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**Land Tenure for Social and Economic Inclusion in Yemen:  
Issues and Opportunities**

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Vice President:	Shamshad Akhtar
Country Director:	A. David Craig
Country Manager:	Benson Ateng
Sector Director:	Laszlo Lovei
Sector Manager:	Luis Constantino
Task Team Leader:	Lelia Croitoru

# Land Tenure for Social and Economic Inclusion in Yemen: Issues and Opportunities

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## الملخص التنفيذي

اليمن بلد مكوّن من أراضٍ قاحلة، وبه محدودية كبيرة في مساحة الأراضي الصالحة للزراعة، والاعتماد على الري بالمياه الجوفية كبير جداً. تلعب الزراعة دوراً هاماً في الاقتصاد، إذ أنها تولّد أكثر من 15 في المائة من إجمالي الناتج المحلي منذ العام 1990، كما أنها توفر وظائف لأكثر من نصف عدد السكان الذين بلغوا سن العمل. ما يزال التنظيم الاجتماعي في هذا البلد قليلاً إلى حدٍّ كبير، ويلعب المشايخ (وهم يمثلون السلطة التقليدية) دوراً رئيساً في الحكم في المناطق الريفية. وتبقى الثقافة الريفية في اليمن مرتكزة بشكل كبير على السلطة الجماعية، فالأسرة عادةً ما تتكون من عائلة كبيرة متعددة تعيش في مسكن واحد، وتعمل في زراعة الأراضي التي تمتلكها. يعيش سكان المناطق الريفية في أكثر من 41,800 من القرى الصغيرة المتناثرة.

حقوق الملكية بموجب القانون اليمني معرّفة في كل من الأحكام العرفية والقوانين، ولكن كليهما مستند إلى الشريعة الإسلامية، والتي توفر فئات الإمتلاك الأساسية للأرض في اليمن. ولا توجد هناك إحصاءات رسمية موثوق بها عن حجم الأراضي ضمن هذه الفئات، أو كم هي مساحة الأراضي الصالحة للزراعة (نسبة مئوية ضئيلة من مجموع مساحة الأراضي) في كل منها. هذه الفئات هي:

- أراضي الدولة، تعتبر الحكومة مالكة لنسبة 90% من جميع الأراضي، ولكنها ربما تشكل حوالي 10% من الأراضي المزروعة. لا توجد قوائم جرد، وهذا يسهل الإقتطاع غير المشروع لأراضي الدولة من أطراف خاصّة. هنالك إطار قانوني سليم ولكنه دون فاعلية فيما يتعلّق بتطبيقه وإدارته.
- الأراضي ذات الملكية الخاصة، نسبتها حوالي 84% من الأراضي المزروعة، ولكنها أقل من 10% من مجموع الأراضي، وتنتمى بدرجة عالية نسبياً من التوثيق من خلال الموثقين (المأمون)، ولكن أيضاً دون وجود نظام حديث للتسجيل، وبوجود وضع إطار قانوني عموماً يسهل أسواق البيع والتأجير.
- أراضي الوقف، ربما تشكل نسبة 3-4% من جميع الأراضي، ولكنها في بعض الحالات تخدم أغراض عامة وهامة، ويجري في كثير من الأحيان زراعتها من قبل مستأجرين لها، وهي تتيح عمليات الحصول على الأراضي للفقراء.
- الأراضي المشاعة، والتي تعتبرها المجتمعات القبلية ملكية خاصة بها، وتتكون أساساً من التلال والأراضي الأخرى ذات القيمة الاقتصادية الهامشية. وتعتبر الدولة مالكة لنسبة 90% من هذه الأراضي والتي تضم الكثير من الأراضي التي يعتبرها السكان في المناطق الريفية "مشاعة"، وهناك إشكالية عدم الوضوح في القانون فيما يتعلق بالحدود القانونية بين هاتين الفئتين.
- أراضي مؤجرة، وربما يغطي نسبة 3-4% من مساحة الأراضي المزروعة ضمن الفئات الثلاث الأولى المذكورة أعلاه، وهي تتكون في معظمها من نصيب المشاركة باتفاقات شراكة طويلة الأجل. وقد أصبح التأجير طويل الأجل والايجازات الثابتة شائعة على نحو كبير في بعض الأجزاء في البلد.

مفتاح التشريعات القانونية هي القانون المدني وقانون أراضي وعقارات الدولة، ولكن توجد هناك غيرها من القوانين الهامة أيضاً، بما في ذلك القوانين التي تهدف إلى التخفيف من الأثر العكسي لعمليات الإصلاح في قطاع الأراضي في اليمن الجنوبي سابقاً، قانون ينظم مهنة التوثيق وقانون تسجيل الأراضي - والذي من المحتمل أن يتم استبداله بمشروع قانون جديد لتسجيل الأراضي معروض حالياً على البرلمان.

بيانات المسح في إطار هذه الدراسة تشير إلى أن العقارات لا تزال على نطاق واسع مملوكة لدى الأسر الريفية. وهناك أسواق نشطة لبيع وشراء الأراضي وتأجيرها. ويدرك أصحاب الأراضي أنهم يمتلكون الحق في التصرف بالبيع أو الرهن لأراضيهم، إلا أنهم يستشيرون أقاربهم، ولا سيما إخوانهم، مع أن هذا الأمر ليس شرطاً للتصرف، وذلك قبل البيع أو التصرف في الأرض. حقوق امتلاك الأرض عادة ما تكون مدعومة بوثائق ملكية، مع أنه لا يتم تسجيلها في كثير من الأحيان في المناطق الريفية. ويبدو أن مستوى تأمين الحيازة، كما هو واضح من طول متوسط مدة الحيازة الجماعية، قوياً بشكل على نحو معتدل.

إلا أنه من الواضح أن بعض الفئات محرومة من الحصول على الأراضي أو امتلاكها. فالبينات محرومات في قواعد الشريعة بسبب حصصهن إلى تصل إلى نصف الميراث فقط لدى الأبناء من الذكور. كما أن الشباب لا يستطيعون أن يرثوا الآباء قبل وفاتهم، ويفتقرون إلى رؤوس الأموال اللازمة لهم لشراء الأراضي، ويفتقرون إلى فرص الحصول على الأرض أو فرص العمل الأخرى، الأمر الذي يهدد الاستقرار الاجتماعي. هذا بالإضافة إلى وجود فئات إجتماعية منغلقة (الأخدام) من الأقليات

العرقية التي استوطنت في البلد تتعرض للتمييز في ملكية الأراضي، فكونهم من العبيد السابقين والمهاجرين من شرق أفريقيا، فهم لا يستطيعون الحصول على ملكية للأرض، بما يحد من فرص عملهم ضمن أكثر الأعمال تدنياً في خدمة الآخرين.

تتوفر التكنولوجيات الجديدة لاستخدام المياه فقط للمزارعين في المزارع التجارية الكبيرة والذين يشكلون ضغطاً على الصغار من أصحاب الملكيات، كما أنهما يرفعون من أسعار الأراضي. وهو الأمر الذي أدى إلى الاستيلاء على الأراضي بطرق غير شرعية، وهذا أكثر وضوحاً على طول المناطق الساحلية، ومناطق أراضي الدولة الموقوفة. وتتسبب تحولات الأراضي، بما في ذلك البيع القسري، في خروج العديد من أصحاب الحيازات الصغيرة ضمن المناطق الزراعية التجارية على طول الساحل والمدن بعيداً أراضيهم. وتنتشر النزاعات على الأراضي، إلا أن المتنازعين لا يحصلون على فائدة من الخدمات التي تقدمها المحاكم، والتي تعتبر غير فعالة وموصومة بالفساد. ويفضل غالبية المتخاصمون اللجوء إلى الجهات العرقية لفض النزاع، وذلك على الرغم من أن هذا الملاذ يبدو أيضاً قد أصبح أقل ثقة كون السلطة التقليدية يتم اختيارها للمشاركة في الحكومة المحلية.

وهناك عدد من القضايا الرئيسية وامكانيات للعمل تنبثق من نتائج الدراسة:

1. في حين أن الإطار القانوني لإدارة أراضي الدولة كافٍ نسبياً، إلا أن هناك بعض المشاكل الأساسية في الترسيم القانوني لأراضي الدولة. أولاً وقبل كل شيء، هناك حاجة لتوفير المزيد من الوضوح في عملية التمييز بين أراضي الدولة والأراضي المشاعة. وسوف يتطلب هذا الأمر تعريفاً أكثر وضوحاً للأراضي المشاعة، والتي يشار إليها تحديداً بحسب الاستخدامات والترتيبات العرفية. ولم تقم هذه الدراسة بإعداد المعلومات الكافية عن الأراضي المشاعة وسبل إدارتها، وهناك حاجة لإجراء دراسة محدّدة تتناول فقط هذه المسألة، تليها التشريعات الخاصة بالأراضي المشاعة. ثانياً، تعريف "المراهق"، أو "الأراضي ذات المنفعة العامة" (مناطق مستجمعات المياه)، والتي غالباً ما تحدّد ما إذا كانت الأرض مملوكة لأطراف خاصّة أو عامّة، فكلاهما يشوبه الغموض ومن الصعب تطبيقه في الممارسة العملية. إن هذه الأمور مصدر لعدد كبير من النزاعات وينبغي وضع معايير أكثر وضوحاً لها.
2. بالإضافة إلى ذلك، فإنه من الواضح أن تنفيذ القانون المتعلق بأراضي الدولة ينطوي على خلل كبير، وأنه قد حدثت تجاوزات من حيث الاستيلاء على الأراضي دون التعويض، والتخصيصات غير القانونية لأراضي الدولة لأغراض خاصّة. إن الافتقار لحصر كامل لأراضي الدولة سوف يقوض الجهود الرامية إلى تحسين عملية الإدارة لأراضي الدولة. ومع ذلك، فإن مثل هذا الحصر يجب أن يكون مسبقاً بالإصلاحات القانونية المحددة أعلاه، وحسب ما تتطلبه الحاجة، كون عملية الحصر في غياب مثل هذه الإصلاحات تبدو مرجحة إلى أن تسفر عن عملية تصنيف للأراضي مثيرة للجدل عبر تصنيفها أراضي مملوكة للدولة، الأمر الذي سيزيد من حدة النزاع عليها. وبالإضافة إلى ذلك، فإن تجارب البلدان الأخرى توحي بأن هذه المهمة الفنية لحصر أراضي الدولة لن تكون سهلة. فأولئك الذين لديهم معرفة بأماكن قطع الأراضي المملوكة للدولة يجنّون الفوائد من تلك المعرفة، ولا يرغبون في أن تصبح هذه المعرفة عامّة. وسوف تكون المشاركة المحلية القوية في عملية الحصر هذه عاملاً حاسماً في نجاحها، وينبغي أن تكون في صلب عملية الحصر.
3. إن القانون المتعلق بالملكية الخاصّة للأراضي مرض في مستواه من عدّة جوانب، كما أن ملكية الأرض وأساليب التصرف بها مفهومة جيداً في ثقافة العامّة. تركز الشريعة الإسلامية في مسألة أملاك الأراضي على حق الشفعة في تصرفات الأراضي، لكنها توفر أيضاً آلية تسمح لأفراد العائلات والجيران الاحتفاظ بالأراضي التي يمكن شراؤها من قبل الغرباء، وذلك دون التدخل بشكل مباشر أو قوي مع سوق بيع وشراء الأراضي. إلا أنه لا يوجد حدّ زمني لممارسة حق الشفعة هذا، وهو الأمر الذي يمكن أن يبقي المشتريين في حالة مستمرة من عدم اليقين، وينبغي تعديل القانون ليشمل مهلة زمنية، ستة أشهر على سبيل المثال، لممارسة هذا الحق. وبالنسبة للأراضي المسجلة، يمكن أن يبقى هذا الحق متاحاً بعد ستة أشهر من التسجيل. القانون المتعلق بالتركة على الأراضي الخاصّة ينص على التقسيم بين جميع الورثة، مما أدى إلى وجود نمط من حيازات المزارع التي تتكون من عدة قطع صغيرة. أدى هذا الأمر إلى التقليل من استخدام العمال ومن الكفاءة في استخدام الآلات الزراعية، غير أن الاستئجار وأسواق البيع النشطة توفر فرصة لأصحاب الحيازات المجزأة لاستخدام تلك الأسواق للتخفيف من حالة التجزؤ في أملاكهم، إذا ما أرادوا القيام بذلك.
4. تعمل العقارات الموقوفة على الاحتفاظ بالأرض خارج مجال سوق الأراضي، على الرغم من الأراضي الموقوفة تحتل ساحة في أسواق التأجير. فهي تدعم الخدمات العامة، وتوفر فرص الاستئجار للفقراء. وكما هو الحال بالنسبة لأراضي الدولة، فإن عدم كفاءة وفساد الإدارة وعدم وجود حصر كامل جميعها تشكل أمراً أساسياً، وتسهل عمليات الاستيلاء على الوقف لأغراض خاصة وغيرها من الممارسات الفاسدة. إن القيام بتنفيذ مثل هذا الحصر يبدو أولوية هامة، ولكن هناك حاجة أكبر للنظر في كيفية إدارة الأراضي الموقوفة بصورة أفضل للإسهام في الصالح العام. وينبغي القيام بدراسة منهجية

للممارسات المتعلقة بالوقف وإدارتها والاستخدام الأمثل لإيرادات الوقف. كما أنه من الضروري أن يتم تنفيذ عملية الحصر في سياق تلك الدراسة الأوسع.

5. عقود الإيجار وسيلة هامة لإتاحة الأراضي في اليمن، وخاصة بالنسبة للفقراء، حيث أن شروطها وفقا للقواعد العرفية مستقرة نسبيا على مر الزمن، وهي تساعد على توفير مستوى من تأمين الحيازة. ولكن هذه القواعد العرفية تتعرض للمقاومة بشكل متزايد في إطار الضغط المرتفع في الطلب على الأراضي، والملاك يستغلون قدراتهم ونفوذهم للمساومة. وقد يكون من المناسب في ظل هذه الظروف أن نؤكد على مدى انطباق القواعد العرفية باستثناء الاختلافات الواردة في عقود التأجير الخطية. هذا الأمر سيوفر درجة من الوضوح خلال الفترة الإنتقالية.

6. فشل المسؤولون في المحافظات الجنوبية في التنفيذ الفعال للقرارات الصادرة والتي تهدف إلى تحسين أوضاع المستفيدين من الإصلاحات في قطاع الأراضي، وقد حدث تراجع في هذه الإصلاحات بعد إعادة توحيد البلد. وتمت الإشارة بوضوح إلى عملية المراجعة المستقلة لعملية التنفيذ وإجراءات الطعن.

7. يعكس مشروع قانون تسجيل الأراضي المعروض امام البرلمان حاليا أفضل الممارسات الدولية، ويوفر الفصل المنهجي للحقوق في الأرض فرصة هامة، ولا سيما في المناطق الحضرية، والمناطق الساحلية، والجنوبية، وذلك للفصل على نحو أكثر فعالية من المزارع المتضاربة، وبشكل أفضل مما هو متاح حاليا. أما في الشمال، حيث تسود التراكم العرفية، فقد يكون من الأفضل العمل على تحسين أداء المؤسسات القائمة، مثل نظام التوثيق. من الضروري توجيه المزيد من الاهتمام بشكل عام للربط بين نظام التوثيق ونظام تسجيل الأراضي؛ على سبيل المثال، قد يكون من المتطلب قانونا وجود الموثقين (المأمون) لتسجيل التعاملات المتعلقة بالأراضي التي يكتبونها.

8. من الواضح أن المرأة مهضومة في أحكام قانون الميراث، بل إن الممارس هو عدم تسليم حصص الميراث المتواضعة المخصصة للنساء في كثير من الأحيان، وضغوط أخرى في المجتمع تتسبب في وجود العوائق الحقيقية لإنتقال الميراث المخصص للمرأة في ملكية الأرض. المرأة ليست تحت أي شكل من أشكال العجز القانوني فيما يتعلق بشراء وتملك الأراضي، ويمكن أن تكون البرامج المخصصة لرفع مستويات الوعي بحقوق ملكية الأرض وتوفير الائتمان وتقديم المساعدة القانونية في تطبيق الحقوق المنصوص عليها في الشريعة الإسلامية ذات قيمة في بدء التحول في القيم الثقافية. وقد يكون من الأفضل الاعتماد في تطبيق مثل هذا التحول والمضي قدما عبر المساعدة من قبل منظمات المجتمع المدني الملزمة بهذه الأهداف.

9. وتستحق ظاهرة الاستحالة والحرمان من الحصول على ملكية الأرض للجماعات العرقية والخدمية اهتماما عاجلا. وكخطوة أولية مناسبة، أن يتم إضفاء الطابع الرسمي من خلال تسجيل مستجمعاتهم السكانية غير الرسمية على أراضي الدولة، تليها تشريعات تجعل من الواضح أنه يمكنهم قانونا شراء الأراضي، وأخيرا إطلاق حملة إعلامية وبرامج تقدم المساعدة القانونية للسماح لهم بالطعن في انتهاكات الحقوق الجديدة. وينبغي أن تنظر الحكومة في الاعتماد على منظمات المجتمع المدني والملتزمة بالقضاء على الممارسات التمييزية لدفع هذه الأجندة قدماً.

