenure under specific legal terms, which the government is currently trying to consider for codifying in order to avoid legal problems related to guaranteeing the rights of the state and the users of those lands, despite the existence of several categories of beneficiaries or exploiters of this situation and who are not necessarily of low-income.

2- Documentation and Registration of property ownership rights in Egypt- General Background

Two main two bodies concerned with the registration process of property in Egypt are: Property registration office affiliated to the Ministry of Justice, which has since its inception in 1946 been responsible for the registration of property, and the Egyptian General Authority for Surveying affiliated to the Ministry of Irrigation and Water Resources, which historically is responsible for the registration of documents or ownership contracts (from both a legal and technical point of view) since 1924, but starting from 1946 it became responsible only for cadastral mapping. In addition to those two, there is a third body which is property tax department of the Ministry of Finance, which has an indirect role in the process of keeping records of the property tax base.

According to the Egyptian laws, there are 2 systems for registering property ownership in Egypt; actual or real registration, which is applied in rural areas on agriculture land and is administered by the state. The second system is registering or recording contracts or ownership deeds and is known as the personal register regulated by Act No. 142 of 1964 which has been applied in the rural areas of agricultural land and is implemented by the state, and a registration system or

codification of contracts or titles known Personal Register and regulated by Law No. 114 of 1946 which has historically covered the entire state, But since the introduction of the registry-kind, the scope of competence was only implemented on the urban areas and despite the passage of that law in 1964, but the actual implementation was not until 1976 issuance of the executive regulation of Law in late 1975. In spite of the laws of either kind, there is no obligation to the registration process, and the process is voluntary or optional.

According to estimates of the Egyptian General Authority for Surveying, the registry system covers a ratio exceeding 80% of the total agricultural land through a serial number for each unit of ownership signatory to the Cadastral maps while there is still 20-30% rate recorded in the tracking system of personal records (based on sales contracts or the purchase of data and numbers of those contracts as a basis for registration).

According to the ministry of justice statistics, there are 13 million personal registration contracts and kept by the property taxation directorate.

The actual number of registered personal system ownership is limited due to the following reasons:

- Random spread of growth in both cities or villages where an estimated growth in the Greater Cairo is more than half of urban development since the 1960s of the last century
- The high value of registration until recently (where it represents 12% according to the Law No. 70 of 1964 then reduced by Law 6 of 1991 to 6% and then to 4.5% in 2002 and 3% in 2005 and finally a law No. 83 of the year 2006 identified a maximum of 2000 pounds as administrative fees to perform the service), which in addition to taxes of the selling and buying process imposes an equivalent of 2.5% of the value of sales on the seller or owner of the land.
- The extremely complicated procedures and the lengthy period of registration.
- In addition to the previous reasons, the absence of a legal mechanism to regulate the registration process of housing units within the Land Registration framework is one of

the current obstacles to the registration system where apartment buildings consisting of several units are the controlling type of buildings in Egypt

Despite all the personal registration system problems, the actual registration system suffers from some drawbacks and obstacles. The actual application of this system on property ownerships (primarily the agricultural land) is not reflected in the actual possession of these ownerships today since the actual registration system depends on transferring the contracts or registered deeds available in the survey authority for land sale to determine the land ownership. These contracts were not updated or not sold or divided among more than one owner after the date of registering of contracts.

Accordingly, in most cases the old owner of the land is the divided the land and therefore the new system becomes ineffective and has nothing to do with reality, but it represents a starting point or departure for a more accurate and efficient system. A recent study has shown in the village of Abrahamia - Damanhour Beheira governorate that only 24% of the total recorded land registry system reflects the real situation of current properties.

3. The difficulties that the citizens encounter in property registration:

The registration procedures followed in the personal record registration are divided into two phases:

The owner or applicant submits an application to the property registration office which the property is affiliated to in the first phase along with a file containing the original application for registration and 4 copies of the selling contract that needs to be registered and data about the area where the property is located, its boundaries, the names of the seller and buyer and the sale price and any data on the existence of a debt or mortgage on the property, or a contract the available evidence on the original ownership of the property in case of circulation more than once.. The file also includes a formal notification from the property taxes department for the registration of the property and that the taxes have been paid along with the building license in case of registration for the first time.

Accordingly, the director of the property registration office examines the application which is later entered in the registry book in case all the required documents are in the file.