10. هناك تزايد في مستوى التنافس على امتلاك الأرض. وهذا الأمر مدفوع في بعض أنحاء البلد بسبب تطوير تكنولوجيات جديدة لاستخدام المياه والتي مكّنت من القيام بأنشطة زراعية على نطاق أوسع، وكذلك من خلق الفرص الاقتصادية. وترتفع أسعار الأراضي بشكل متسارع، ما أدى إلى بعض ممارسات البيع القسري للأراضي الخاصة والاختلالات في تخصيص أراضي الدولة والأراضي المشاعة للمصالح الخاصة. وفي حالات أخرى، مثل المناطق النائية والجبلية، فإن المساحات المحدودة من الأرض لن تساعد على توفير سبل العيش الأساسية للجبل القادم. وهناك عدد من التدابير المقترحة أعلاه، مثل سجلات أكثر وضوحا لحقوق ملكية الأرض ووضع نظام قانوني ملائم للأراضي المشاعة، والتي من شأنها التخفيف من حدة هذه المشكلة، لكن هناك ما يدعو للقلق بسبب اتساع رقعة الافتقار إلى ملكية الأراضي. وينبغي على الحكومة أن تنظر في إجراء مسح للأسر الريفية لتقييم حجم الافتقار إلى ملكية الأراضي لديها، ومعدل نموه وأسبابه، وذلك لاقتراح التدابير اللازمة لتحسين عملية الحصول على الأراضي.

11. سيادة القانون لا تزال ضعيفة في ظل الافتقار إلى السبل الملائمة لفض النزاعات، وهذا بدوره يؤدي إلى تفويض حقوق الملكية وضمان الحيازة. وعملية الإصلاح لمؤسسات تسوية النزاعات ضرورية لنظام موثوق لحقوق الملكية باعتبارها مؤسسات لإدارة شؤون الأراضي.

12. إن التكامل منعدم الكفاءة والعشوائي للقواعد القانونية والعرفية يسهم في تنامي تركّز ملكية الأراضي. ومن الضروري التنسيق في أدوار كل الأعراف والمؤسسات. إضافة إلى ضرورة إعادة النظر في دور المؤسسات المحلية المتعاملة في قضايا إدارة الأراضي، ورؤية ما إذا كان هناك مؤسسات محلية لإدارة شؤون الأراضي تسمح بالمزيد من المشاركة العامة وإدماج سلطات الحكومة التقليدية والمحلية في ذلك.



13. تم هجر الأشكال العرفية في تنظيم استخدام المياه من دون إيجاد البديل، وجار التحضير لوضع الوسائل الفعالة لتنظيمها. يؤثر قانون المياه تأثيراً مباشراً في أسعار الأراضي وسبل الحصول عليها، وبالتالي ليس من الممكن تجاهل قانون المياه في أي دراسة تتعلق بحقوق الأرض والإصلاحات المطلوبة.

14. يبدو أن أعمال التسجيل التقليدية لحقوق الملكية عن طريق الموثقين (المأمون) ليست شاملة تماماً كما ينبغي في بعض الأحيان، وأن هناك طلباً كبيراً للتسجيل لا تتم تلبية. وقد تنجم تبعات لوجود قدر أكبر من الطلب في بعض المناطق أكثر من مناطق أخرى فيما يتعلق بالمناطق التي سيتم اختيارها لتنفيذ مشروع تجريبي لنظام التسجيل الجديد والذي هو قيد النظر أمام البرلمان حالياً، وذلك في حالة إقراره في نهاية المطاف. ومن ناحية أخرى، فإن بعض الإنحرافات (الاختلافات) غريبة بعض الشيء (كثدي متوى الطلب في صنعاء على سبيل المثال)، ومن الضروري إجراء المزيد من التقصي حولها.

15. تمضي الحكومة بالفعل قدماً نحو سن قانون لتسجيل الأراضي وتنفيذ عملية تجريبية لمنهجية تسجيل الأراضي في بعض المناطق الحضرية وشبه الحضرية. ولكن فيما يتعلق بقضايا الأراضي في المناطق الريفية، فإن إبداء عدم الاهتمام في إجراء هذه الدراسة من قبل الجهات الحكومية الرئيسية التي كان ينظر إليها على أنها شريك محتمل يوحى بأن التشجيع الضئيل لن يكون فعالاً. وقد تشمل أية استراتيجية قابلة للتطبيق تقديم الدعم لما يلي: (أ) جمع المزيد من المعلومات بشأن حقوق الأراضي المشاعة، ووضع استراتيجية من أجل اعتراف قانوني بالحقوق، (ب) إدخال قسم كبير يتعلق بحيازة الأراضي في مسح وطني دوري للأسر العاملة في الزراعة، مثل التعداد الزراعي الذي تنفذه منظمة الأغذية والزراعة (الفاو)، وذلك للسماح بتتبع الاتجاهات في عدد من المجالات، بما في ذلك توزيع الأراضي، (ج) استكشاف احتمالات التوصل إلى دراسة جادة لاستخدام الأراضي الموقوفة، والممارسات الإدارية وروافد الدخل فيها، وذلك بهدف وضع استراتيجية هادفة لضمان المزيد من مساهماتها في الصالح العام، و (د) أنشطة منظمات المجتمع المدني المكرسة لحماية حقوق الملكية، سواء بصفة عامة أو لأصحاب المصلحة الرئيسيين مثل صغار الملاك والمستأجرين، بما في ذلك برامج المساعدة القانونية ومنظمات المجتمع المدني التي تدير حملات إعلامية لزيادة الوعي والتنقيف بحقوق ملكية الأرض. الأوضاع في اليمن على ما يبدو تفضي إلى ضرورة إتباع نهج التأكيد على التمكين القانوني للفقراء.

## Executive Summary

Yemen is arid, with very limited arable land and a strong dependence on groundwater irrigation. Agriculture plays an important role in the economy, generating more than 15 percent of GDP since 1990 and employing more than half of the working population. Social organization remains heavily tribal and shaykhs (traditional authorities) continue to play a major role in governance of rural areas. Rural culture is intensely patriarchal, and households usually consist of an extended family living in a single domicile or family compound, farming owned land. The rural population lives in over 41,800 scattered hamlets.

Property rights under Yemeni Law are expressed both in custom and statute, but both are informed by shari'a (Islamic law), which provides the basic property categories for land in Yemen. There are unfortunately no reliable official statistics for the amount of land within these categories, or how much arable land (a small percentage of total land area) falls within each. These categories are:

- 1) State land, claimed by Government at 90% of all land, but probably accounting for around 10% of cultivated land. No inventory exists, and this facilitates illegal private appropriations of state land. There is a sound legal framework but it is ineffectively administered.
- 2) Privately-owned land, perhaps 84% of cultivated land, but less than 10% of all land, with a fairly high degree of documentation through notaries but without a modern registration system, with a legal framework which generally facilitates sale and leasehold markets.
- 3) Religious endowment (waqf) land, perhaps 3-4% of all land, but which in some cases serves important public purposes and, being often farmed by tenants, provides land access to the poor.
- 4) Communal land, considered by tribal communities to be owned by them, consisting primarily of hillside and other lands of marginal economic value. The state claim that 90% of land is state land includes much land which rural people consider "communal", and there is a problematic lack of clarity in the law regarding the legal boundary between these two categories.
- 5) Tenancy, covering perhaps 3-4% of the farmed land within the first three categories above, consisting largely of share-cropping. The terms of share-cropping agreements are becoming longer, and long-term leases with fixed rents are becoming more common in some parts of the country.

Key statutory enactments are the Civil Code and the Law on State Lands and Real Estate, but there are other important land laws as well, including laws intended to mitigate the impact of reversal of land reform in the former South Yemen, a law regulating the notarial profession and a law on land registration – which may be replaced by a new draft land registration law currently before the legislature.

Survey data under this study indicates that property continues to be broadly owned among rural households. There are active land and leasehold markets. Land owners are clear that they are entitled to transaction or mortgage their land, but while it is not a requirement, they would consult with relatives, particularly their brothers, before selling or otherwise transacting land. Land rights are usually supported by documents, though not often registered in rural areas. Tenure security, as reflected by long average terms of parcel possession, seems to be reasonably strong.

It is clear however that certain groups suffer from disadvantages in accessing land and land rights. Daughters are disadvantaged by shari'a rules which limit their inheritance shares to only half that of a son. Youth, unable to inherit until the demise of their parents and lacking the capital to buy land, lack access to land and other employment opportunities, which endangers social stability. There are occupational castes (artisans) who are discriminated in land holdings and ethnic minorities, former slaves and immigrants from East Africa, who lack access to land, and especially land ownership, limiting them to the most menial labor.

New water technologies available only to large commercial farmers are placing pressure on small holders, as are rising land prices. These have given rise to illegal land grabbing, most evident along the coast, in areas of state land and waqf. Land transactions are converting some small farmers to tenants on land that was formerly their own or leading to their migration out of agriculture. There is evidence of some forced sales, but other small farmers simply cannot afford the high input cost and so sell their land to large landlords and then work for them as laborers. Land disputes are common, but litigants are poorly served by the courts, which are considered corrupt and inefficient. Most prefer customary dispute resolution institutions; though these may be perceived as less reliable as traditional authorities are co-opted into local government.

A number of key issues and possibilities for action emerge from the findings of the study:

While the legal framework for administration of state land is relatively adequate, there are however some fundamental problems in the legal delineation of state land. First and foremost, there is a need to provide a clearer distinction between state and communal land. This will require a clearer definition of communal land, one which refers specifically to uses and customary arrangements. This study did not develop adequate information on communal land and its administration, and there is a need for a study dealing specifically with this matter, followed by legislation on communal land. Second, the definition of marahek, or "public utility land" (water catchment areas), which often determines whether land is publically or privately owned, is both unclear and difficult to apply in practice. This is the source of a significant number of disputes and clearer standards should be enacted.

In addition, it is clear that implementation of the law concerning state land is badly flawed, and that there are abuses in terms of uncompensated land takings and illegal appropriations of state lands for private purposes. The lack of an adequate inventory of state land will undermine efforts to improve state land administration. Such an inventory, however, should be preceded by the legal reforms identified above as needed, as an inventory in their absence seems likely to result in controversial classifications of land as state land, which only intensify conflict over them. In addition, experience in other countries suggests that the apparently technical task of a state land inventory will not be easy. Those with knowledge of the location of state land parcels profit from

that knowledge, and are reluctant to see it become public knowledge. Strong local participation in such an inventory will be critical to its success, and should be built into the inventory process.

The law concerning private ownership of land is satisfactory in most respects, and ownership and land transactions are well understood in the popular culture. The shari'a-based right of pre-emption limits security in land transactions, but also provides a mechanism that allows families and neighbors to retain land that might be bought by outsiders without interfering too directly with the market in land. However, the lack of a time limit on the exercise of the right of pre-emption can leave buyers in a continuing state of uncertainty, and the law should be amended to provide a time limit, such as six months, on exercise of the right. For registered land, this could be six months after registration. The law concerning inheritance of private land provides for division among all children, resulting in a pattern of farmer holdings consisting of several small parcels. This reduced the efficiency of both labor and machinery in agriculture, but the active rental and sales markets provide an opportunity for those with fragmented holdings to use those markets to mitigate fragmentation, if they wish to do so.

Religious endowments hold land out of the land market, though waqf land is in play in rental markets. It supports public services and provides tenancy opportunities for the poor. As in the case of state land, inefficient and corrupt administration the absence of an adequate inventory is fundamental, facilitating appropriation of waqf for private purposes and other corrupt practices. Development of such an inventory would appear to be a priority, but there is a larger need to consider how waqf land can be better managed to contribute to the public good. A systematic study of waqf land management practices and optimal use of waqf revenues should be undertaken. The inventory should be carried out in the context of that larger study.

Tenancies are an important means of access to land in Yemen, especially for the poor, and their relatively stable terms under customary rules have historically provided a reasonable degree of tenure security. But customary rules are increasingly being challenged under increased pressure on land, and landlords are taking advantage of their stronger bargaining power. In these circumstances, it would be appropriate to affirm the applicability of customary rules except where varied by written leases. This will provide a degree of clarity in a period of transition.

In the southern governorates, officials have failed to implement effectively decrees intended to ameliorate the situation of land reform beneficiaries as the land reform was rolled back after reunification. An independent review of implementation and implementation of an appeals process is clearly indicated.

A draft land registration law currently before Parliament reflects current international best practice, and systematic adjudication of rights in land offers an important opportunity, especially urban areas, coastal areas and the south, for more effective adjudication of conflicting claims than is currently available. In the north where customary structures prevail, it may be more effective to work to improve existing institutions, such as the notarial system. In general, more attention needs to be given to linking the notarial system and the land registration system; for instance, notaries might be legally required to register land dealings which they notarize.

Women are clearly disadvantaged by the terms of inheritance law, but since even the modest inheritance shares allotted to women are often not received, other pressures in the society are the

real constraint to women inheriting land. Women are not however under any legal disability with regard to buying and owning land, and programs to raise land rights awareness, provide credit and offer legal assistance in achieving rights under shari'a could be valuable in initiating a shift in cultural values. Reliance in moving this agenda forward might best be placed upon civil society organizations committed to these goals.

The lack of access to land by disadvantaged ethnic and artisan groups, the product of both economic and social barriers, deserves urgent attention. An appropriate initial step would be formalization through registration of their informal settlements on state land, followed by an authoritative announcement to make it clear that they should not be discriminated against by those selling land and finally the launching of a public information campaign and legal aid programs to allow them to challenge violations of new rights. Government should consider relying on civil society organizations committed to the elimination of discriminatory practices to push forward this agenda.

There is growing competition for land. This is driven in some parts of the country by the development of new water technologies which have enabled larger-scale cultivation and created economic opportunities. The adoption of these technologies has been promoted by World Bank and other donor-supported projects. Land values are rising rapidly. This is resulting in some forced sales of private land and questionable appropriations of state and communal land by private interests. In others, such as the mountainous hinterlands, the limited land base may not be providing needed livelihoods for the next generation. A number of measures suggested above, such as clearer records of rights in land and an adequate legal regime for communal land, would mitigate this problem, but there is reason for a broader concern with emerging landlessness. Government should consider a survey of rural households which assesses the extent of landlessness, its rate of growth and its causes, and proposes measures to improve land access.

In the absence of adequate dispute resolution, the rule of law will remain weak and this in turn undermines property rights and security of tenure. The reform of dispute resolution institutions is as essential to a reliable system of property rights as land administration institutions.

Inefficient and haphazard integration of statutory and customary norms are contributing to growing land concentration. Both rules and institutions need to be harmonized. Local institutions dealing with land administration need to be re-examined, asking whether there are local land administration institutions that allow greater public participation and integrate traditional and local government authority.

Customary forms of regulating use of water are being abandoned without alternative, effective modes of regulation being put in place. Water law so directly impacts land values and access to land that it cannot be ignored in any study of land rights and needed reforms.

It appears that the traditional registration of rights documentation with notaries is not quite as universal as it sometimes suggested, and that there is a significant unmet demand for registration. The existence of much greater demand in some areas than in others may have implication for areas to be selected for piloting the new registration system under consideration in Parliament, if it is eventually enacted. On the other hand, some of the divergences are somewhat curious (the low demand in Sana'a, for instance), and would need further investigation.

Government is already moving forward toward enactment of a law on land registration and piloting of systematic land registration in some urban and peri-urban areas. But with respect to rural land issues, the lack of interest in this study displayed by key government agencies which had been seen as potential partners suggests that simple encouragement will not be effective. A workable strategy might include support for a) the gathering of further information on communal land rights and development of a strategy for their legal recognition; b) introduction of a substantial land tenure section into a periodic national survey of agricultural households, such as the FAO agricultural census, to allow tracking of trends in a number of areas, including land distribution; c) exploration of the prospects for a serious study of waqf land use, management practices and revenue streams, with a view to developing a more purposeful strategy to ensure its contribution to the public good, and d) activities of civil society organizations devoted to protection of property rights, both generally or for key stakeholder groups such as smallholders and tenants, including legal aid programs and CSO-managed information campaigns to increase land rights literacy. Conditions in Yemen would appear conducive to an approach emphasizing legal empowerment of the poor.

## **Introduction: Study Objectives and Approach**

This report synthesizes information gleaned from a series of reports prepared under TF057349 (Yemen Land Tenure) for a study of rural land tenure in Yemen, and from the modest number of published and unpublished sources which provide relevant information. The primary source is the Draft Final Report of the Yemen Rural Land Tenure and Livelihoods Study (March 2009), prepared by an Hariri & Associates by a team consisting of Dr. K. I. Hariri (team leader); Dr. M. Amrani (sociologist), Dr. Suad Yafaei (socio-economist), Dr. S. Haddash (lawyer and legal aspects consultant), Eng. Abduljaleel Al Himyari (agricultural economist/data analyst) and Ms. A.K. Hariri (lawyer and human rights specialist). The objective of this synthesis paper, prepared by World Bank land tenure consultant John Bruce, is to make the material available in a relatively accessible form and to identify some of the land policy and law reform issues that affect rural livelihoods that are raised by the study findings, explicitly or by implication.

The overall objective of the study, as stated in the TFESSD application, was to “promote rural land policy reforms for equitable access to land resources, greater empowerment of vulnerable groups and sustainable pro-poor economic growth”. To this end, the activity was to 1) analyze the functionality of existing state and customary land tenure, and property rights as well as reviewing the overall legal framework on rural land; 2) assess the land tenure status as they relate to livelihoods of rural populations, and 3) to prepare an action plan for land policies, governance and legal reforms favorable to poor and vulnerable population groups conducive to greater and legally secure access to productive land, sustainable land resource management and improved livelihoods.