A copy of the file is then sent to the General Authority of Survey to examine the file to make sure of its location and its size. After the payment of all the fees required, the authority specifies a date to meet the owner (usually within one week of receipt of application with a possibility of delay until 3 weeks). After conducting its survey, the authority later sends its estimate of the results to the property registration office in the form of a renewal report. Accordingly, the Property registration office begins reviewing the application from the legal point of view to ensure the possession of the owner to the property and the absence of any errors in this regard.

It should be noted that in case of any error, deletion or if the data is not clear (which normally happens as a result of the adoption of the Property registration office and Survey Authority to the manual system), the procedures are disrupted until the error is corrected where the file is returned to the owner or the applicant, which causes the disruption of the registration procedures for long periods of time, although the law stipulates that the maximum duration for the completion of the registration procedures and registration take no longer than 30 days. However, this period is not invoked until they verify that the file is complete and that all existing data are correct. In addition to that, in the case of detecting any error during the legal review by the property registration office, the procedures will therefore stop and the applicant loses the costs of surveying the property. Therefore, it would be appropriate in the future that the reviewing process precedes the survey.

Once the documents required are completed, the file is returned to the applicant to prepare a draft of the legal contract (contract Verde) with the same date and later to be documented by the Egyptian syndicate for lawyers after which the green contract Verde is returned to the property registration office to approve and stamp it as a contract suitable for registration and announcement. Then both the buyer and seller sign the contract at the registration office after all fees are paid.

The second phase is represented in the documentation and announcement process itself when the owner returns the signed and stamped contract to the property registration office for revision and in case of final approval, the contract is documented or registered. According to this step, the ownership rights are

transferred from the owner to the new buyer and a copy of the contract is given and another copy is kept in the registration office.

Accordingly, the registration process takes a period of time ranging from 3-24 months between the property registration office and the Survey authority and contains many complex steps within which the registration process can be halted and resumed again from the starting point, as well as consuming relatively large sumo of money until recently. In addition to that, there is a large number of cases, whether in rural or urban areas, which would be difficult to register (random of illegal properties, or the inability to access the first registration of the property, the inability to separate or divide the property among heirs, thereby hindering any attempt to a clear comprehension of the proof of ownership), and even in the case of the ability to overcome those obstacles, the registration process in this case will take time and cost much more than what has been described previously.

This complex situation has led to the emergence of a number of permissible legal and illegal means to circumvent those constraints to carry out the documentation or registration. As a result of the inevitability of the seller's presence together with the buyer at the registration office at the time of signing the contract Verde (and often the seller does not go, especially if he received the total value of the property) has led to the spread of a procedure called "validity and effectiveness," where the buyer files a lawsuit against the current vendor, and all former vendors and owners. The court examines the property from the standpoint of the validity of the contract of sale. Upon completion of this procedure the buyer gets the approval of legal validity of the contract of sale that could be used for registration or authentication of the sales contract in the property registration office. The court receives a quarter of the value of registration, while the buyer pays the remaining three quarters at the time of registration at the property registration office.

As the court receives only a quarter of the assessed value of registration fees, many buyers view consider this procedure as a means of adequate proof of ownership.

Finally comes the validity of the signature as a more common procedure to impart much of the legal process of transferring ownership of property in slums or in situations where it would be difficult to prove ownership (in the case of one of the heir's desire to sell his/her share of property without a clear specification of his/her share or formal agreement with the rest of the heirs). Where the beneficiary resorts to submitting the sale's primary contract to the court for authentication through a known procedure called "validity of signature" where the court investigates the validity of signing the contract between the owner and buyer without the formal recognition of ownership right mentioned in the contract). The issues of "validity and effectiveness" and "validity of the signature" represent a huge proportion of the cases before the courts nowadays.

As for the property registration procedure, the process begins with defining a zone or more which need ownership documentation or registration. The Survey Authority makes survey maps delineating properties and other data recorded separately for each house. After examining the contracts, initial legal decision are made regarding the property in those contracts. And then comes the last concern that allows the owners or holders of their rights before the current proof of what has been already documented with regard to the owners (the current experience of registering the properties of agricultural land to a lot of criticism for not taking into account the rights of the current owners to modify their applications and documentation by those bodies). Once the registration process is effective, the owners are invited to convert the Landholdings documents to official registered contracts but it is not uncommon for owners to register, in fact a large proportion of landlords in rural areas still depend on the validity and effectiveness action in spite of landed registration of their properties for many reasons : -

- The high value of the registration fees, even after being reduced from 12% to 3% for owners of agricultural land especially those holders of small ownerships less than 3 acres and who represent the vast majority of the holders of agricultural land.
- Lack of awareness campaigns of the importance of registering to landowners, which represents an incentive for them to register.
- Scarcity of access to and ownership of the registration document as financial collateral especially for smallholders.

The registration process represents one of the hurdles confronting the poor and the limited income category as the registration is divided into:

- 190 pounds for surveying the land only, and 380 pounds for the land and building (this cost is for one visit and thus in case of need to repeat the survey for any reason, it will be required to pay a new fee)
- 3% of the value of the transfer of ownership or 300 times the value of the property tax to be paid, whichever is higher (property transferred result of the inheritance is exempt of this fee).
- 0.5% of the value of the sale or transfer of ownership is for the accreditation of the Syndicate.
- This is in addition to a tax on the sale of property equivalent to 2.5% of the value of the sale.

The property tax constitutes one of the most important factors that discourage the poor and the limited income category to document their ownership rights. The property tax directorate which is affiliated to the Ministry of Finance is entitled to collecting taxes on the property existing within the administrative confines of each agency affiliated to the directorate. Thus such properties are only subject to property tax.

There are three types of property taxes imposed:

- O arable land tax on agricultural land which was about 14% of the annual rental value of the land.
- O property tax on residential and non-residential construction in urban areas.
- O entertainment tax on activities that will be practiced in real estate.

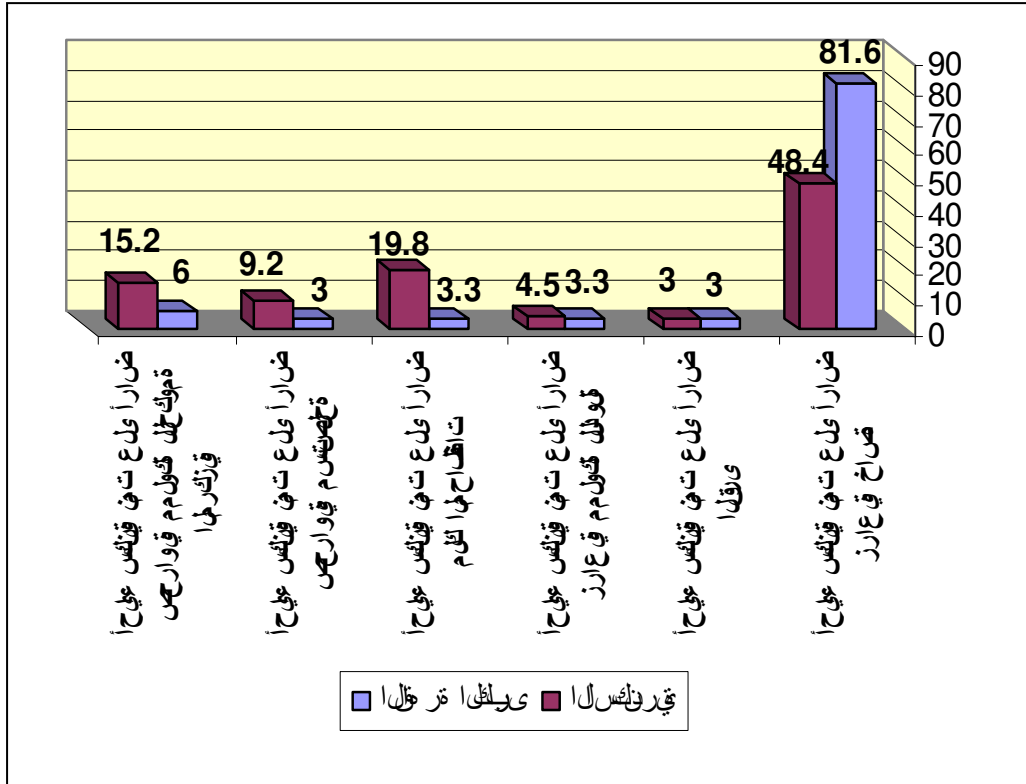
With respect to the property tax on non-residential buildings in urban areas (for industrial-commercial-administrative use) amounts to the value of the tax of 10% of the annual rental value. As for the residential buildings, the tax depends on the level of the housing unit (according to the law, four levels economic - average above-average and luxurious), so the value ranging tax sways between 10% - 46% of the value of the rent. These high value taxes has led the citizens to avoid to register their

property and avoid paying those taxes, which led to the exemption of levels above-average and economic buildings built from 1977 from the tax.