The study is in line with current national poverty reduction efforts and with CAS 2002-05, which stipulates that bank lending and private investment are hindered by insecure land titling in Yemen while advocating for stronger enforcement powers for local land courts as well as the establishment of a land ownership cadastre. The task was to increase knowledge on local land issues and set the stage for future Bank operations in land titling and administration reforms for poverty reduction and sustainable development in Yemen. A recently completed Yemen Country Social Analysis (CSA) identifies, among others, the following strategic priorities for equity and poverty reduction: (i) rural land reform and establishment of property rights that protect the poor; (ii) improved land access to women and young men; as well as (iii) better access to justice systems, to enforce the rights of poor people and women. The study was to adopt a methodology linking social and economic aspects inherent to vulnerable populations and their access to land resources to formulate pro-poor land policy reforms and contribute to Bank analytical work on social development and poverty by investigating rural land issues in Yemen, an area that has not been analyzed in depth in the country before. Hence there has been an emphasis on linking livelihoods and land tenure in the design and write-up of the study.

A detailed survey of rural households was conducted, covering a wide range of information, including land ownership status, definition of property rights, activities and investments undertaken on the land used as well as household living standards (employment situation, income level, and welfare level). Based on a review of state and customary land tenure and property rights and analysis of the survey results, an assessment was to be made of the effects of land policies and institutional arrangements on sustainable land productivity, equitable economic

growth and poverty reduction efforts in rural areas. An action plan was then to be developed and disseminated within the stakeholders' community.

The activity has been solely funded through TFESSD. The Bank team included the task manager (an agricultural economist) and a legal consultant. The study was contracted to the firm of Hariri & Associates, which assembled a local team with expertise including land policy, land administration, property rights, and rural and social development. Results of the study were to be disseminated through mediums such as workshops and public consultation activities, national conferences, and policy briefs to the senior government officials. The primary government counterpart was to be the Planning and International Cooperation and key line Ministries such as the Ministry of Agriculture and Irrigation, Ministry of Legal Affairs, Ministry of Interior, Ministry of Finance, Ministry of Justice, as well Ministry of Social Affairs. (In the event it proved difficult to engage most of these institutions; insofar as they evidenced any interest in land issues, it was focused on high-value urban and peri-urban land.)

Ten governorates were selected for the study: Abyan, Aden, Hadhramut, Hajjah, Hodeidah, Ibb, Lahej, Sana'a, Shabwa, and Taiz. This is 10 out of the country's 22 governorates, or 45% of governorates. In each governorate three to four districts were chosen, and one or more communities were selected from each district. The selection of governorates/districts was made on the basis of the following criteria:

- a) Main agro-ecological zones: highlands, coastal and mountainous areas;
- b) Typical economic activity: herding, farming and fishing;
- c) Cropping profiles: e.g., qat vs. non-qat farming areas
- d) Accessibility and security status of the areas.

Discussions did take place with the Ministry of Agriculture and Industry (MAI) officials in Sana'a prior to commencement of the study to explain the assignment, its objective and outputs. The Deputy Minister provided a letter of introduction for the study team to the MAI branch offices in the selected governorates. Survey teams were each led by a senior researcher from the staff of Hariri and Associates (a sociologist, a socio-economist, an agriculture statistician or the team leader). Several previously trained survey enumerators were selected to join the team, and in addition, two to three enumerators from each governorate were recruited. Contacts were made with MAI branch offices and local councils before the initiation of the field visits.

The number of communities selected within each district was determined so as to fit within available funds for the study. Thirty-eight communities, some of them clusters of small hamlets, were studied. For each community, a case study was first carried out through key informant interviews, focus groups and other qualitative methods, followed by random selection of a sample of households and administration of a questionnaire. Annex 1 provides a listing of the communities studied, by governorate, the issues raised with each community and the numbers of households interviewed in each governorate. The numbering of communities provided in this annex is used to identify those communities in references throughout this paper.



Annex 2 is an English translation of the survey questionnaire. While the number of surveyed households is too small to be representative and statistically significant at community level, the data nonetheless provides a valid assessment of typical land tenure status and livelihoods of rural populations in the selected areas. Selected data is provided in a few tables in the main body of this synthesis report, but most are simply referenced there and included in Annex 3 to this report.

This report is thus based upon:

- 1) A review of the very limited literature on rural land tenure in Yemen, including other World Bank studies;
- 2) Legal and other qualitative data gathered by the study team and reflected in the reports;
- 3) The breakdown of the study's survey responses contained in the final report of the project, with accompanying comments by researchers, plus some tables on land disputes and land registration prepared from that data specifically for this synthesis paper; and
- 4) Community profiles of the communities from which the survey households were selected.

Sources, including both reports from this study and other sources, are listed at the end of this synthesis paper.

## **1. Background: Land, Economy and Society in Rural Yemen**

Land tenure issues arise in the particular geographic, economic and social contexts of the country concerned, and they can be understood only within those contexts. This background section attempts to situate land within those contexts.

### **1.1 The Land and Livelihoods**

Yemen has limited arable land, estimated at 166 million ha. This is less than 3% of its total land area. In 1996, 64% of that arable land was cultivated. The vast majority is irrigated. About 25 percent of this land is in the form of man-made terraces in the highlands (Aw-Hassan et al 2000: 1).

There are four types of agricultural land ownership in Yemen: Private land (milk khas), state land (miri, or aradi al dalwa), religious endowment land (aradi waqf) and communal land. These will be discussed in much greater detail later in this paper, but first, it is important to understand the variety of Yemen's land forms and the livelihoods its regions support.

The Highlands are the most densely populated part of the country; nearly 60 percent of Yemen's population lives there. Land holdings are small and fragmented. Those in the Highlands practice a largely subsistence agriculture, mostly cereal production (sorghum and at higher elevations, wheat). Terracing is common and supplemented by hand-dug wells. With the introduction of modern irrigation techniques, financed in part by remittances of migrants to Gulf Countries, rainfed agriculture has dramatically declined since the 1970s, from 85 percent of total production to just 45 percent in 2003

In addition, there has been an intensification of production of qat (a mild narcotic), making it the most important crop. Highland farmers expanded qat hectarage from 45,000 in 1980, to 80,000 in 1990 and 111,000 in 2003. In 1999, qat accounted for 25 percent of the agricultural labor force, by far the highest source of rural employment. In some areas, such as Sha'lan, the land is exclusively given over to qat. Annual returns from qat are almost three times that from coffee, the main export crop, and provide households with essential cash. Households producing qat are more than twice as likely to be food secure than those not doing so. Qat is popular because production costs – aside from water – are low; qat requires limited labor and few pests and few diseases affect the crop. The transition to flatter valley land irrigated by wells combined with out-migration of males has led to abandonment of many of the terrace systems, especially those that relied on runoff water harvesting.

The Tihama, stretching along Yemen's Red Sea coast line, accounts for about 15 percent of the national population and represents one of the poorest regions in the country. Farmers traditionally grew sorghum, millet and dates for subsistence and sesame and tobacco as cash crops. Land here is concentrated in the hands of a few owners. Low rainfall has meant that agricultural production was largely restricted to seasonal flood irrigation from temporary barrages and under customary allocation systems. Land was in the hands of a handful of large landowners, with the bulk of the farmers engaged in sharecropping. The waqf system has flourished here, and made rental land available to poorer farmers but this system is weakened through private misappropriation of waqf land. In the mid-1970s government introduced new

technologies and new cash crops, primarily fruit. The use of these new technologies and farm inputs require significant cash investments which are out of reach for most small farmers. Many have been forced to sell their land and now working as wage laborers. In addition, a key coping strategy for such destitute farmers is to migrate to urban areas or other rural areas. Following unification, the new government reinstated land confiscated by the socialist regime in the spirit of protecting private property rights and promoting the market economy. Poor farmers who were granted land rights suddenly became landless and social hierarchies that had weakened with socialist rule were reintroduced. In some instances, the laborers continue to work on their farms as wage laborers, while in other cases they have been expelled from their land and must make a living as transient farmers or unskilled construction workers.

The Eastern Plateau is the most sparsely inhabited zone of the country, containing roughly 8 percent of the total population over a vast desert area stretching from Saudi Arabia to the north and Oman to the east. The main livelihood system in the 1970s was nomadic herding and some farming in the fertile valleys of the Hadramut. With the discovery of oil in this region, some small towns have sprung up, and sedentarization has increased rapidly.

## **1.2 Economic Context**

The population of Yemen numbers almost 20 million. The country has one of the highest birth rates in the region, and the population has in recent years grown at 3.1 percent annually. The population is young, with two-thirds under 25 and one in five persons aged between 15 and 24. Over 75 percent of the population is rural, and over 95 percent of the rural population is engaged in agriculture.<sup>1</sup> Few households survive solely on income from agriculture.

Poverty too is largely rural. When last measured in 1998, it was widespread (over 40 percent of the rural population lived on less than a dollar a day), and food poverty almost doubled from 9 percent to 17.5 percent between 1992 and 1998. Yemen is in fact the poorest country in the region. Yemen's GNI per capita is US\$521, compared to US\$2,390 in the MENA Region and the GDP growth rate has steadily been falling. While Yemen is an oil producer, and oil revenues have driven the development of some large-scale agricultural production, the country is the smallest oil producer in the region. Oil revenue accounts for an estimated 70 percent of government revenue, but the country's known reserves are projected to be exhausted by 2012.

Agriculture plays an important role in the economy, generating more than 15 percent of GDP since 1990 (20.4 percent in 2005 according to the Central Bank of Yemen) and employing more than half (54.2 percent in 2003) of the working population. Numerous environmental problems hamper growth in this sector—soil erosion, sand dune encroachment, and deforestation—but the greatest problem by far is the scarcity of water. Yemen is an arid country, and there are no permanent watercourses. Annual precipitation ranges from about 5 inches in the highlands, 15-20

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<sup>1</sup> Central Statistics Office, Ministry of Planning, Yemen, 2004 Census.

inches in the lower highlands, and the 15-20 inches in the middle highlands. Throughout Yemen, precipitation is erratic and variable from year to year, and lengthy droughts occur. As a result of low levels of rainfall, agriculture in Yemen relies heavily on the extraction of groundwater, a resource that is being depleted. Yemen's water tables are falling by approximately two meters a year. The use of irrigation has made fruit and vegetables Yemen's primary cash crops, together with qat.

Qat is a mildly narcotic and heavily cultivated plant that produces natural stimulants when its leaves are chewed. It plays a dominant role in the agricultural economy, constituting 10 percent of GDP and employing an estimated 150,000 persons while consuming an estimated 30 percent of irrigation water and displacing land areas that could otherwise be used for grains, coffee, fruits, and vegetables. Between 2000 and 2004, the growth rate for the agricultural sector for agriculture and fisheries (excluding qat) averaged a relatively stable 4 percent per annum; the growth rate for qat averaged between 15 and 20 percent per annum for the same period. The contribution of agriculture to the GDP has been steadily declining, and is currently estimated at between 16 and 20 per cent.

Today, due to pressure on access to natural resources (most critically groundwater and land), few rural households can survive on agriculture alone. Subsistence agriculture has grown more tenuous, and there is considerable rural underemployment, though modest new employment opportunities are being provided by the qat sector. Most households cope by diversifying their income sources, largely through integration of urban and rural livelihoods. There is substantial labor migration from the rural areas, both permanent and seasonal, including migration to Saudi Arabia and the Gulf.

Table 1, based on data from the household survey under this study, gives some indication of the diversity of income streams of rural households:

**Table 1: Source of Income According to Governorates and to Samples Surveyed**

Source	Sana'a	Abyan	Taiz	Ibb	Lahej	Al-Hodeidah	Hajjah	Hadhramut	Aden	Shabwa
	%	%	%	%	%	%	%	%	%	%
Income from teaching	0	1	12	18	15	4		3		49
Income from Farming	71	54	30	50	55	78	67	95	15	1
Paid Labor (Agriculture)	11		12	9	7	11	7	0	4	0
Employee	13	9	13	5	9	4	1	5	16	2
Paid Labor (Soldier)	4	3	8	3	8	0	0	0		0
Income from Livestock Husbandry	0	32	19	10	15	7	0	0	15	48
Income from Fisheries and Related Activities	0	2	10	0	0	0	25	0	50	0
Paid Labor (Commercial)	0	0	5	3	4	0	0	0		0

Have Grocery Shop <sup>a</sup>	0	0	3	2	2	0	0	0		0
Total	100	100	100	82	100	100	100	100	100	100

### 1.3 Social Structure

Tribes and their subdivisions are the primary social organization in rural Yemen. Social organization remains heavily tribal and shaykhs (traditional authorities) continue to play a major role in governance of rural areas. Rural culture is intensely patriarchal, and households usually consist of an extended family living in a single domicile or family compound, farming owned land. The rural population lives in over 41,800 scattered hamlets. With the exception of villages that are close to urban areas, the structure of the modern nation state has only marginally touched rural areas.

For each tribe, there are four hierarchical levels of shaykhs: the *Shaykh M'Shayik* (highest ranking and literally shaykh of all shaykhs), *Shaykh D'man* (covers an area approximating district level or more), *Shaykh* (at a sub-district level), *Shaykh mahal* (also known as the *Shaykh lohma or aqil* and operates at the hamlet level). The boundaries of the shaykhs' territories do not always correspond to administrative divisions. The number of *registered* shaykhs varies widely from governorate to governorate. Sana'a Governorate has the highest number of registered shaykhs per capita (nearly one shaykh for 2,757 people compared to one for 45,078 inhabitants in Al-Mahwit). In the southern governorates, tribal institutions weakened by decades of socialist rule are now being revitalized, and there are now a large number of registered shaykhs, though the tribal system remains weaker in these areas.

Rural shaykhs continue to play an important role in the redistribution of goods and services and the settlement of conflict. Their primary responsibility is to resolve disputes, manage communal assets, protect the weak, collect agricultural taxes and then redistribute it. Islamic law (*shari'a*) and customary laws (*'urf*) provide the rules by which conflict and cooperation was to be mediated within the tribe or across tribes. Shaykhs continue to play a convening role both in mobilizing the community for collective purposes and serving as the community's interlocutors, lobbying local and central government for development projects. The Shaykh M'Shayik are responsible for the supervision of religious tax collection (*zakat*) in rural areas, often from agricultural income and the lower level shaykhs for its collection. As being a shaykh is considered voluntary service to the community, no official salaries are provided but they may, nonetheless, keep an unspecified percentage of the collection.

Shaykhs were nominated by their communities but have to be formally confirmed by the Government. The state incorporates traditional authorities into the state's formal institutions is through official recognition of some tribal leaders by the Department of Tribal Affairs in the

Ministry of Interior, appointment to high government office and election to local government or

Parliament, making them key actors in the state patronage system. The fact that shaykhs now draw on formal state systems to support them has weakened the traditional sanctions open to local people for holding them accountable or removing them. Well-organized tribes are still capable of removing their leaders, but for the most part, their wealth and connections to the

central government are powerful sources of patronage. Because communities increasingly rely on their shaykhs to mediate with the central government they tend to voice little opposition to their patrons except in cases of gross infractions.

A large majority of Yemen's population fall within this social framework. They are sedentary landowning agriculturalists (often members of tribal groups or *qab'ail*, who traditionally bore arms) and fishermen (estimated at 80 percent of the population). But there are also a smaller group who provide services to this sector (estimated at 5%), and variety of marginalized mainly landless people who do not have recorded genealogies and are often excluded from land ownership or even access (estimated at 10 %).

Virtually all citizens of Yemen are Muslims, either belonging to the Zaydi order of Shi'a Islam or to the Shafa'i order of Sunni Islam. It is estimated that the Zaydi (Shias) form 42-48 % and the Shafi (Sunnis) form 52-55 % of the general population.

## 2. Sources of Property Rights: Shari'a, Custom and Statute

Yemen, as is the case with most countries in the developing world, exhibits a degree of legal dualism: a pervasive and resilient body of Islamic/customary law deeply embedded in social structures and culture, and a statutory law whose writ runs primarily in urban centers and associated peri-urban areas. In many developing countries, the penetration of the statutory law into the rural areas is an important tool by which urban-based elites capture land there. Often the interface between these systems is unclear, creating uncertainty as to applicable law and allowing disputant to not only “forum-shop” but, by choice of forum, to “law-shop”. It can become a source of insecurity of tenure. What is the extent of this dualism in Yemen, how do the bodies of law interact, and to what extent is it problematic?

In Yemen, the traditional polity was an Islamic state, one based on the shari'a and headed by a jurist-leader, an imam. This polity had a thousand-year history in the highlands prior to the fifty years of Ottoman rule (1872-1919), and was resumed in the 20<sup>th</sup> century. Messik (2003) writes:

*“Mid-twentieth-century highland Yemen [exhibited] ... a set of institutions surrounding the individual legal subject, institutions in which the formal terms of Sharia doctrine matched the informal categories of a significant range of economic practice. Foremost among these is the institution of individual ownership of property, moveable and immovable, commercial and agrarian, property that could be bought, sold, leased, and passed on to heirs. Such a form of property was a basic building block of a socioeconomic system that may be described as "capitalist"....*

Once one moves beyond urban areas and their environs, land access and use are controlled by shari'a-molded local customs. Throughout the Islamic world, shari'a has often accommodated local custom (urf) in land matters, and this is especially true in land matters. Still, there remains a dichotomy and some degree of tension between shari'a and urf. But in Yemen, because this is a country with a very long history of Islam, on the Arabian peninsula whose land customs influenced the development of shari'a, that dichotomy hardly exists, by comparison to societies of more recent conversion to Islam, for instance those in many parts of sub-Saharan Africa. Early customs has been incorporated into shari'a and shari'a has become customary, the two being melded together in practice by many centuries of interaction. Scholars may be able to discriminate between the sources of particular rules, but for rural people, there is a single system of rules which is at once Islamic and customary, with statutes which are seen as an extension of those systems.