One of the most important problems of empowerment of the poor and low-income from benefiting from their rights is the slowness of settlement of disputes over property rights, or tenure, both among citizens or with government bodies where the process may take many years of judicial separation to resolve the right to property as a result of the absence of mechanisms to resolve the dispute before reaching courts. Moreover, this process often requires considerable financial costs for the cases and lawyers fees and costs of the required documents, which would normally be beyond the capacity of the poor, leading to them being the most affected party or the losing one among other parties.

4- The Real Dimensions of non-formal ownership and Possession in the Egyptian Urban and Rural Areas:

It already is clear that the problem of insuring properties or possession are one of the most important problems facing low-income people to prove their materialistic rights, as well as one of the most important problems of the real estate market in Egypt and also economic activities. According to official statistics and numerous specialized studies in the area of housing, about 60% of the housing units that have been built during the last three decades has grown in informal areas and therefore although investments were made by the owners of those units in building them, they cannot benefit from them in the formal real estate market.



One recent study has indicated that 52% of the housing quarters in the Greater Cairo are non-formal zones (grew as random zones). However, 62% of the region inhabitants live in these areas. The study also indicated that this percentage is divided according to type into (Sims 2002):

Figure 1-Percentages of the types of Illegal zones(Slums) in Greater Cairo and Alexandria.

Several studies, amongst which, a study conducted by the Egyptian Center for Economic Studies indicated that there are six types of illegal zones in Egypt classified according to date holding possession and the legal status and in which the owners cannot utilize or document their properties. These types are as follows:-

First Type:-Dwellings established on agricultural lands, divided and sold informally:

Despite the fact that agricultural lands ownership in Egypt is registered according to either the title system or the deed system, it is noteworthy to discover that the ownership of the majority of the housing units built in the Egyptian villages are not registered or certified and this is basically due to the fact that these buildings are not

governed by the applicable laws of construction and consequently are in no need of a construction license. In addition, there is lack of awareness among the citizens, regarding the importance of registration process, means of completion and the incurred high fees, the matter that hindered the vast majority of them, especially those of low income, from registering their property properties in the rural Egyptian areas.

We may particularly divide the built agricultural lands into the following categories:

- A- Private agricultural lands: they are the lands that were originally registered, such as Free-hold lands (till 1950) but later on has been illegally divided and sold to individuals who had built on them in violation of the prohibiting laws that had been issued by the Egyptian government to prohibit the construction on agricultural lands that fall outside the allowed urban cordon of the villages based on the aerial photography of 1985.
- B- Agricultural lands at the heart of the Egyptian villages: the lands that are not registered and had been built.
- C- Governmental agricultural lands and are divided into:
 - C-1- Agricultural land affiliated to the agricultural reclamation: Lands that had been nationalized after 1953, divided and distributed to farmers who illegally re-divided and sold them.
 - C-2- Agricultural land owned by the Ministry of Endowments and leased to farmers who illegally re-divided and sold them.
 - C-3- Agricultural land owned by authorities or governorates which in turn were leased to people who illegally re-divided and sold them.
 - C-4- River-emerged land: It is the land that has emerged as a result of the change in the course of the river and leased to farmers who illegally re-divided and sold it.

Second Type: Dwellings built on desert land which is divided into the following categories:

- A- Desert land owned by municipalities (governorates): The land that had been illegally seized and built on.
- B- Desert land allocated for reclamation: It is the land that had been allocated for investors to be reclaimed or the land that had been already reclaimed and built by farmers through occupancy.
- C- Desert land affiliated to government agencies or public companies that had been illegally seized and built, or the land that had been allocated for the

housing societies but was randomly or built in contrary to the applicable laws and regulations of cooperative housing.

D- Land Affiliated to the Antiquities Authority: It is the desert land that is affiliated to the Antiquities Authority in several areas, but it is vulnerable to building and violations.

E- Public Land: It is the land that is allocated for public use and adjacent to the railways, canals and highways, but was illegally seized and built on.

The first two types are basically unofficial or random areas as a result of being developed through violations of the applicable laws and legislations of urbanization.

Third Type: Dwellings that are of no clear possession status in the public (government) housing:

They are dwellings that had been originally constructed through the local units, cooperative housing societies, public companies or endowments and was unofficially built on a state-owned land, or unofficially sold or assigned.

Fourth Type: Dwellings built with no construction license, hence, are vulnerable to fine or demolition:

Despite selling these units as owned units, yet their owners cannot register or utilize from them.

Fifth Type: Dwellings of no clear possession status, especially those located in the ancient historical areas:

As a result of inheritance disputes and the endowment system that date back to hundreds of years, and cannot be disposed of, hence, usually they collapse with time without being utilized from.