Shari'a governs property rights in land in the rural areas, with minor differences depending upon the school of Islamic law is applicable in the community. As in all Muslim countries, there is a well-established system of private individual ownership of real property. Land ownership in Yemen has four categories: privately-owned (mulk), state-owned (referred to as miri), communal property, and land endowed to a religious trust (waqf). Privately-owned land is governed by shari'a and customary law and is almost always documented by a written deed or contract, usually signed by a religious authority or a shaykh who is also charged with updating records (e.g., to show inheritance). Documentation is available on the most productive plots in the

country and includes information on boundaries, history of ownership, etc. Agricultural land tenancy is common, both cash and share tenancies.

The fundamental property institutions and mechanisms of market economies have long been present in Yemen under shari'a law, reflecting the development of shari'a in an environment in which commerce flourished. In its first centuries of development, shari'a was in many respects more market-friendly than the law of property in Europe, which remained heavily feudal.

How then does this law interface with statutory law? Islamic law is constitutionally the source of all legislation in Yemen. The statutory law of Yemen relating to land consists of a few articles in the Constitution, the real property provisions of the Civil Code, and several laws which expand upon the provisions of the Civil Code regarding particular land matters. These are for the most part relatively recent laws, reflecting both attempts to modernize Yemeni law but also the impetus to unify the country's land law following the 1990 post-war re-unification of northern and southern Yemen.

The 1990 Constitution reflects the fact that Yemen has a market economy. It guarantees private ownership of land and prohibits taking by the state except in the public interest and for fair compensation. Inheritance of property rights is also "guaranteed in accordance with Islamic law". It goes on to provide that the law shall show "conditions and methods disposal of State-owned real estate free of charge", adding that the law shall organize "how to grant privileges to local units and dispose free of charge public properties". The Constitution mandates protection by the state of a) public properties, calling for their careful management by the relevant state agencies, and b) religious endowments (waqf), placing these endowments under protection of the state and mandating administrators to ensure the land is used for the appropriate purposes.

The centerpiece of the statutory law governing land and other property relations in Yemen is the Civil Code, issued as Law 14 of 2002. It provides that the owners of land alone shall have the right to use and dispose of their property. No person is to be deprived of his property except according to law. The property right extends to water runways established on the property, which may not be used by others except by agreement with the owner. The owner is however obligated to allow others the passage sufficient water to irrigate land away from water resources or the passage of excess water for supply into the nearest public drainage. There are extensive provisions on property rights and transactions, comparable with those in Civil Codes elsewhere in the region, including provisions for ownership of properties in common and its management. While the property rights provisions of the Yemeni Civil Code would be immediately familiar to any civil lawyer in the European tradition, it is nonetheless a Code which has been vetted for consistency with shari'a and incorporates a number of distinctive shari'a concepts.

The level of legal dualism in the Yemen legal system is less pronounced than in most developing country legal systems. There is little contrast between custom and shari'a, and since shari'a is the source of all statutory law, dictating that statutes will be interpreted in light of shari'a, the contrast between shari'a and statutory law is also quite limited. To an extent which is unusual in developing countries, Yemenis deal with a relatively unified body of legal fundamentals, though they experience it in quite different ways, the urban populations as statute and the rural populations as custom. There are no separate Islamic courts, and the regular courts administer the law as one integrated body of law, held together by the primacy of shari'a. The dualism that does



exist is largely related to a secondary level of legislation, the rules and regulations adopted by government to implement these fundamentals, which are to some extent known in urban areas but largely unknown in rural areas. This has important implications for land law reform in Yemen, which will be explored later in this synthesis report.

### 3. Property Rights in Rural Yemen

Yemeni law, both statutory and shari'a, recognizes certain fundamental land tenures. The land tenure system is composed of these particular tenures, each of which has its own legal definition and distinctive rules. These are state land, private ownership, religious endowments, communal ownership and tenancy. The basics of each tenure in Yemeni law are summarized in this section, and some policy/law reform issues are raised.

#### 3.1 State Land

State land includes land that was confiscated by the imam prior to the 1962 revolution from big landowners and tribes as settlement on disputes and land that was confiscated from the imam's family after the revolution. The Authority of State Land, under the Ministry of Finance, is responsible for the state land, which is rented to tenant farmers with similar arrangements to tenancies on other land. The State Land Authority estimates that 90% of all land in Yemen is state owned land, but the proportion of arable land is much smaller and this figure includes much land which is locally considered owned communally (Prettitore 2007).<sup>2</sup> Varisco (1985) estimated that state land in the northern provinces occupied 2-3 percent of the arable land. Because the Authority has no reliable records of the land, state land continues to be lost to land grabbing (Aw-Hassan et al. 2000: 3).

A World Bank Urban Land Policy Note (2005: 77-78) notes:

Based on their analysis of maps and other information, SLREA estimates that State-owned lands roughly represent 90% of all land in Yemen including: (i) desert lands; (ii) the so-called "dead" or non-valorized lands, in Arabic "*Arady Mowat*," which are considered State-owned and include undeveloped/uncultivated lands; (iii) mountains and slopes; (iv) unpopulated islands and beaches; (v) lands without identifiable owners or heirs; and (vi) some 70% of the so-called *marahak* or slopes receiving and channeling rainfall in agricultural areas. The remaining 10% or so would include 5-9% in agricultural and cultivated lands, and 1-2% in urbanized lands covered by human settlements (cities and villages). According to SLREA, the State's ownership in agricultural and cultivated lands varies by Governorate. In Hajja and Al Mahwit where the topography is more mountainous, the State is estimated to own some 50-80% of the land. In Zhamar, Sana'a and Abyan, the State is estimated to own some 30-40% of the land, whereas in Ibb, State ownership would be limited to some 10%. The remainder would be in private and *Waqf* hands. In urban areas, the share of the State in land ownership varies greatly from one place to another (the largest share of State-owned lands being in cities in coastal and desert areas), but it is not estimated to exceed 10% of privately-owned lands (especially in light of the State's policy of restitution of nationalized property in Southern and Eastern Governorates). The accuracy of such estimates cannot however be determined.

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<sup>2</sup> The survey in this Study found that farmers identified only 1% of the land they are using as state-owned, but there is almost certainly other state-owned land within the category identified as farmed on tenancy.

Until today, no inventory exists of State-owned land in Yemen, whether in the public or private domain.<sup>3</sup> In 2001, the President issued instructions to SLREA to undertake an inventory of State-owned lands. Unfortunately, however, no additional budgetary resources were made available to SLREA to finance this huge undertaking. As a result, the progress in most SLREA branch offices has been very limited to date.

The Law on State Lands and Real Estate (No. 21 of 1995) supplements the provisions of state land in the Constitution and the Civil Code, providing a more detailed treatment of the matter. This law makes the State Lands and Real Estate Authority responsible for management of state lands and buildings. Violation of state land is prohibited and it is made clear that prescription (acquisition of private title by occupation) does not apply to state land, even where that land has not been recorded as state land.

The law provides a listing of lands falling within state ownership, including a) land and estates owned by the state, b) land acquired by the state by purchase or other transactions, c) land acquired by the exercise of eminent domain (compulsory acquisition by the state in the public interest), d) fallow lands and forests to which no private title can be proven, e) public utility land, f) beaches and riverain areas which become dry land, and g) land of which the owner is not known and for which there is no heir under shari'a.

The law breaks state land down into six categories for land administration purposes, with different rules applicable to them. There is no data on the amounts of land falling within these categories.

- 1) Allocated Land: Lands that have been planned and plotted prior to distribution;<sup>4</sup>
- 2) "White" Land: Lands that are not allocated lands but fall within urban planning areas;
- 3) Agricultural Land: Land cultivated or well suited for cultivation;
- 4) Fallow Land: Agricultural land that has been abandoned or neglected;
- 5) "Public Utility Land": Mountains, hills and slopes that receive rainwater, including the major structures through which flood waters are collected from tributaries;
- 6) Desert Land: Lands that are covered by sand or sandy lands.

The law incorporates the civil law distinction between the private land of the state (land for farming or other productive use which can be alienated) and the public land of the state (land for public purposes which cannot be alienated). It provides that no private land of the state may be used for free except where a public purpose is to be achieved or at the direction of the President. The right of Government agencies to the land they are using is affirmed, and it is stated that this land cannot be alienated except as provided in this law. Alienation of shrines and museum or

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<sup>3</sup> State-owned lands are classified by Law according to the following categories: (i) State Developable Lands (SDL, in Arabic "*Arady Mokhassassa*"), which are defined as "lands that have been planned or prepared and serviced in view of distribution," i.e. the urban expansion zones; (ii) Agricultural lands and uncultivated agricultural lands (in Arabic, "*Arady Bour*"); (iii) Desert Lands (without planned land uses); (iv) islands and beaches; and (v) "*marahak*" (which, as stipulated in the Law, are part of the State's public domain in the "main cities").

<sup>4</sup> These are largely urban and peri-urban phenomena.

archeological sites is forbidden, but other buildings owned by the state can be alienated or leased out in accordance with the law.

Available fallow lands, it provides, can be sold or leased out with priority being given to graduates of agricultural schools, small farmers, families of martyrs of the civil war, civil servants and soldiers, cooperative associations and investment projects. The state is to identify areas of desert land which are suitable for reclamation for agricultural or other activities by irrigation. It is to preserve relics and resources such as mines, minerals and oil on such land, but it can otherwise lease or sell through public auction desert lands that are within reclamation projects. Priority is to be given to families of civil war martyrs, graduates of agricultural schools, civil servants and soldiers, interested parties wishing to migrate to desert areas, and construction projects of benefit to the national economy. It is provided that if someone has received fallow or desert land under a contract under which he has committed himself to bring the land back into cultivation but does not do so within two years, then the contract terminates automatically and the land can be administratively reclaimed without recourse to judicial procedure, subject to recovery of costs of works undertaken on the land. Leases for desert land reclamation are not to have a term of more than five years.

Beach and island land cannot be sold and can only be leased in connection with projects of investment and tourism potential, even then preserving rights of public access. Such leases can only be made that are consistent with the environmental and aesthetic character of the land and after assuring that the contractor will assume responsibility for infrastructure maintenance.

Agricultural land with a slope of 20 degrees or more is “public utility land” and is declared to be owned by the state. Local rights of pasture and firewood gathering on public land are to be respected and only terminated in the public interest. The State’s ownership of this land is not extinguished by its failure to formally claim or register this land. Public utility land of which prior beneficiaries have died returns to the state and can be sold or leased. An exception is created however for public utility land which is being restituted or for which compensation is being provided due to their earlier nationalization. This last provision applies only to land which was subject to agrarian reform in the South.

This “public utility land” (*marahék*) is a trouble area in Yemeni land law, and the source of many disputes. It is discussed at some length in World Bank (2005: 75-76). The problematic articles are articles 42 and 43 of the Law on State Lands and Real Estate. Clause 42 stipulates that the *marahék* or slopes adjacent to agricultural lands are exempted from qualification as public lands and are instead considered part of the agricultural lands “if their slope does not exceed 20 degrees or within the range of this ratio if the slope exceeds it, with the slope calculation starting from the separating line between the *marahék* and the adjacent agricultural land.” Clause 43 stipulates that “the ownership right to the neck of the *marahék* [i.e. the areas closest to the agricultural lands] for owners of land that is adjacent to the public *marahék* applies only from the date of expiration of neighbors’ common use rights to these *marahék*.” These two clauses are also disjointed since one talks of whether *marahék* as a whole would be considered publicly or privately owned while the other discusses private ownership of part of the *marahék*.

The Bank report notes that different ways in which these provisions are interpreted by judges and indicates that the lack of clarity of these provisions has been a major source of land disputes, especially disputes between farmers and the SLREA (p. 76):

- Judges for the most part interpret that slopes steeper than 20 degrees (as measured from the beginning of the *marahék* slope) are public whereas gentler slopes, like agricultural or terraces, are an extension of private lands. Judges are thus usually faced with a technical problem when the *marahék* have varying slopes, as they often do;
- Private landowners argue that they are entitled to all *marahék* lands that fall under a 20 degrees plane projected from the beginning of their agricultural properties, which given the historically large scale of agricultural landholdings would in effect mean that all *marahék* slopes in most instances would be private; and
- The SLREA's interpretation is that the first 20% of the *marahék* [i.e. the neck] which are adjacent to the (formerly) agricultural land parcels belong to the private landowners and the remaining 80% belong to the State (the procedure to finalize this apportionment arrangement is called in Arabic "*Farz*", using a special form developed by SLREA known as *Istimaret Farz*).

SLREA's Sana'a Branch complains of a handful of *amins* who have reclassified *marahék* slopes into flat buildable lands (in Arabic, "*arady salba*") when drafting *basiras* between two private parties, thereby enabling the misappropriation of State-owned lands by squatters and sanctioning their unlawful transfer from a squatter to another party (World Bank 2005: 89).

Where someone has appropriated lands or buildings owned by the state prior to the enactment of this law, he is a trespasser and can be sentenced for that crime under this law. But if that person took the initiative to inform the Authority in writing of the situation is exempt from punishment if he also provides a list of the properties concerned and, within three months, other details including the development of the land carried out since appropriation.<sup>5</sup>

Registration of any transaction concerning state land by the Registry or any other authority is prohibited unless the transaction has been approved or certified by the Authority. Land disputes are to be resolved by the regular judiciary, and to be considered matters of urgency, except that disputes between the Authority and the Ministry of Endowment over whether land is state-owned or waqf shall be referred to the Council of Ministers for resolution consistent with the Legitimate Endowment Law.

As in most jurisdictions around the world, the state acquires land in the public interest by administrative, consensual or judicial acquisition. These modes of acquisition are provided for in the Acquisition in the Public Interest Law (No. 1 of 1995):

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<sup>5</sup> Prettitore (2007) notes that this law envisages publication of an announcement inviting such claims, from which the three-month period would be calculated, but that no such notice has been published, and so this remedy is not actually available.

Administrative acquisition is applicable only where the owner of the land is itself a government agency. An agreement is to be reached between the acquiring agency and the landowning agency as to compensation. If they cannot agree, the matter should be settled by the concerned minister if both parties are in the same ministry, by the Council of Ministers if it is not. Where there is a dispute over compensation either party can request an evaluation committee, whose decision shall be final. Once the compensation is paid and the payment recorded, the registration of the land is changed.

Consensual acquisition is where a private owner whose land is being acquired consents to the acquisition but there is a dispute as to the compensation, in which case again there is resort to an evaluation committee whose decision is final and binding and must be registered unless the owner objects to the assessment within 20 after the decision of the committee. If the owner files a timely objection the consensual acquisition is cancelled. The acquisition is also cancelled if the acquirer fails to pay the specified compensation or change the registration within a period of thirty days from the date of agreement in writing to the decision of the assessment committee.

By judicial acquisition is meant a true compulsory acquisition (expropriation) by the state. An application (specifying the public interest project for which the land is needed and the documenting the ownership and other rights over the land) is brought by the acquiring government agency to the Court of Appeal in the governorate where the property is located. The Court holds a hearing which the two parties are required to attend, first verifying the facts set out in the documentation. If the Court is satisfied, but the parties cannot agree on compensation, appoints an assessment committee to determine fair compensation within one month's time. The agency applying to acquire the land pays the costs of the procedures for acquisition, and in the case that the Court refuses the application, orders that agency to compensate the owner for their expenses and lawyer fees. Compensation must be paid within two months, in cash or, in the case the owner requested compensation in kind, in kind. The Court then makes an order for the registration of the land to be changed accordingly. Where there is a dispute over the ownership of the land, it does not stay the judicial acquisition process, but if ownership is proved to a third party the process shall be terminated and if necessary, against correct owner. Awaqf and cemeteries can be acquired only by judicial process, and not through administrative or consensual processes.

In the case of emergencies and disasters the law provides for an expedited "provisional acquisition" for a period not to exceed two years. This is carried out by a committee appointed by the governor of the governorate where the land is located and compensation is estimated by an assessment committee, taking into account rents for similar properties in the area. At the end of the provisional acquisition the property is returned to the owner, with compensation payable to the owner for any damage. Compensation decisions may be appealed by the owner to the Court of Appeal of the governorate. Such provisional acquisitions may be challenged both administratively and judicially on the grounds that no real necessity for the acquisition was created by the emergency or disaster, and in the case the property is not returned after two years the owner may require that the acquisition be formally renewed or terminated.

The law provides for the composition of assessment committees, to be headed by a sitting judge and to include a variety of local officials, and for their decision of disagreements by majority

vote. Clear criteria for compensation (beyond a requirement that the compensation be “fair”, which is the constitutional standard) are not set out in the law.

The most significant disconnect noted between customary and statutory law regarding state land had to do with land on mountain slopes, not utilized for crops and not used as catchment areas for terraces. These are at custom communal lands, effectively open access resources with all communities having the right to use them (Aw-Hassan et al 2000: 5). The legal status of such land is unclear. While there are provisions in the Civil Code for group ownership of land, they are not in play in this context, and the land is treated effectively as state land, in the sense that it is available to the state without legal restriction, though in practice there are political and social constraints upon state in appropriating such land.

**Issues:** The body of law on state land and compulsory acquisition of land are relatively recent and in line with current best practices. What is clear from the literature however, and will become clearer as the results of the study are reviewed, is that implementation is remarkably weak. The lack of an adequate inventory of state land is an elementary lack, and will undermine all efforts to improve administration in this area. In the current situation, its primary result is private appropriation of state land. The extent of this problem will become clearer as the findings of the community studies are reviewed. It appears to be substantial, or at least wide-spread. This is particularly unfortunate as the amount of state land which is accessible and usefully located – forgetting for a moment desert areas -- is fairly limited.<sup>6</sup>

There are two issues of lack of clarity regarding the definition of state land. The first concerns “public utility land”, or marahek. The current statutory provisions are extremely difficult to implement and as a result courts and others are interpreting them quite differently, leading to a substantial number of land disputes. This issue needs to be revisited, and the law amended for great clarity and ease of application.