Sixth Type: Dwellings that are subject to the applicable leasing laws:

These units are of no use in the official housing market, and are usually being unofficially subleased.

The last four types are examples of housing units that originally enjoy legal or official status, but with the course of time have changed into unofficial possession forms; hence, their status has been frozen and is of no use in the official property market.

According to the study, the economic value of such units within greater Cairo has increased to US 79 billion in 1997 and US 195 billion all over the country. If we add the units of unclear possession status in the rural areas, the total economic value of such areas will amount to US 241 billion.

Third Section: Obstacles of protecting and promoting the right of the poor to property ownership and possession.

Dozens of millions of the urban poor in the developing countries are daily investing considerable portion of their low income in building and developing their dwellings that they might own illegally or unofficially, as they are located in what is called "unofficial or random housing". The question arises round the risk of investing in a sector that might not be recognized by governmental bodies, the matter that may expose the poor to severe reactions that might reach to destroying their houses and evicting them from the lands they occupy. The logical answer to this inquiry lies in the absence of other chances to secure a house through formal channels, as it is impossible to obtain a piece of land for its skyrocketing price especially in the areas close to employment opportunities available to the poor. Moreover, the complicated conditions imposed by the government agencies make it impossible for this poor category to even apply for obtaining a piece of land. Therefore, the alternatives available for this category are either laying hands on a piece of public land owned by the state anticipating that their positions to be legalized in the future, or securing a small piece of agricultural land, building a house on it in the absence of official approval from the concerned authorities, then developing such a house in time in accordance with their available financial capabilities. Securing the possession of a house or land for this deprived category is considered a basic and pressing issue in order to improve their living economic, social, constructional and environmental conditions. Thus we need to focus on securing property possession and protecting property rights of the poor.

Despite the abundance of legal texts and the good intentions, the poor and the marginalized categories or weak classes in the developing world suffer from the inability to protect or prove their property rights or settle the disputes thereof, especially if such dispute is against stronger or more influential categories. As a result, those poor categories often continue to remain in the poverty circle due to their inability to utilize their properties in improving their living standards.

Despite the great efforts exerted by the State in the field of economic reform through statutes and laws aiming at liberalizing the market to create new employment opportunities that contribute to improving the living conditions of citizens, several studies indicated that a wide range of citizens especially the limited income category are not benefiting for such efforts due to their inability to utilize their real properties and their investments in the small and medium size economic units. The main problem is represented in the fact that most of these properties are informal which means that they are either not registered or built in random areas during the last three decades. Accordingly, these categories were unable to benefit from their investments in these properties to improve their living conditions, the matter which resulted in a state of impoverishment for the inhabitants of these areas due to their inability to utilize their properties through sale or leasing in the formal market or loan guarantees to invest in economic projects in order to improve their living conditions.

The problem of securing possession or ownership in Egypt whether in formal or informal (random) areas, in urban or rural areas represents one of the most important problems that constitute a hurdle confronting any actual progress in the field of activating the property market. According to a study conducted by The Egyptian Center for Economic Studies that is concerned with evaluating informal properties (housing units and economic units) of the poor which cannot be handled or utilized in the economic development revealed that the value of these properties amounts to \$241.4 billion (as housing units) and \$4.2 (as economic units), the matter which necessitates prioritizing this issue by developing a national strategy for legalizing the status of these properties and protecting the rights of their owners in order to improve the living conditions of categories of limited income in the Egyptian community, either in urban or rural areas.

First: Obstacles facing low-income people in Egypt to officially possess lands and real estate properties and contributing to unofficial tenure.

There are several administrative and regulative obstacles that have largely contributed to the seriousness of unofficial random growth especially among the low-income categories. Following are some of the most important obstacles:

- Difficulty to have access to new lands designated for building at affordable prices for the low-income people. Regarding the lands that fall under the jurisdiction of the governments, we see that Law No. 29 of 1958 provided for the possibility of allocating lands for free for the people who don't have dwellings, government agencies or non-profitable organizations such as cooperative societies as far as it serves the public interest. the practical application of such law isn't based on fixed or regular measures known for all, in addition to the fact that the duration of these measures take no less than 15 months and include payment of fees that aren't affordable to the ordinary citizens, so the cooperative societies are the only ones who are able to go ahead in this road. The problem gets even worse if there is a necessity to obtain approvals from other authorities such as Authority of Monuments when such lands are adjacent to historical sites. The cooperative societies have no right to ask for a specific part of land since the allocation decision lies at the hands of the governorate authority. Upon issuance of the allocation decree, the land isn't finally owned except after the completion of the housing projects as a whole which include completion of construction and full payment of the price of the land. Any change in the allocation purpose may lead to revocation of the allocation decree.
- Regarding the lands in the new cities and urban communities that are affiliated to the General Authority of New Urban Communities which is considered as the competent authority to sell the allocated lands for housing projects for entities or individuals, along with the dwellings built by the Authority. despite the fact that the sale process is directly concluded with the contractor, the pertaining measures often take time and require provision of documents that prove the monthly income of he citizen to obtain the housing unit or the allocate lands for the low-income people which lead to exclusion of a wide segment of the poor. Moreover, the owner of the land or the housing unit cannot dispose of them before the full payment of the price and the fact that

any change contrary to the purpose of allocation might lead to revocation of the allocation. Throughout this period of time, the owner of the land or the housing unit cannot benefit from them as a guarantee of mortgage or financial loan.

- The problem of unofficial tenure in the government or public housing projects is even worse for the dwellings that have been constructed after the 1950s since the ownership of the land still affiliated to the government to avoid manipulation with the housing units. Regarding the old housing units until 1977, it is permissible for the owner in accordance with law No. 49 of 1977 to possess the unit after 15 years of renting. The renter shall pay the rent amount to the governorate until he owns the unit against the periodical maintenance fees of the property. In most of these cases, there is no contract for the unit that could be used by the owner to utilize or dispose of the property at his discretion except in some old projects during which the renters received initial contracts that would be registered upon the end of the lease duration. The owner may utilize or dispose of the property through sale, lease or change of usage.
- Housing projects that have been conducted by unions or government companies are similar to their counterparts in the government housing projects conducted by the governorates with trifle differences such as sale and lease are permissible under the condition of notifying the union or the company and paying an amount of money against the transfer of ownership which make many people refrain from this to avoid such payment. Upon the full payment of the due installments, a final contract is issued and could be registered in the competent authorities. Due to the prolonged time required for completing such measures and the depletion of financial sources to have full access over the property and the necessity to wait until the full price of the property is paid, the majority of owners in the government housing units dispose of the units in unofficial manner with a percentage of 70 - 75 % in Cairo alone. Such disposition is conducted through a proxy between the owner and new buyer to be registered in the Real Estate Register and signed by the two parties. Under such proxy, the new buyer shall pay the remaining dues in the name of the original owner until all installments are paid and afterwards the sale contract is registered and the ownership is transferred to the new owner.

- Despite the fact that the Egyptian law since 1946 has allowed for the registration of real estate properties and lands in the Real Estate Register to safeguard the full protection of properties, yet the prolonged time of registration, complicated measures and high cost of registration have encouraged the majority of the owners not to register their properties. as we have just mentioned, even in the case of being successful to register the land or the real estate property, the common usage of such lands and properties in the developed countries is in the form of a guarantee of financial loan. This common usage isn't that much easy in Egypt because of difficulty and high cost of real estate mortgage making, revoking or withholding in return for not paying the loan installments. For example, the process of registering a real estate mortgage in the competent authorities requires about 34 documents and takes about 198 days in addition to the cost that amounts to L.E. 6000. such measures include meeting the following prerequisites required by the banks or the lending bodies such as the land or real estate property registration contract, inclusions statement (real estate certificates), Certificate from the real estate register defining the date of the land or the property and all other pertaining transactions throughout the last 30 years, certificate from real estate taxes stating that the all due taxes on the land or the property have been paid, commercial evaluation to the value of the land. as for banks, it is preferable to have non-leased or unoccupied land since leasing laws prohibit expulsion of renters and this reduces the commercial value of the land. It's worth mentioning that the complication of mortgage conclusion applies to mortgage redemption or revocation.

Second: Obstacles facing the process of legalizing tenures and properties in the unofficial random areas

The problem of tenures in the random areas of Egypt is divided into two basic sections: First: illegality of land tenure, which means that the built land is either owned by the state or has been illegally seized such as squatting or is owned by individuals and hasn't been originally allocated for building because it is an agricultural land that has been illegally transformed into building land. Second: illegality of the constructed building for lack of the required licenses.