The other issue of lack of legal clarity that emerges from this discussion concerns the exact relationship between state ownership and communal land. The latter is both a social and legal reality, especially regarding grazing land on hillsides, but there may be other important niches as well. In the literature communal land is often described as a category distinct from state land, but in discussions with officials, they were often inclined to describe communal rights as use rights over state land, rather than as a separate category. In practice, communal land often appears to be treated in the latter fashion by officials. The matter is not well covered in the literature and the communities covered in this study tended to be sedentary communities whose land use was largely for residential and agricultural purposes. The clarification of these issues is a pre-requisite for an effective inventory of state land; an inventory in the absence of a clarification may mis-classify communal land as state land, or vice-versa.

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<sup>6</sup> Problems in administration of state land are discussed more fully in a World Bank land policy note (World Bank, 2005: 72-131).

## 3.2 Privately Owned Land

Private land is the most common form of land tenure. While there are no official statistics, it is estimated that 81 percent of the land in the northern provinces is private land (Varisco 1985). This figure appears to refer to a percentage of cultivated land. It is consistent with the national figure of 84% of all cultivated land nationally found in the survey under this Study. While Aw-Hassan et al (2000) indicate that it is believed that the tribal land tenure system was based on ideals of equity, in which every tribal member had to have land to cultivate, citing Carapico and Tutwiler (1981), Noaman (1989) suggests that nearly half of the privately owned land in the country is owned by two hundred “important” families. There are no reliable statistics on these points available.

As noted earlier, the Civil Code provides a codification of rules on private property. Private ownership is well developed in shari’a. Many of the code provisions might have come out of a Civil Code in a non-Islamic jurisdiction, but others incorporate distinctively Islamic legal institutions.

The ways in which ownership can be established under the Code are purchases, grants, inheritance, taking up land which has no owner, revival of abandoned land, and pre-emption. Echoing a fundamental principle of shari’a (ihya’ al-wawat), the Code provides that un-owned and unused land, not subject to any private or public right, can be taken up and cultivated by any Muslim. The land may be “revived” through plowing, sowing, extension of gardens, removing of the trees behind buildings, building of walls or digging water trenches. The President is given the right to grant permission to revive land that does not have an owner, limited to 500 square meters in the case of agricultural land. Certain categories of land are excluded from such revival, but where it does take place, the individual reviving the land becomes the owner. This effect cannot exceed what is needed by the individual, his family and others dependent on him.<sup>7</sup>

Another fundamental principle of Islamic property law incorporated in the Code is that of: pre-emption (shuf’a). The right of pre-emption is a right to substitute oneself for the buyer in a completed sale of real property (land or a house). It is granted by law and cannot be transferred. It is held by 1) a co-owner of the property, 2) the owner of a servitude in the property, and 3) the owner of adjoining grounds (Schacht 1964: 142).<sup>8</sup> The party exercising the right of pre-emption must compensate the buyer for the full price paid. Preemption claims arise in variously defined

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<sup>7</sup> At shari’a, such land can be claimed only if revived with the prior approval of the imam. It is to be enclosed and cultivated within three years, or the right lapses. Digging of a well or planting of trees are strong evidence of revival (Schacht 1964: 141).

<sup>8</sup> There exists a considerable body of law on evasion of the pre-emption right, and some schools of Islamic law look upon such evasion as only mildly reprehensible. One such device consists of making a charitable gift of one room to a prospective buyer, who thereby becomes a co-owner and then selling him the house. There are also a number of legitimate grounds which preclude exercise of the right of pre-emption. For instance, pre-emption will be precluded if the person seeking to exercise the right himself made a bid at the time of the original sale (Schacht 1964: 142).



situations of close ownership proximity. A classic type of claim arises in the aftermath of succession to an estate, following the application of shari'a inheritance law. When one of the resulting joint owners of a property sells his or her fractional inheritance share to an outside third party, the sale may be preempted by another of the joint-owning heirs.

The Code goes on to provide for use rights such as leasehold and usufruct, stressing the consensual nature of these agreements, and has a particular provision on plantations, which while not limited in terms to qat plantations does apply to them. It refers to customary law as the source of norms for matters not spelled out in the article. It also provides for easements and rights of way for the flow of water.

There are also extensive provisions on rights of water. In a very dry environment such as Yemen access to water will largely determine the value of land. These provisions confirm the custom that access to water, once obtained, is owned, and include provision for a right to use and maintain irrigation and discharge channels running across the land of another, subject to a requirement that this be done in a manner that does not damage the land across which they run. There is also provision to protect the established "flow rights" of downstream users to water, prohibiting interference from upstream users.

***Issues:*** Pre-emption does not prevent a sale, but is triggered by a sale. If exercised, it can upset the bargain agreed upon in the sale and disappoint the buyer. Potential buyers may be driven away by the prospect of any purchase they transact being preempted. The rationale offered for the existence of the preemption mechanism is that it represents a defense against the entry of an unknown or undesired individual into a close ownership relation--with all the uncertainty, even danger, this was thought to entail. Today, it offers a buffer against community concerns about growing absentee land ownership. Conflicts over pre-emption can reflect competition for land by community and outside interests. The right of pre-emption is an important qualification of the generally broad freedom conferred by shari'a on private parties to deal in land without interference.

### **3.3 The Religious Endowment**

Religious endowments are an important tenure form, as throughout the Islamic world. Total waqf land is estimated at 10-15 per cent of agricultural land in Yemen (Noaman 1989). Built-up land can equally be constituted waqf, but no estimates of the amount of urban land under waqf were noted. In the survey under this study, the proportion of cultivated land reported as waqf was smaller (5%), but it should be remembered that it can bulk very large in some local contexts. In the community case studies it was noted that in one village most land was waqf (10), while in another 30% of the farmland was waqf (18).<sup>9</sup>

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<sup>9</sup> The numbers in parentheses identify particular communities in the community case studies, based on the number given each community in the list of communities provided in the introductory section to this paper.

Waqf originates in privately owned land which has been placed in a trust under shari'a law.<sup>10</sup> These endowments are made in perpetuity; "until God inherits the earth" is the formulation used in the Yemeni documents creating them. In times when wealth in itself held limited social value, rich men gained prestige for their families by donating land and property as waqf for the public good. Families could lose land for political reasons, and putting land into a waqf protected the land from appropriation while allowing continuing benefits to one's heirs.

The waqf institution was developed in the 7<sup>th</sup> to 9<sup>th</sup> centuries, and resembles the English trust institution.<sup>11</sup> Every waqf has a *waqif* (founder), *mutawillis* (trustee), *qadi* (judge) and beneficiaries. Under a waqf, property is reserved, and its usufruct appropriated, for the benefit of specific individuals, or for a general charitable purpose; the corpus becomes inalienable; estates for life in favor of successive beneficiaries can be created without regard to the law of inheritance or the rights of the heirs. Continuity is secured by the successive appointment of trustees or *mutawillis*.

An important distinction exists, recognized in the Civil Code, between what are referred to as "family waqf" and "charitable waqf". The former were set up to avoid taxes and other impositions and the beneficiaries are the descendants of the creator of the waqf. The latter are genuinely charitable, created to support mosques, religious schools and other religious purposes. The latter provided, in traditional Yemeni society, support for much of what today would be considered "public", such as schools, hospitals and water systems.

These waqfs, given their perpetuity, constitute a form of collective and inalienable property holdings by families or communities. Both categories of waqf provide important opportunities to the land-poor in Yemen, since they are often cultivated by tenants, and the waqf institution has generally been seen as mitigating land concentration.

As noted earlier, both the Constitution and the Civil Code refer to the waqf. Waqfs support many functions normally regarded as public (schools, hospitals), and in light of a history of abuses of the waqf institution, the Yemeni state has assumed the role of its guardian, taking on the role of trustee for all waqfs. In this respect its practice conforms to that of most modern Islamic states, and this is confirmed in the Constitution, which establishes the basis for strong state supervision of waqfs. The Civil Code contains a few basic provisions as well, but the principal enactment is The Legitimate Endowment (Awaqf) Law (No. 23 of 1992). It provides that there waqf endowments are administered by the state, the yields and benefits of which are

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<sup>10</sup> Technically, waqf land is still private land, though committed a religious purpose, but given the perpetual nature of the commitment, it is usually listed as a separate tenure category.

<sup>11</sup> The resemblance is not coincidental. Trust law developed in England at the time of the Crusades, during the 12th and 13th centuries, and was introduced by Crusaders influenced by the waqf institutions they came across in the Arab World. See Gaudiosi, Monica M. (April 1988), "The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College", *University of Pennsylvania Law Review* 136 (4): 1231-1261.

devoted to charitable purposes. There are two types of waqf: a) the civil waqf, for individual persons and their descendants (often referred to as a “family waqf”), and b) the charitable waqf, from which funds are disbursed for schools, mosques, etc. A waqf is constituted the act of a donor, which must designate a public or private body to administer the waqf. Acceptance is not necessary to constitute the waqf, but the donee may return the donation, in which case the entitlement is forfeited. A valid waqf can be oral but must have been publically announced or be in the handwriting of the donor. It may be conditional. In case of an endowment to a mosque, it does not matter whether it is on public or private land so long as the mosque is open to the public.

This law provides that it is not to be enforced retroactively with respect to a civil endowment which contravenes its provisions so long as it has been adjudicated as a waqf or the heirs have reached a settlement on the waqf or forty years have passed since its creation. In those cases the civil waqf shall remain in force unless ended with the consent of the heirs, in which case application can be made to civil authorities to overturn the moratorium. But where a court has ruled to nullify an old civil endowment, it shall be nullified. If the person who had an entitlement under it has died, his heir shall receive the benefit as part of his estate.

It is possible to sell part of a waqf for its repair, where the revenues from the endowment are insufficient for this. An endowment cannot generally be sold, but can be sold in the exceptional case where its income has become less than its value and in that case, once it is sold, the beneficiaries of the endowment shall receive that greater value. An endowment cannot be seized for any purpose, and anyone who seizes an endowment is responsible to pay compensate any damages from the seizure and is responsible for the income it would have generated until it is restored.

A tenant occupying an endowment is responsible for the yields to the beneficiary or beneficiary institution and if these are not realized due to his neglect, he is still responsible for them and can be removed.

There are three types of property involved in endowments: agricultural lands, land on which buildings have been constructed, and buildings which belong to an endowment. These are managed by the Ministry of Awaqf, which is responsible to regulating relations between waqf owners and tenants according to the applicable laws; prevention of illegal exploitation of endowment funds; promotion of reclamation of and investment in the lands under endowments to ensure their benefits to the beneficiaries; following the directions of the state regarding utilization of such land, ensuring employment of the most local manpower possible, and provision of vital services and necessities, including foodstuffs, for the bulk of the population.

To be valid, a lease of a waqf must be a contract which shows the agreement of the parties to the contract, who may be two private parties or the state and a private tenant. Each party should be competent to agree to the contract. The property covered by the contract must be described and its location indicated. The use to be made is to be clearly set out, and crops suitable to the land shall be specified. The lease may not be for more than three years, though it can be subject to automatic renewal if all conditions are satisfied. Upon renewal, the crop can be changed to get a better return on the land. The rent paid should be specified as an amount or a share and should not be less than the rents paid of similar properties. Proceeds to the beneficiary of the

endowment may be in cash or in kind, and should be in line with current market values of production. Similar detailed provisions are made for leasing of waqf land for construction of buildings.

A lease of a waqf ends upon expiration of the term but if the tenant wishes to renew it, he has priority, though consideration must also be given to the interests of the endowment, compliance by the tenant with the contract, the condition of the land (which must be inspected), assessment of the continuing appropriateness of the former rent, and if necessary, recalculation of the rent. No waqf is to be leased or exploited in contravention of the rules of shari'a. No tenant may mortgage, lend or lease the property or allow it to be used to guarantee commitments to a third party. Such acts are invalid. No contact regarding the endowment is to be registered or recorded by a notary public without from approval of the administrator of the endowment.

Waqf cannot be transferred by sale, gift or inheritance, but is leased out to provide the income for the beneficiaries of the waqf. Aw-Hassan et al (2000: 3) in their study in northern Yemen found that close relatives of the person who donated the land have priority in renting waqf land for sharecropping. Use of the waqf land remained within the family of the donor.

The Ministry of Religious Endowment and Spiritual Guidance holds the endowment land. In strict terms, the state has no claim to this land, it is simply the trustee. Although the Ministry does not have central records of waqf land in the country, its offices in the provinces have some records of the land. Waqf land is cultivated by tenant farmers under sharecropping arrangements with the state, and the Ministry collects rents based on crop shares. This land is not registered and is grabbed by big landholders without compensation to previous holders (Aw-Hassan et al 2000: 3).

***Issues:*** Waqf is a fundamental institution of Islamic law. It may offend western economic sensibilities in that land under it is permanently held out of the land market, but in the circumstances of Yemen it performs strong social functions. Charitable trusts are an effective means of supporting important public functions such as schools and hospitals, and even both charitable and family trusts provided tenancy opportunities for the land poor. On the other hand, it was clear from the community interviews that there are important problems in the administration of waqf land. A number of those studies noted problems with misappropriation of charitable waqf land for private profit.<sup>12</sup> The appropriate reform posture regarding waqf would appear to be to ask how the waqf institution and its administration can be improved to more effectively deliver its contribution to the public good. Since the state plays a major role in management of waqf land, this is a matter well within the purview of the cognizant government institutions. The lack of an adequate inventory stands out as a fundamental problem.

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<sup>12</sup> For a good review of recent discourse on the pros and cons of the waqf institution, see Sait and Lim (2006) at 147-173.

### 3.4 Communal Land

Communal land rights in most Islamic countries are recognized as ‘urf, or custom. In Yemen, their status is unclear. Prettitore (2007) writes:

There is also the category of communal or “tribal” land, which is not clearly defined under legislation. It is primarily land considered marginal, which is often used for grazing or other activities, such as collection of firewood. Such land is administered pursuant to customary norms. Under customary norms, construction in such areas requires the consent of the community. However, it is highly likely that customary definitions of land will conflict with formal definitions of state land. Under current legislation, probably much of what is considered communal or tribal land by rural inhabitants is likely state land, and thus there is considerable potential for conflict. Persons using state land have the right to usufruct, but many believe their rights extend to ownership.”

While in Yemeni law includes provisions on co-ownership of land, they do not appear to deal with co-ownership of privately owned land and to have little relevance to customary communal land. This is an important gap in Yemeni land law. Prettitore (2007) speaks of “a large number of disputes over land ownership with private and tribal claimants”

The World Bank Urban Land Policy Note devotes considerable space to discussion of this rural and issue, because it confronts cities attempting to expand their boundaries. Tribal ownership claims, it relates, especially related to desert lands that constitute the majority of urban expansion lands in such cities as Aden, Hodeidah and Mukalla are... [a] chronic problem of State land management in Yemen. In pre-republican times, large swathes of urban land in the Southern and Northern governorates were under tribal control, usually with natural landmarks separating tribal jurisdiction areas (known locally as the protection or control zone, and which involved a bundle of use rights for grazing, logging, control over water and natural resources, etc). Yet, the emergence of the People’s Democratic Republic of Yemen (PDRY) in 1967 triggered the abolition of private property and nationalization of all LRE in Southern Yemen, based on the 1970 Constitution and a series of Laws (most notably No. 11 of 1972 which abolished tribal groups and expropriated their properties and Law No.32 of 1972 which nationalized all housing).

Tribal interests in land in Southern cities including Aden and Mukalla only resurfaced after the unification of Northern and Southern Yemen in 1990 and the enactment of the first Presidential Decree for restitution of nationalized property in September 1991, which dealt with commercial property. In Aden, two tribes—known as Al Mossa’aba and Al Alban—historically claimed control over most vacant land to the north of the city, especially in Khormaksar and Dar Saad districts. The problem was that most of these contested lands, which represent the current urban expansion areas of Aden, were subject to detailed land subdivision plans during the 1990’s and were largely distributed or earmarked for residential and investment uses (including for compensation). A committee for the settlement of land claims (chaired by the Aden Governor and including the directors of SLREA and the Land Registry, three judges, and the director of Security) was formed to investigate such claims. The dispute between SLREA and the two tribes was only resolved through a settlement mediated by the President in 1997, which earmarked the equivalent of 10 neighborhood planning units (a total area of 400-600 ha) to the two tribes in

return for foregoing all their land ownership claims in Aden. The settlement was not finalized until 2003 when the detailed plans for these neighborhood units were finally approved.

In Mukalla, Al Akabra tribe has a similar ownership claim over most undeveloped land to the east of the city, but which unlike Aden has not been resolved. As a result, the tribe has many ongoing disputes with beneficiaries of State-owned land, including with investors and former residential property owners who were compensated for their nationalized housing. In one illustrative case reported by the Hadramout GIA, one of the most established Saudi investors of Yemeni origin was granted a 600ha State-owned parcel for free, following Presidential instructions, to invest USD15 million in a large fish processing plant. The investor had to pay USD1.4 million (YR260 million) to settle with Al Akabra tribe, which claimed ownership of the parcel. This unexpected financial outlay caused the delay of the investment project (it still remains undeveloped to date), which defeats the purpose of the State's policy of granting free land as an incentive to large investment projects. Al Akabra tribe has also contested the attribution of land under the so-called Rowainat IV investment project, a land subdivision project of 2,400 parcels.