Regarding the state-owned land that has been illegally seized and built, the only way to legalize such a land is through transfer of ownership from the government bodies to the individuals in return for an amount of money to be defined by the competent authorities. This status doesn't apply to all irregularities, in accordance with law No. 31 of 1984; the beneficent category of the aforementioned status is the one which built the land before the issuance of this law. The ownership transfer is done through four steps: obtaining a certificate from the Real Estate Tax Authority (inclusions statement) that proves the existence of the building over the said land and states the date of construction. Through such statement, the building is evaluated and afterwards, the application shall be reviewed by the ownership department in the district and the government, and finally the owner obtains the approval for ownership transfer.

Land price placement is one of the most important obstacles facing such a measure; it requires the approvals of many committees in a period of time which is no less than 6 months. Moreover, the practical application of such measure in most cases links the legalization process with the completion of the urban improvement projects and development of the area that contains such irregularities, which is often late thanks to lack of available financial resources. The situation is of no difference in the government-owned lands such as those owned by Ministry of Endowments. These lands are being rented for long periods (monopoly lands) since the measures of ownership transfer require the same complicated measures and steps. The old tenures of these lands make this problem even worse since there is no clear tenure status or good documentation system at the government authorities which add to the seriousness of the problem in general.

As for the random areas constructed over the private agricultural lands that have illegally divided and built in contrary to the applicable laws of urban planning and regulation of construction, in addition to agriculture laws. Based on such laws, it is impossible to legalize the division process and registering these lands and the constructed buildings which lead to lack of any services or utilities by the government. These laws have criminalized the division and building on such lands and provided for severe penalties that range from fines to demolition of the buildings and return the land to agricultural usage once again and finally to imprisonment of the violator. Such laws made it impossible to connect such lands to the services and utilities till the issuance of the decree of the Prime Minister which allows for

connecting such slums that have been established before the decree of the Military Governor in 1996 to government utilities. These slums shall be verified as viable areas by a report from a specialized consultant. The aforementioned decree shall not be taken as means of official certification or tenure legalization; rather it is merely a guarantee that the constructed buildings over these lands won't be vulnerable to demolition and might be connected to the government utilities.

Legalization of the status of these lands is still impossible except under an urban development scheme in the pertaining area by the competent governmental authorities so as to make these areas part of the official block of the city. Afterwards, the measures of certification shall be taken upon paying the due fees and charges in advance. Usually the development scheme requires expropriation of some lands and the demolition of some properties in order to connect the required utilities and services to such areas. The approval process on the aforementioned scheme usually takes along period of time which may reach 5 years since the approvals of several authorities are required such as Ministry of Housing represented in the General Authority for Urban Planning and Ministry of Agriculture to transfer the land from the agricultural usage to the urban one, this is in addition to the approval of the local public council, the executive council and the competent governor.

In an endeavor to attest such illegal status of lands and real estate properties in the random areas and to avoid the demolition of them under the applicable laws of agricultural land protection, the owners seek several means including martial or initial sale or lease contracts in which the land or the real estate property is defined and then starts the next step by obtaining any valid document from a government authority such as inclusions statement or filing a valid and force lawsuit to attest the validity of the martial (initial) contract or registering at different utilities to obtain receipts or bills of electricity, water, gas or communication that would prove the existence of the property on the said land hoping to utilize it later when the competent government authorities desires to legalize the status quo of these areas.

Conclusion and Recommendations:

Promotion of acquiring and practice of real estate ownership right for the public in general and for the poor in particular through registration of such properties is a major challenge that will certainly affect the map of poverty in Egypt. For this purpose, concerted efforts should be exerted by the two key players in the process of protecting

such a right, namely: the state and the citizen. Based on the complicated current situation that has been revealed through this paper, the benefit that would reflect on the two parties should be clarified to create a favorable motive for both of them to achieve the aspired goal:

As for the state, the most important benefit of attesting and documenting the real estate rights will be:

- Creating a database to absorb the real estate wealth in Egypt regarding the lands, constructed units and usages that would be of great benefit upon maintaining such real estate wealth.
- Securing the collection of due fees to the state including real estate taxes which may represent a basic source of government resources especially for the municipalities to provide the required services.
- Identifying the types of housing and occupancy and vacancy volumes, the rented and free units that would contribute to the formulation of an effective housing policy based on the actual assessment of supply and demand.

As for the public in general and those of low-income in particular, the significance of registration is represented in the following:

- Documentation of private ownership and obtaining an official document of such property would protect the citizen from the expropriation of this right by others who might exploit the absence of official documents.
- Legalization of tenures and properties in the unofficial areas would enable the citizen of legal local services especially water and sewerage services with no need to exceptional decrees, as it is the case with the decrees issued by the Cabinet now, to connect water services to random areas.
- Such registration could be used as a financial guarantee to apply for facilitations or loans to lead a better life. Despite the fact that this kind of guarantee is not common in Egypt, it is expected that several financial institutions and banks in the fields of real estate and small enterprises funding will tend to provide such kind of facilitations and loans that would require a guarantee from the applicant.