One implication is that investors often pay twice for the land, to SLREA and to private/tribal claimants. This increases the financial burden and risk faced by investors, which may not be anticipated or properly accounted for in initial project feasibility studies, hence the significant delays and high ratio of aborted investment projects.

***Issue:*** The extent to which Yemeni law recognizes customary communal lands is not clear, and to the extent they are recognized, it is not clear whether communal rights are a form of ownership by communities or only a use right (usufruct) held by those communities over land owned by the state. Formal legal and popular understandings of the position seem not to agree. The land administration authorities appear to take the latter position, reflected in the claim that 90% of the land in Yemen belongs to the state. The issue is not academic; its resolution determines the terms on which the state can appropriate this land from rural communities, and it is having a direct and very negative impact on much-needed private investment in housing.

### **3.5 Tenancy**

While tenancy is common in Yemen, it does not predominate. Owner cultivation is estimated at 82%. Ministry of Agriculture and Irrigation figures indicate tenancy levels for the five highland provinces as 18% of all land and 35% of terraced land. (Aw-Hassan et al 2000: 1). In the highlands, these tenancies are still largely share tenancies, in which the landlord contributes the land, the tenant the labor, and crops are shared between landlord and tenant according to traditional formulae. Fixed rents tend to occur in tenancies on waqf land and larger irrigated holdings.

Messick (2003) writes:

*“The ijara lease/hire contract was fundamental to an understanding of early sharia capitalism... It represented the general contractual form for engaging both land and labor, the principal production factors of the agrarian-era economy. Such leases were the legal means to bring together land and labor for cultivation, and*

*what was leased was the use of the productive capacity of the land... While in violation of the doctrinal principle that requires a terminal date for the contract, the customary opened-ended design of local leases fit the social circumstances of many of the relationships represented. Many such associations between landlord and tenant were enduring, spanning not merely lifetimes but generations. Just as landed wealth was inherited, so rights of tenancy on particular plots were rights passed from fathers to sons. Tenancy could be held through the deaths of one or both of the original contractors."*

The custom of each region dictated not only the specific fractional share of the harvest that local landlords received, but also the general obligations of the tenant to the owner with respect to the land held in the lease. For instance, the ijara might specify that the landlord will receive one-quarter of the harvest yield, and could also provide for customary in-kind payments to the landlord, for instance a specified amount of extra labor or a specified quantity of clarified butter.

This has changed significantly in recent decades, as options such as jobs in town and labor migration have opened up, but the pattern can still be observed in many rural communities, especially in the highlands. Tenancies there remain largely share tenancies. Fixed rent arrangements mostly occur in state and waqf land and in low land and irrigated areas.

The only study of agricultural tenancies in Yemen is Aw-Hassan et al. (2000), carried out in the western escarpments. In their area of study they found that 55 percent of the farmers had holdings of one ha or less, while 30 % had holdings between 1 and 2 ha and 15 per cent had holdings between 2 and 5 ha. They found that on the average, the farmers cultivated in five locations, noting that this is in part a result of Islamic law of inheritance, and while it is a disadvantage in terms of time spent going to parcels and in weak supervision, it also allows access to different *wattan* (micro-agroecological areas) and helps spread risks. Tenant shares in production ranged from 50-75% and that tenants shouldered between 50-100% of the substantial costs of terrace repair (Aw Hassan et al. 2000: 11).

The customary tenure system allows special arrangements for reclaimed land. If rangeland or uncultivated land is reclaimed and transformed to farmland, tenants may be entitled to a larger share of the harvest (75%) or may keep the whole harvest for a period of four to six years to cover the costs of land reclamation. This is also true of tenants to bear the cost of shifting to qat, who can then keep the whole production for 3-4 years after which the landowner received 1/3 of the harvest. If a landlord wishes to terminate the contract in this case, the tenant will have to receive a payment equivalent to 1/3 of the actual market value of the improved land. But if the landlord provides the investment capital, the crops shares will be 50-50 with no privileges if the tenancy is later terminated. It varies for other regions, and depending on the crops, and can be a quarter or other higher fraction (Aw-Hassan et al. 2000: 22).

The basic hypothesis of the study was that the prevailing sharecropping tenure arrangements are not conducive to long-term investment in improvements, resulting in terraces on sharecropped land being more degraded than those on owner-cultivated land. The study found that a higher proportion (23%) of owner-cultivated holdings than sharecropped holdings (14%) were indeed renovated (Aw-Hassan et al. 2000: 24).

In spite of this finding, they found that most tenants enjoyed substantial security of tenure. Most tenancies are open or specified for long periods (they found tenancies for 20, 30, and 50 years) and inheritable. These are written, usually prepared by the amin). Short term tenancies were not common, but where they existed, were for a season and were oral. Farmers perceived that they had adequate security of tenure. But the authors found that due to increasing land scarcity, customary law has become ineffective and most disputes go to court, where the landowners use their greater power to make tenants forego customary rights. Rights at custom are increasingly negotiable because of high costs of enforcement (Aw-Hassan et al 2000 27-28).

***Issues:*** The authors of the study note the importance of tenancy as a means of land access by the poor, and its relatively stable terms and the relative security of tenure it provides under customary rules. But they also note the breakdown of customary rules under increased pressure on land, and the weak bargaining position of tenants as more terms of the tenancy move out from coverage of custom and into the sphere of bargaining.



## 4. Other Key Land Legislation

### 4.1 Land Reform Readjustment

While today the concept and law concerning private ownership is the same in the north and south of Yemen, there are special transitional provisions that seek to deal with anomalies created in the south by land reforms under the leftist government in power for some decades. There exist a series of Prime Ministerial Decrees on Land in the Southern Governorates: A Prime Ministerial Decree to Solve Issues of Agricultural Land in the Southern Provinces (No. 49 of 1990) formed a Commission to make recommendations to facilitate the adjustment of land law in the south following national reunification. The two most comprehensive of several Republican Resolutions issued as a result of the work on these issues are:

- 1) Prime Minister's Decree on the implementation of principles and directions to solve the issues of agricultural land in the southern governorates (No. 65 of 1991) provides for agricultural land which was seized and redistributed contrary to Law No. 27 of 1970 to be returned to the owners, and for compensation for those users whose land is withdrawn and returned to owners, with an emphasis on compensation in kind. It contains separate provisions for rain-fed and irrigated land and procedures for proof of ownership.
- 2) Prime Minister's Decree on the implementation of principles and directions to resolve the issues of agricultural land in the southern governorates (No. 221 of 1997) allows retention an amount not exceeding 5 acres by beneficiaries and provided compensation in the form of land or other support where land is not available in the area. This Decree appears to largely replace the 1991 decree but does not in terms repeal it.

***Issue:*** These laws were meant to ameliorate the situation of land reform beneficiaries faced with the resumption of large estates by the former landlords after reunification of the country. The community consultations in this study indicated that that they have often not been followed in practice.

#### 4.1 Notaries

The World Bank Urban Land Note (2005: 37-38) notes the importance of the notary (or amin). In North Yemen, the amin is a role that functions effectively as an expanded notary public consistent with historical role performed in a large number of Arab as well as Islamic and Western European countries (such as Netherlands and Spain). In the South, the amin function is typically performed by lawyers and/or brokers. His role in land transactions is essential. Usually, all transactions involving land have to be performed and certified by the amin in the North. He is effectively the conveyance agent and performs the function much like other parts of the world. This transfer is supposed to be subsequently registered with the land registry.

The Documentation Authentication Act (No. 29 of 1992) provides for the authentication of documents by notary publics and for the supervision of notary publics by the Ministry of Justice. The law sets out qualifications for notary publics and for their nomination by the competent courts, and provides for the competences and duties of notaries, which include documentation of the identities of the parties to transactions, authentication of their signatures, ascertainment that contracts and other documents presented meet any legal requirements, keeping records of those documents brought before him for authentication, and submitting reports every two months to

the competent court. In the case of real estate, he is responsible for verifying the ownership of the property to be dealt with. The Act entitles the notary public to collect and remit fees, and to retain a portion of the fees for services rendered.

This system is widely spread throughout the country, with the notary publics accommodated in court offices. It is a system with which even rural Yemenis are quite familiar and comfortable.

***Issue:*** Rural people often feel that notarization and the deposit of documents in notaries' offices is sufficient formalization, and so opt not to utilize the more modern but far less accessible and more expensive property rights registration system.

### **Property Rights Registration**

The Land Registration Act (No. 39 of 1991) provides for registration of immovable property in Yemen. Within the register can be registered state property, awaqf, and private property. (Separate if inadequate registers are also kept of public and awaqf lands by the responsible agencies.) The Land Register is maintained by the Land Authority, and exists only in Sana'a, with parcels in urban and peri-urban area around the country registered there. Almost uniquely among registration laws, it provides for two types of land registration:

- a) sejel shakhsee, or person-based deed registration, in which the transactions are registered under the name of the owner or other right-holder, and
- b) sejel ainee, parcel-based land registration, involving registration of a parcel with transactions concerned registered on that parcel file; and

The first is a deed registration system not unlike deed registry systems elsewhere. The second embodies one of the key elements of title registration in that it is parcel-based, but does not have some of the other characteristics of such systems. Modern title registration laws usually provide for systematic adjudication and registration titles in selected areas, but this law does not. The Land Authority has preferred to work with the sporadic, sejel shakhsee approach and so for most purposes it is accurate to describe Yemen as having a rudimentary deed registration system. Implementation has been almost entirely in urban areas and in coastal governorates.

The law provides that all land transactions must be registered in order to affect real rights and transfer title, but also provides that personal rights, such as a right to compensation for a breached contract to transfer land that was not registered, can still be pursued before the courts. Inheritances as well are to be registered, and no heir can carry out any transaction with respect to land inherited until the inheritance has been registered.

Only leases of five years or more are required to be registered. Charitable endowments can be registered as such, in the name of the administrator. Registration of mortgages on a property determines their priority, registered mortgages having priority over unregistered mortgages or other debts burdening the property. Certified extracts from the land registry are available to those who request them.

A request for registration of a parcel not previously registered requires one month's notice of the proposed registration, printed in a locally available newspaper. If there is no objection, the Authority's surveyors go to the parcel and survey it. The Authority is to issue by-laws for implementation of this law, and the Prime Minister's Office is to issue a schedule of fees and other charges for those using the Registry.

***Issue:*** In a series of policy workshops and other discussions over the past several years, an expert consensus developed that Yemen would be better served by a land registration system, a parcel-based system similar to sejel ainee, but with provisions for systematic implementation. A draft law providing for this has been under discussion for several years. It has been approved by the Cabinet and is currently before Parliament.<sup>13</sup>

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<sup>13</sup> The existing system of land registration and a proposed new law are treated much more fully in a World Bank report on urban land policy in Yemen (World Bank 2005: 5-56 & 122-131).

## 5. Distribution and Markets

This section draws upon data from both the community studies and survey data from the draft Final Report from Hariri & Associates. It looks at the amount of land which is under the various tenures under Yemeni law.

### 5.1 Distribution of Rural Household Land by Tenure

The data collected on tenure of land held by the survey households is summarized in Table 2. It indicates that 84% of their land is privately owned, 1% is state owned, 1% is tribal, 3% consists of charitable endowments, 2% of family endowments, 6% was rented in, 2% was held in partnership, 2% was leased in, and less than 1% was borrowed. It is clear that rural households own most of the land they farm, and that a considerable majority of farmed land is privately owned. This situation may be being eroded, as is suggested by community studies in areas of land pressure, but property ownership remains widespread in rural Yemen. Tenancy, while important, is not very extensive, and it may be suspected that even if land concentration is increasing, as information received in the community studies suggests, the land in the new, larger holdings is not being farmed under tenancy.

There were significant variations among provinces in the distribution of land by tenure. For instance, Sana'a and Shabwa showed 97% of land holdings privately owned, whereas this figure was substantially lower in Ibb (75%) and Lahej (71%) and Hadhramut (73%), accounted for primarily by higher levels of acquisition of land from endowments and rentals, and in the case of Hadhramut, from the state.

These figures do not correspond to such global estimates as are available on distribution of land among tenure types. This is because the survey deals only with land used by respondents and so, for example, substantial unused state land does not appear in these figures.

**Table 2: Type of Land Tenure in Farmer Holdings**

Governorate Name:	Private Ownership %	State Owned %	Tribal %	Charity Endowment %	Family Endowment %	Rented %	Partnership %	Borrowed %	Total
Sana'a	97.0	0.0	0.0	3.0	0.0	0.0	0.0	0.0	100.0
Abyan	92.0	0.0	0.0	0.0	0.0	5.0	3.0	0.0	100.0
Taiz	85.0	0.0	3.0	0.0	0.0	11.0	1.0	0.0	100.0
Ibb	75.0	1.0	1.0	4.0	4.0	15.0	0.0	0.0	100.0
Lahej	71.0	0.0	1.0	0.0	0.0	26.0	0.0	2.0	100.0
Al-Hodeidah	78.0	1.0	0.0	7.0	5.0	5.0	4.0	0.0	100.0
Hajjah	93.0	1.0	0.0	2.0	0.0	2.0	2.0	0.0	100.0
Hadhramut	73.0	6.0	1.0	6.0	4.0	10.0	0.0	0.0	100.0
Aden	100.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0
Shabwa	97.0	1.0	0.0	0.0	0.0	2.0	0.0	0.0	100.0
Average	84.0	1.0	1.0	3.0	2.0	8.0	3.0	0.0	100.0

## 5.2 Documentation of land rights

Documentation of land rights is widespread in Yemen. Legal literacy, if not high, is widespread in the sense that persons who can prepare and notarize simple contracts are quite accessible to most communities. It was found that 50% of the land held was held under a document authenticated by a notary public, while 13% was registered. Some of the remaining 38% will have been supported by a document, but nothing had been done to make an official record of them (Annex 3, Table 1).

## 5.3 Use of Land

It was found that 89.4% of the land held by the survey households was used for agriculture, while 10% was used for residences and .5 % was for both purposes (Annex 3, Table 2). The land farmed by the respondents consisted of land under rainfed agriculture (49.8%), terrace agriculture (5.1%) and irrigated agriculture (45.1%) (Annex 3, Table 3). The terraced land was concentrated in the governorates of Sana'a, Abyan, Lahej, Taiz, and Hajjah; it exceeded 10% of land farmed in the first three governorates listed, with the highest percentage being that for Abyan, at 27%. Land under irrigation ranged from 21% in Sana'a to 71% in Shabwa and 86% in Lahej (Annex 3, Table 4). Of the irrigated land, most was irrigated from wells (59.8%), while spate (flood) irrigation was 23.6% and irrigation by pump from canals was 12.6%, irrigation from springs accounted for 3.1% and processed sewage water was under 1% (Annex 3, Table 5).

## 5.4 Accessing Land

Respondents were asked how they had obtained their land. It was found that 74.5% had been obtained through inheritance, and 7.9% through purchase, while 13.8% was rented in. Other modes of acquisition accounted for very minor amounts (Annex 3, Table 6). Asked whether the land reported was being used by the respondent or someone else, the respondents reported that they were themselves using 94.4% of the land while 1.3% was used by relatives and 3.2% by others (Annex 3, Table 7). For owners who did not use the land themselves, it was found that 54 % were residents in the village, and 14% and 11% respectively were non-residents or owners from a different village, while 21% were owned by endowments (Annex 3, Table 8).

The limited literature on land tenure in Yemen often mentions fragmentation of the farmed holding as an issue. The study sought to assess the seriousness of this by asking respondents how far they had to travel to reach their land. Mean time required to reach parcels was 32 minutes, with the average for the nearest parcel being 14 minutes and the average for the furthest parcel of the household being 52 minutes (Annex 3, Table 9). These are not in themselves alarming figures; they are comparable with those in farming systems elsewhere. On the other hand, their cumulative impact in terms of labor time lost to travel depends on the number of parcels farmed by a household, and the survey did not obtain this information. It may be that tenancy and other mechanisms such as land-lending, as well as the land market itself, may be limiting the loss of labor time to travel between residences and farmed parcels, by allowing tenants or others to cultivate some of the households' more remote parcels.

## 5.5 Duration of Tenure

Respondents were asked, for six of their parcels, the number of years the parcel had been held by a household member. The mean number of years was 23 years, and the minimum reported was 3.63 years (Annex 3, Table 10). This generation-length mean is compatible with the fact that inheritance is the most common form of land transfer in Yemen. It seems to suggest a reasonable degree of security of tenure, at least on a national basis, in spite of local problems reflected in the community studies.

## 5.6 Land Markets

The survey assumes, quite appropriately in Yemen, that owners are free to sell their land, but asks whether those selling land must ask for someone approval. 5.2.3% said that brothers would be consulted, 15.9% would consult another member of the family and 17% the father, but only 1.1% would consult “the wife, because she is a partner” (Annex 3, Table 11). Ask whether they had plans to sell land, 88.7 % of respondents answered that they did not (Annex 3, Table 12). Asked why they did not plan to sell land, most replied that they needed the income (46.9%) or had no need to sell (22.4%); only 8.9% responded that they did not plan to sell because the land belonged to their children, and only 2.8% because selling land was “a shame to the family” (Annex 3, Table 13).