Therefore, the paper has revealed several discussion points regarding the empowerment of the citizens in general and the poor and those of low-income in particular to utilize their properties in improving their standard of living. These discussion points are based on two main pivots that require speedy actions, namely:

First Pivot: Raising the efficiency of certification of ownership and tenures rights in the official areas of urban and rural communities.

- ❑ Accelerating the process of replacing the Deed System applied in the urban areas and the built areas in the rural communities with the Title System with special attention to overcome the problems of the Title System regarding out-of-date information and data. This will require several legislative amendments to overcome the current duplication between the two systems.
- ❑ Making the first registration of the real estate property a must through a unified national project that aims at reducing the registration fees remarkably and exempt some areas of such fees, especially those inhibited by low-income people.
- ❑ Adopting an awareness campaign on the importance of registering the properties while encouraging the demand on such process through a set of incentives including the reduction of steps and measures required in both the Real Estate Register and the Egyptian General Authority for Survey. The idea of One-stop window should be promoted to end the registration measures within a shorter period.
- ❑ Encouraging the registration process in the rural areas by making use of the idea that most citizens in such areas are closely related to the post offices, so the registration process should be done through these offices in cooperation with the Real Estate Register.
- ❑ Amending the Real Estate Tax System for the agricultural areas and real estate properties in the rural and urban areas alike will lead to reduction in the ceiling of the tax and afterwards the tax will be determined based on actual estimation of the property value.
- ❑ Encouraging the establishment of specialized public societies to provide free services to the citizens, especially those of low-income

that would help them going ahead in the measures of registering and declaring their real estate properties.

Second Pivot: securing tenure for the poor in the unofficial or random areas:

The paper revealed that securing the tenure of lands and dwellings is one of the basic keys of urban development, and at the same time has a positive impact on the economy that would improve the standard of living of all society segments with especial emphasis on the low-income people. Such process requires several organizational and administrative changes at all levels, and the top of which is amending the legislations and laws that govern the tenure process so as to allow for easy implementation of tenure legalization schemes. Such legislations shall provide for admitting the unofficial status of these tenures in the random areas through set of mechanisms that would be developed to fit with the different local conditions whether at the urban or rural communities. This may be achieved by developing a national policy of clear mechanisms to legalize the land tenures through the transfer of ownership or lease to the possessors while clarifying the system upon which the price of the land under codification is being determined. Lack of clarification may lead to the failure of these schemes and subsequently the failure of achieving the aspired goals.

The enforcement of these legislations or adoption of a new national policy for lands should be followed by developing an executive framework through which the different competent authorities and the required approvals for the legalization process will be unified under the umbrella of a single department or authority that would enjoy all the required competencies to ensure smooth and rapid implementation of such projects.

This should be done in parallel with the adoption a program for technical and administrative capacity building for the officials and specialists who work in the government authorities responsible for managing and implementing such projects. Further consideration should be given to means of enhancing the public participation in the decision-taking process regarding the legalization scheme. At the same time, genuine efforts should be exerted to build the public awareness for the residents of the deteriorating urban communities which will be under such schemes through the mass

media regarding how to implement such projects and means of participation in the implementation process.

The success of land tenure legalization in the random areas must depend on developing an integrated database about such tenures, and assigning highly technical qualified officials to undertake the required tasks in this regard in order to accelerate the legalization process and motivate the possessors of such lands to apply such process.

The first impression that securing and legalization of tenures will automatically lead to smooth procurement of financial facilitations and loans through land guarantees shouldn't be generalized. Experiences in several developing countries such as Peru have shown that this idea wasn't up to the expected level because the financial institutions and banks didn't give sufficient attention to this type of small loans based on the fear that they won't pay the loans back or due to the economic delay which downplays the importance of applying new experiences in such institutions that haven't been pre-tested yet. Therefore, the importance of having a political commitment by the state is significant to adopt such kind of loans and provide the motives to encourage the financiers while providing the required financial support through the state institutions for the majority of the low-income people who won't be able to obtain such facilitations from the commercial banks and private institutions. It's worth mentioning that the Real Estate Fund Assurance that has been established in Egypt under the real estate mortgage law shall undertake such task with the help of the three government banks and the Social Fund for Development to contribute in this regard.

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