Where land had been purchased, the mean price per parcel was 636,868 Riyals (Annex 3, Table 14). The study also explored increases in land values by asking respondents to estimate the value of local land in various categories (residential, terraced, lowlands (un-irrigated), and irrigated (from ground wells) for 1980, 1990, 2000, 2005, and 2008 (Annex 3, Tables 15-19). They indicate:

- 1) The mean for residential land rises from 18,359 Riyals in 1980 to 94,789 R in 2000 and 282,099 R in 2008.
- 2) The mean for terraced land rises from 21,431 R in 1980 to 29,454 R in 1990 to 55,919 R in 2000 to 109,137 R in 2005 to 148,833 R in 2008.
- 3) The mean for lowland rises from 14,494 in 1980 to 30,560 R in 1990 to 79,810 R in 2000 to 133,523 in 2005 and 190,082 R in 2008.
- 4) The mean for Irrigated land rises from 21,952 R in 1980 to 56,290 in 1990 to 125,176 R in 2000 to 239,729 R in 2005 to 435,723 R in 2008.

Asked whether they could mortgage or pledge their land, 63.5% said that they could do so, while 36.5% said that they could not. (The reasons for not being able to do so are not reported) (Annex 3, Table 20).

Asked if they could give land to their heirs, 17.6 % said yes, and 82.4% said no (Annex 3, Table 21). Asked whose approval would be needed before giving land to heirs, 53.6% named brothers, 14.3% fathers, 15.5% other family members. Only one respondent replied that he would need to consult his wife, “because she is a partner” (Annex 3, Table 22). Asked if they were planning to

give land to heirs, 73 % said that they were not, and said that they were not doing so primarily because they either needed the income or had no reason to give the land to an heir (51.1% and 21.5%) (Annex 3, Tables 23 and 24).

Asked whether land could be given as a present, 57.8% said they could do so (Annex 3, Table 25) and most (85%) said that they would not need anyone's approval to make such a gift (Annex 3, Table 26). Such approval, if sought, would be sought from the brother (52.1%), father (11%) or other member of the family (16.4%). A few (2.7% and 4.1 % respectively) responded that they would ask approval from their wife or the children of their wife. Asked if they planned to make a gift of land in the future 91.8% responded that they did not (Annex 3, Table 27), and the explanations given for not doing were that they needed the income (33.4%), or had no reason to do so (11.8%), or because the land belonged to the children (9.8%) or simply because "no one gives away land" (24.3%) (Annex 3, Table 28).

## **5.7 Rental Markets**

Asked whether they could rent out their land, 64.8% indicated that they could do so (Annex 3, Table 29). Asked whether someone's approval might be sought before renting out their land, 50% said they would consult brothers, 15.5% the father, 19% other members of the family, 1.2% their wife, and 2.4% her children (Table 32). But only 14.1% said they plan to rent out land (Annex 3, Table 31). There were substantial differences between governorates. The percentages indicating an intention to rent out in the future was highest in Sana'a, Ibb, Lajeh and Al-Hodeidah (between 15.4% and 25%) and lowest in Hadhramut, Aden and Shabwa (between 5.1% and 17.6%) (Annex 3, Table 31). The most common reasons for not planning to rent out land were that they needed the income (51.9%), or had no need to rent out land (25.5%) (Annex 3, Table 32).

## 6. Groups Disadvantaged in Access to Land

The study, and in particular the community case studies, indicated that there are a number of groups which face legal disabilities in accessing land. Women are the most numerous group, but there are also significant numbers of households which as artisans cannot intermarry with landowning families, and households descended from slaves and immigrants from East Africa who are under similar disabilities. Youth are disadvantages in accessing land as well, through not due to a legal disability.

### 6.1 Women's Land Access

As anticipated, most of the households in the survey were male-headed (89.2%). The governorate exhibiting the highest level of female household heads was Ibb (22%), Lajeh and Al-Hodeidah (both 18%) and the lowest Sana'a at 3% (Annex 3, Table 33). Respondents indicated that in 98.6% of the households the husband was available in the village (Annex 3, Table 34). When respondents were asked who in the household held the rights to the household's lands, in 95% of the cases the respondent indicated that the husband owned the land. Wives were reported to own 3.3% and all other family members less than 2% (Annex 3, Table 35).

The shari'a law on inheritance provides that daughters inherit shares in the decedent's estate, though smaller shares than their brothers. Islamic law entitles them to half a share if inheriting from their fathers, one sixteenth (from a son) and one eighth from a husband. But these rights are seldom realized. By custom, women exchange their rights to land ownership for lifelong support and economic security (including housing in case of divorce or widowhood) from their male kin or by laying claims to moveable property.

The key point here is that the right to inherit is not a right to inherit land, just a portion of the estate. As in many Islamic societies, women's inheritance is largely limited to personal property. This is usually not of equal value with the land, but the physical and economic vulnerability of women and their dependence on male relatives for protection and support discourages them from challenging this. In Yemen, in once community examined in the study, they receive a "hadiyyah and a qadiyya" (a present and a sheep or goat led by a short rope) on occasions as token compensation for the land taken from them (2). It was said in a few communities that women do inherit land (11, 12). While these are clearly the exception, their circumstances that allowed women to inherit land deserve closer examination.

Women are not, of course, limited to inheritance as a means to acquiring land. Women of wealth are free to purchase land, and in fact do purchase property, especially business or residential properties. This may suspected to be the source of most of the 3.3 % of land said to be owned by women in the sample.

The failure of some communities to respect shari'a regarding the ability of women to own land has been noted by some Yemeni authors: "Women in some parts of the Yemeni territories, like Shabwa and Yaffie and "Al-Mawaset" district in Qadas/Taiz and Al-Mifrakh, Mashraq, Hadnan, in Jebel Saber do not have the right to hold lands even if they are legal heirs, even if they are from very rich families and Muslims.. In these cases the right to own land depends on the tribal



cultural heritage. Islamic Shari'a, the source of Yemeni legislation, is ignored... not to mention international conventions."<sup>14</sup>

This lack of access to land by women must be seen in light of their active participation in the agricultural economy. In the traditional agricultural economy, women seed, weed, harvest and process grain. Their active role in agricultural production used to provide them with significant economic power, physical mobility and voice within the household and community. However, as males increasingly migrate in search of wage employment, the household-based system of subsistence production is declining. Women who are left behind continue to work on land that has become more marginal because the terraces are collapsing due to the lack of male labor. The men who do remain in the highlands are increasingly involved in *cash* cropping (such as qat) which requires greater labor specialization but a more limited role for women. Thus, when women work on land that belongs to the household, it is increasingly on a subsistence basis. Some women are indeed employed in cash cropping as agricultural laborers. However, they are generally hired at half the wages of men, often for the most strenuous and labor intensive tasks.

There is thus an increasing divergence between a subsistence agriculture where most work is done by women and a cash-based agriculture in which men are the major participants. The shift in the agricultural system of production is feminizing subsistence agriculture and puts women at a disadvantage.

One of the few Yemeni sources to discuss this issue<sup>15</sup> states:

Although the Constitution of the Republic of Yemen stipulates that all citizens are equal before the law..., the male inherits as twice as much as the female. [T]he reality in some areas of Yemen, for example in the region inhabited by Hashed tribes, specifically located within Amran governorate, is that women do not receive anything from their share in the inheritance which is contrary to Islamic Sharia law and the Yemeni Personal Status Law. This custom is also practiced in the areas of Jabal Habashi in Taiz Governorate, and also in Rasad directorate in Abyan governorate. Official and unofficial Yemeni reports related to the implementation of the International Convention on the Elimination of the Discrimination against Women refer to this problem.

## 6.2 Caste/Ethnic Minority Land Access

While most of the communities covered in the survey were Arab communities which had been on their land for generations, there were a few communities with significant ethnic minorities, who are of interest here because they suffer under traditional legal disabilities with respect to land access.

Three such groups were reported:

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<sup>14</sup> Anon. c. 2005.

<sup>15</sup> Anon. 2005.

- 1) Abna'a Al Khumus,<sup>16</sup> described as artisans (butchers, barbers, hair-stylists, shoe-makers, etc.) who do not intermarry with landowning families and so do not inherit land. Several communities noted the presence of families of Abna'a Al Khumus (2, 3, 21, 23 and 31). While noting that they did not inherit land, it was acknowledged that they could purchase land and in one community they had done so (31).
- 2) Hujur, described as dark skinned persons from East Africa, whose ancestors often came to Yemen as slaves. A number of communities noted the presence of Hujur families (26, 32), and noted that they did not own land, though it was agreed that they were not absolutely barred from land ownership. In the South, they were given land rights after the revolution, but it appears that some have lost this land since the reunification.<sup>17</sup>
- 3) Akhdan, described as also of East African descent, often from Ethiopia. This is the group under the highest level of disability with respect to land, being by custom prohibited from land ownership<sup>18</sup>. One community noted a settlement of a hundred Akhdan living just outside their settlement, working as labourers (20). Another settlement was composed primarily of Akhdan (37). The Akhdan were characterized by informants as living apart in their own small temporary settlements in small huts of mud and palm leaves. They most often work at the least attractive forms of manual labor and despised professions such as waste disposal.

The Akhdan often establish their settlements on state-owned land outside towns, and because there is a need for their labor, local governments tend to initially tolerate this. The problem becomes acute when urban sprawl reaches their informal settlements:

The problem appears when the urban sprawl of the population approaches the places close to residential clusters of Akhdan. Then the Yemeni authorities start focusing on the area inhabited by Akhdan. The government asks them politely in order to encourage

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<sup>16</sup> The terms Naqseen and Mazayina are used in some profiles, reflecting different local terminologies.

<sup>17</sup> Anon (2005) comments on Hujur lack of access to land: "Hujour is the plural of the word (hagari) who are the remnants of the slaves, and they do not have a specific tasks or professions. They were not allowed to hold property rights, but in southern and eastern provinces of the Republic of Yemen they were working on lands and at the service of higher class houses before achieving independence in the southern part of Yemen in November 30, 1967. Their status changed radically since the Agrarian Reform Act, which granted them the right to own agricultural land since 1968. Furthermore, in 1972 the landless peasants and those deprived of the right of ownership made an agricultural uprising to get the land in a revolutionary fashion. But after achieving the unity of Yemen and the announcement of the Republic of Yemen on 22 May 1990, ex-owners of the properties regained their agricultural properties without cancellation of the Agrarian Reform Act. The Yemeni government has given them other lands as compensation. The lands and real estate of the State stipulates that the state is not entitled to take any action with regard to dispositions made for restitution or compensation to address the situation resulting from the nationalization (Article 57).

<sup>18</sup> Al Sharjabi, Qaied. 1990. *Village and State in Yemeni Society*. Sana'a: House of Solidarity for Printing and Publishing), at 300: "They were not allowed to possess agricultural lands or work as partners in an ownership or in the places where they have their homes... In view of their poverty and their inability to buy land to build homes, they take possession of the lands where they have their homes and most of the time it is state-owned land."

them to move to another area, and if these methods fail, it suddenly starts fires in their homes which are built of wood and tin, accra, blankets made of fabric, which is used in the manufacture of tents, and in all cases, the actor who started these fires remains undetected. As a result of those fires the Akhdam are forced to leave that land to search for non-owned lands to use temporarily until they are forced to leave again using the same scenario of fires, and their life cycle continues without interruption (Anon. 2005).

***Issues:*** The lack of access to secure land rights for caste and ethnic minorities condemns them to continuing poverty and insecurity. Their situation is in stark contrast with the humanitarian values espoused by Islam and with international standards. Their problems need to be addressed as a priority by the Government of Yemen. Practice regarding women's land access falls short of the standards prescribed by Islamic law and international best practice. Failure to incentivize women in agriculture through provision of property rights will likely hamper efforts to move rural households out of poverty. .

## 7. Growing Competition for Land

### 7.1 Roots of Competition and Growing Inequality

Traditionally, land is reputed to have been quite equitably distributed. The survey data presented here confirms that this continues to be the case to a significant degree. Most rural households own most of the land they cultivate. Although the holding sizes may differ, the bulk of the population owns land and there does not seem to be significant loss of ownership, though here too there are signs of concentration in the southern governorates and the coastal zone generally. There, in contrast, the holdings of large agricultural land owners are expanding at the expense of small farmers. After unification in 1990, land taken in socialist land reforms in the South was returned to large absentee owners.

Various reports suggest that land inequality is becoming an important issue in Yemen. It is suggested that access to water and land is increasingly concentrated in fewer hands. In deliberating on why this is the case, one theme that emerges regularly is the role of water and the interaction between water technologies and land access. Yemen has one of the lowest per capita water availability rates in the world, with water scarcity most extreme in western half of the country (Highlands, Tihama and Arabian seacoast), home to 90 percent of the population. Water is scarce and inequitably distributed across regions and social groups.

Yemenis have a history of effective water management. They developed elaborate terrace agriculture systems, which used runoff, spate diversion and shallow groundwater extraction, varying according to the resource and social organization. These technologies were accompanied by elaborately negotiated systems of rules and organization. Where disputes arose, they were resolved by force of arms, local mediation processes or adjudication. Water rights were and remain based on a combination of Islamic principles, customary practice and state intervention. They apply the following principles: (i) water is an ownerless resource but usufruct can be appropriated to those who develop it; (ii) upstream riparians have priority; (iii) water may not be alienated from land; (iv) wells must be spaced a certain distance apart, and (v) no one may deny a person's rights to drinking water.

Changes in water technologies are impacting land access and patterns of land distribution. Across the country, farmers have managed to expand agricultural production and employment thanks to improved irrigation systems (especially tubewells) with a progressive shift from subsistence farming to cash cropping. In 1970, only 3 percent of the total cultivable land was irrigated with wells but by 2003 and this had risen to 37 percent. This rate of expansion, however, is unsustainable due to the severe water scarcity in the country.

How has this affected land access? Land ownership is becoming more concentrated. Large farmers who have bigger land areas and more financial resources dig deeper, while the wells of adjacent small farmers are drying up due to the violation of the "well spacing" norms. The introduction of new technologies for irrigation, often with public investment, has created incentives for private appropriation of open access resources. A small number of farmers with large land holdings are controlling groundwater rights and dominating water consumption, putting the community at large at risk of water scarcity. In some areas, the rapid drawing of

groundwater has dried springs and wells, forcing small farmers to abandon their fields, and driving them into poverty. In others, the growing scarcity of water has driven communities to trucking in water for both domestic use and irrigation. This phenomenon can be observed even a few kilometers outside Sana'a, where the general water scarcity is exacerbated by serious pollution of water from local industrial enterprises.

There is thus considerable conflict over land ownership. Especially near cities, rampant land grabbing is occurring, often by influential and powerful figures. Weak systems of land registry are leading to a proliferation of fraudulent claims made on public land. There is also a trend towards increasing private appropriation of communal land. Customary law entrusts shaykhs with the management of communal lands, primarily used for grazing and firewood collection. In recent years, as land speculation has increased (especially in areas close to towns), there is growing confusion over communal land entrusted to shaykhs and the land that they hold privately. Some shaykhs have sold land alleged to be communal to private owners outside the tribe, a contravention of customary norms.

### Land Appropriation

The community case studies suggest that land grabbing, while focused in coastal areas and the south, is widespread in those areas. It occurs in a number of forms: forced sales, appropriation of state land, appropriation of waqf land, and

This study is not the first to note this phenomenon:

There are villages in which the lands belonging to its original poor inhabitants have been captured. These are agricultural lands, some of them purchased for negligible prices by people of authority and influence who come as investors. Others were captured forcibly as is the case in "Dar Al-Mansoor" village and in other areas where a tribal sheikh, benefiting from his influence captures all lands of the village, as is the case in Al-Gaashena Village in Ibb Governorate. The Sheikh expelled the land owners and took hold of all the lands for two years. The Al-Gaashena people were forced then to demonstrate and stay in strike before the House of Deputies asking them to deal with this issue. The solidarity of NGOs and the raising of this case by some non-official newspapers convinced the House of Deputies to deal with the subject. The government was directed to tackle the issue in order to return to the villagers their lands. A resolution of the Prime Minister was issued to Ibb Governorate to return the Al-Gaashena to their village and restore their land (Anon. 2005).

Complaints of similar land appropriation surfaced in case study village. In one, it was alleged that local sheikhs and influential people had illegally captured land belonging to poor families (38). In another, the allegations were more detailed. At the community interview for the community of Musa'bain (21 May 2008), it was reported that:

Musa'bain, a village of farmers and camel herders in sub-urban Aden suffered from the policy of the stick and carrot. Mr X, a business man who owns a beverage plant in Hodeidah, bought from the villagers 276 acres of land in 2005 (approximately 110.4 ha.) through the influence of the Governor of Aden. Then began a process of creeping boundaries, expanding his territory until he

now has thousands of acres. Farmers, complaining against this illegal capture of land, were taken to prison. Their village literally began to shrink as he claimed land and forcefully expanded towards the village and behind it. During the study, there was a visit by his surveyors, who were asked to leave by the son of the sheikh, explaining he cannot guarantee their safety if they stay longer.

Mention was also made in another community (33) of land illegally captured by strong tribal leaders, with no compensation paid to those who had been using it earlier.

Land grabbing occurs more in some contexts than others. One circumstance mentioned in several communities concerns loss of state land and irrigation facilities (1,3,7,8,9). The taking of them was in one case said to have reduced local former users to the status of tenants (1). Many of these cases appear to have involved land and irrigation facilities which were at one time under state farms and cooperatives in the former South Yemen, and have now been turned over to influential people. In one community (8), the team was told that when farmers were asked to turn over the land to a landlord, the farmers refused, and were imprisoned for terms of between three months and one year. In community 33, it was complained that the PM Ministerial Decrees intended to protect former land reform beneficiaries had been ignored after 1995, and in another community there was a specific demand for revival of the prime ministerial decrees, again on the ground that they were ignored today, and even a demand for a return to state farms and cooperatives (9).

Another context in which land grabbing seems likely to occur is that of coastal lands. The coastal land near the beaches is important to fishers as communal land for residence, expansion of the village, anchoring their fishing vessels, storing their equipment and landing their catch. But rights in this land exist only under customary law, and are not documented. This lack of documentation has created problems with land brokers, influential persons, and authorities who acting illegally try to capture vast land areas for so-called "investment and/or development projects". This leads to high insecurity of tenure, complained a number of coastal communities (4, 5, 38). These same coastal fishing communities complained that local fishers had been left out of planning for a local free zone and protected area, and urged that their cooperatives need to be involved in such planning processes.

The coastal zone issues have been mentioned by other commentators:

[D]ue to the weakness of the rule of law, lands classified as islands or semi-islands, although populated and declared to be natural protected areas in order to protect the environment and marine creatures and trees, were also captured by executives in authority for investments, ignoring international conventions on safeguarding of protected areas such as "Socotra Island". City villages and marine villages were also captured and subjected to misplanning; they are captured and sold without any consideration to laws and international conventions related to organization of building on the beaches and maintenance of the environment, or the protection of marine creatures or observation of changing geographical climate on the lands known to be as marine beaches, as it is the case in all beaches of Aden. We would also like to mention here the capture of lands, expulsion of inhabitants and their imprisoning and displacement, as was the case in the maritime "Al-Qarau" Village, and for other lands of various beaches and islands, carried out by those executives in authority and heads of tribes. The more

influence and money they possess, the more able they become to capture lands, including mountains. Subsequently, every resource on the ground and underground like water supplies, springs, valleys and wells, plants, animals and man ("Tehama" for example) become their property (Anon 2005).

There was also a complaint from one community about appropriations of lands connected with oil and gas leases, without compensation to the communities which had benefited from the land. There was a demand that government reassert its role as protector of property rights (1).

While some land grabs appear to have involved appropriation of land on the ground that it was not owned, in violation of undocumented customary rights, other communities complained of forced sales (for example 16). In one community, it was reported that sale of land was forced under a threat that the governor would imprison the eldest son or husband in each family and either force the women who owned land to sell land as a condition of freeing the men. They would not agree to free the men unless their women agreed to sign documents pertaining to selling the land (6).

Waqf land has also been subject to appropriation. The community case studies produced a number of cases of local former users of waqf land who complained about insecurity and fraud in allocation of waqf land. In one community, it was alleged that locals using waqf land had formerly paid 60 qadah (1 qadah = 40 kilograms) of sorghum worth then 144,000 Yrs. The waqf authorities took back the land from them and gave it to influential persons from Sana'a for paying only 45,000 Yrs only. Six households were affected (18). In two other communities, there were complaints of plans to turn waqfs from farmland to residential building sites, thought to involve corruption of waqf authority officials (9, 10).

As some commentators suggest, corruption of officials plays an important role in the appropriation of lands. Anon (nd) writes: "Corruption plays a big role in land issues. Lands are sold and leased according to the amount of bribe the purchaser could pay. This is found in all land registration and land right documentation departments: the real estate register, the state lands department, those dealing with taxes, court notarization and the public constructions and works office. As a result of this many of the population are deprived of their lands. In some cases a land was sold twice. The registration and notarization procedures are primitive and serve only a gang of executives who can capture lands through the security and military."

## **7.2 The Role of the Market**

Land-grabbing is hardly the only source of insecurity. There are very real economic pressures as well. Quite a number of communities noted the role of high prices of agricultural inputs, draught periods, and soil erosion during heavy floods (24, 25, 26, 28, 30, 32, 36). These are placing pressure on smallholders and tend to force them into sales. Some smallholders, unable to meet the costs of inputs, sell their land to large landowners and then work as part of the buyer's labor force.

In a number of communities there were complaints about pressures from landlords to renegotiate tenant shares of production down from 50% to 25% due to rising costs of inputs (16, 18, 19, 20, 23, 26). Concerns were expressed about the role of influential speculators (6), and of local

sheikhs buying up land, paying prices that no one else could afford (22). In one community there were complaints that local waqf administrators were renting waqf land to outsiders, instead of local people, and that this was inconsistent with the purpose of the waqf (20).

There are concerns expressed in some communities about the extent of absentee ownership, one community complaining that locals owned only 10% of the local land (18) and another complaining that locals owned only 3% of local land (19). In another it was said that “Investors come, buy the land, and create landlessness” (15). Land brokers and amins are often mentioned in discussions of these

### **7.3 Uncompensated Takings of Land**

There were in addition complaints about uncompensated takings of land for public purposes. In one community, residents complained that a rain forest remnant, declared a protected area in 2006 and replanted, had suffered when local authorities constructed a 20-meter wide road through the area, destroying almost half the trees planted just to allow the sheikh to drive his car up one side of the mountain to his house on top, rather than driving up the other side (17).

In another community (28) there were complaints that the government had taken without compensation 500 libna (each libna = 44 sq. meters) of their farmland to add it to a military camp.

***Issues:*** The growing competition for land is in part driven by new water technologies, and is creating opportunities for appropriation of both state and waqf land. The pattern that emerges in the community interviews is one of considerable insecurity and pressure on smallholders, with a process of land concentration taking place and creating an agrarian structure which will provide fewer labor opportunities. This is much more pronounced in the south and in coastal areas. This process is accompanied in some cases through illegitimate and corrupt exercises of authority (land-grabbing) but also is taking place through market mechanisms. Communities with undocumented rights, especially in communal land, are especially vulnerable.

The communities interviewed had some concrete ideas of what needs to be done to improve this situation. One community with some State land asked that it be reclaimed for the poor and disadvantaged (25). A number of communities urged that communal properties need to be documented so they can be protected. There were demands for more effective law enforcement (33) and for a law to regulate landlord/tenant relationship (19). Better land documentation was urged, and interviewees noted a large number of inauthentic and forged documents, as well as a need to document so far undocumented rights (1, 15, 16).



## 8. Land Disputes and Their Resolution

Land disputes, as suggested earlier, are common. The survey and the community case studies provide some insight into the nature of these disputes. Respondents were asked about disputes over a parcel since they first begin farming a parcel, and the nature of those disputes.

**Table 3: Nature of Land Disputes, Percentage by Governorate**

Governorates	Border dispute on owned land	Owner wants users to leave the land	Ownership dispute	Dispute on digging new well	Attempt to take land from current holder	Inheritance dispute	Dispute over Crops	Disputes over existing wells	Total
	%	%	%	%	%	%	%	%	%
Sana'a	0.0	0.0	15.2	0.0	7.0	10.1	0.0	68.2	100
Abyan	23.1	0.0	38.3	0.0	0.0	38.3	0.0	0.0	100
Taiz	37.4	56.2	6.3	0.0	0.0	0.0	0.0	0.0	100
Ibb	5.8	10.9	9.7	43.7	20.1	9.7	0.0	0.0	100
Lahej	0.0	17.0	3.8	0.0	0.0	11.4	68.0	0.0	100
Hodeidah	12.9	0.0	21.3	0.0	44.4	21.4	0.0	0.0	100
Hajjah	34.0	0.0	0.0	0.0	23.6	17.0	0.0	25.5	100
Hadhramut	0.0	0.0	66.6	0.0	0.0	33.6	0.0	0.0	100
Aden	37.7	0.0	62.4	0.0	0.0	0.0	0.0	0.0	100
Shabwa	0.0	0.0	50.0	0.0	0.0	50.0	0.0	0.0	100
Total	15.1	8.4	27.4	4.4	9.5	19.2	6.8	9.4	100.0

While disputes occur across a wide range of topics, three categories (boundary disputes, ownership disputes and inheritance disputes) compose nearly 60% of all disputes (Table 3). The data shows considerable variation in disputes across governorates. Ownership disputes, boundary disputes and inheritance disputes are significant in most governorates, but other types of disputes are focused in a few governorates. Disputes over evictions by owners are concentrated in Taiz, Ibb, and Lahej. Disputes over the digging of new wells figure large only in Ibb; while disputes over existing wells are concentrated in Sana'a and Hajjah. Disputes over crops occurred only in Lajeh.

The community case studies complement the survey data. The most common disputes were said to concern property boundaries (9, 15, 16, 21, 22, 23, 26), and such disputes are often connected to inheritance disputes (23, 26 28). In some regions, boundary and ownership disputes lead to blood feuds and these are resolved either within the tribe or by force (2, 3, 33, 34). Some major land disputes with tribals stem from the taking of land without compensation for oil and gas leases (33, 34), and such disputes lead to armed confrontations (34). Blood feud is reprehensible, and more effective means to settle land disputes need to be found (2, 3).

Water disputes were also frequently mentioned in the community interviews (1, 18, 19, 31), including the withholding of water from downstream users by large commercial used in the upper wadi (15,16). It was suggested in one community that this was due to the abolition of

customary water management without replacing it with an alternative effective system, creating a free-for-all in water access, in which poor are disadvantaged (1), and two communities urged a restoration of traditional systems (1, 15).

Other common disputes concerned share tenancies (re distribution of yields, delays of the tenant in cultivation, delays in paying the share of the owner and disagreements over crops to be grown (19, 30). As long as custom was enforced, these disputes could be handled by sheikhs or aqils (30). Other types of land dispute mentioned were fraud in allocation of waqf land (18), disputes over public utilities land (21), disputes over pre-emption (shuf'a) (30), and, in a peri-urban context, a dispute with public authorities over groundwater deterioration and poorly treated sewage (29).

Some of the more striking data to come out of the survey concerns the large number of these disputes (disputes since the farmer began cultivating the parcels) that are still under litigation and how long many have taken in litigation. Table 4 below shows that 56.8% have been resolved but 43.2% have not been resolved. There are major differences among governorates, with 88.4 % of disputes remaining unresolved in Aden but all disputes having been resolved in Hadhramut.

**Table 4: Percentage of Land Disputes Resolved**

Governorates	Yes	No	Total
	%	%	
Sana'a	64.9	35.1	100.0
Taiz	31.5	68.5	100.0
Ibb	41.4	58.6	100.6
Lahej	84.5	15.5	100.0
AL-Hodeidah	65.0	35.0	100.0
Hajjah	73.5	26.5	100.0
Hadhramut	100.0	0.0	100.0
Aden	11.6	88.4	100.0
Shabwa	47.6	52.4	100.0
Abyan	48.0	52.0	100.0
Total	56.8	43.2	100.0

Table 5 below shows the minimum and maximum years that the disputes went on, and the mean duration for disputes. It should be noted that a dispute does not necessarily signify a single litigation. There are a number of dispute settlement fora and litigants engage in forum-shopping, that is, shifting a dispute from one forum to another to obtain a more favorable result or simply to delay a final resolution. Some disputes may have been processed a number of times. Still, the mean period, over 20 years, suggests that dispute resolution institutions are failing and failing badly to bring closure to disputes within a reasonable period. It also suggests that the references heard frequently to endemic land disputes in Yemen may reflect that failure as much as the number of disputes.

**Table 5: Duration of Land Disputes**

Governorates	Minimum (years)	Maximum (years)	Mean
Sana'a	5.6	44.4	16.7
Taiz	11.0	33.1	22.7
Ibb	1.3	66.3	11.1
Lahej	11.4	34.3	20.0
AL-Hodeidah	2.6	51.3	23.1
Hajjah	4.0	47.4	13.0
Hadhramut	6.2	61.6	26.1
Aden	12.3	44.2	26.3
Shabwa	6.3	56.3	31.3
Abyan	4.8	48.1	23.1

How far do the litigants consider that the dispute over their land was fairly handled? Table 38 in

Annex 3 provides some indication. It needs to be borne in mind here that those interviewed are still farming the land that was under dispute, which will likely incline them to consider the dispute was fairly handled. (Those who failed may feel differently.) Still, the figures of 100% fairly handled for Lajeh and Hadhramut are surprisingly high. That of only 9.1 % of Aden is alarmingly low, and the figures of under 30% for Al-Hodeidah and Abyan are also cause for concern.

What are the dispute resolution institutions involved, and what is their relative importance in dispute resolution? Customary and modern laws are each mediated by sets of different institutions (shaykhs and courts) which coexist. The state rarely interferes with tribal justice systems when only locals are involved but may intervene when actors from the center are involved, who may ignore the authority of customary dispute resolution systems. But there are also problems in the customary system. Shaykhs who might adjudicate land-related conflicts are no longer perceived as entirely neutral arbitrators since they are often important beneficiaries of land concentration. Table 6 below gives the percentage of the disputes which were handled by the various dispute resolution authorities.

**Table 6: Percentage of Disputes Handled by Various Dispute Resolution Authorities**

Governorates	The Sheikh	Imam	Judge	Auqil	Lands committee	Tribal convention	Total
	%	%	%	%	%	%	
Sana'a	0.0	0.0	17.4	0.0	0.0	82.6	100.0
Taiz	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Ibb	0.0	0.0	30.2	69.8	0.0	0.0	100.0
Lahej	8.7	0.0	4.6	0.0	86.7	0.0	100.0
Hodeidah	34.1	0.0	9.0	56.8	0.0	0.0	100.0
Hajjah	85.1	0.0	14.9	0.0	0.0	0.0	100.0
Hadhramut	0.0	0.0	17.5	0.0	0.0	82.5	100.0
Aden	0.0	0.0	100.0	0.0	0.0	0.0	100.0
Shabwa	100.0	0.0	0.0	0.0	0.0	0.0	100.0

Abyan	0.0	0.0	100.0	0.0	0.0	0.0	100.0
Total	25.3	0.0	32.6	14.1	9.6	18.3	100.0

Some of the results are again striking. Courts processed only 32.6% of the disputes, a figure that rises to 100% in Aden and drops to 0% in Shabwa. Generally, more disputes were processed by institutions such as the sheikh, the aquil, and the tribal convention. Land committees played little role except in Lajeh, and disputes resolution by tribal conventions was important only in Hadhramut and Sana'a. These results, while suggestive, must be viewed with some caution, especially at the governorate level, as the number of disputes may not have been sufficient to permit firm conclusions.

In the community case studies, courts were usually mentioned only to complain of their corruption and slowness and to point out that they do not enjoy the trust of the public (11, 12, 22). Local institutions such as the aquil and amin are the first resort, with resort to the courts only if this fails (28, 29, 30, 31). Courts were necessary, however, for ensuring compliance with the terms of transactions (21). Some disputes, such as those over boundaries, can be handled by local institutions but others, such as those concerning outsiders, need to be handled in the courts (13, 18).

The survey asked respondents to rate their level of confidence in the various dispute settlement institutions, and the results are provided by governorate in Tables 37-41 in the Annex 3. Those who had had parcels involved in disputes rated local courts relatively low (less than 23% rated them as highly trustworthy (placing them in categories 1 and 2 on a scale of 1-5, which indicates a relatively high level of trust). Respondents also did not have a high opinion of cooperative officials and local administrators in this role, only about 40% of respondents rating them in categories 1 or 2. Sheiks and auqils scored appreciably higher, over 50% in categories 1 and 2, and amins (notaries) the highest of all, over 70% of respondents placing them in categories 1 and 2. There are significant differences evident in the ratings. In Aden, for instance, possibly due to post-unification tensions, over 90% of respondents indicated that they trusted their local sheikhs and aquils (categories 1 and 2), but only 30% showed similar confidence in local courts. Generally, it appears that local, traditional dispute resolution mechanisms are considered more reliable and fair, though to the extent that traditional authorities are absorbed into local government, this perception may change.

These results suggest a poorly integrated and weak system of land dispute resolution. This is a matter of consequence for rural land tenure, because security in property rights in land ultimately depends upon the rule of law. Unfortunately, citizens have limited access to the formal legal system. The court system is ineffective and overburdened with adjudicating land conflicts, and faces the additional problems of (i) inappropriate and insufficient educational skills of legal and administrative staff; (ii) inadequate administrative systems; (iii) heavy caseloads; (iv) insufficient physical facilities; and (v) widespread corruption. The prestige of the judiciary has been undermined by widespread venality. As a result, ordinary citizens are discouraged from using the legal system and are unsure of whether to use the tribal or state institutions. Moreover, ordinary citizens are often unaware of their legal entitlements and therefore fail to exercise the ones they have.

**Issues:** It is clear that land dispute resolution mechanisms are not functioning well. This is unfortunate, because in the absence of adequate dispute resolution the rule of law will remain weak and this in turn will undermines property rights and security of tenure. Here one is dealing with a set of institutions separate from those involved in land administration, but their reform is equally essential to a reliable system of property rights. Of all the findings of the study, perhaps the most significant is the high level of trust of amins, or notaries. In developing plans to improve the quality of land dispute resolution, government should bear in mind that the amins provide an important resource for reaching that objective.

## 9. Records of Rights in Land

The lack of adequate dispute settlement arrangements clearly contributes to insecurity of tenure in Yemen, but another factor appears also to be at play: lack of recording of rights in land and consequent difficulties in proof of rights. Proof of rights will often hinge upon whether a given title has been recorded officially. The recording of deeds with the notary (amin) is the most widespread form of right registration in Yemen. There is also a land register managed by the Land Authority under the Land Registration Act (No. 39 of 1991). This register exists only in Sana'a, with parcels in urban and peri-urban area around the country registered there. Official estimates of the amount of land registered nationally vary, but are all below 10% of parcels. In a series of policy workshops and other discussions over the past several years, an expert consensus developed that Yemen would be better served by a land registration system, a parcel-based system with provisions for systematic implementation. A draft law providing for this has been under discussion for several years. It has been approved by the Cabinet and is currently before Parliament.<sup>19</sup>

What do the responses from the study suggest about records of rights in land in Yemen? Table 7 below distinguished among parcels authenticated by the notary public and registered under the land registry under the Land Registration Law. It indicates that of parcels which have been recorded officially, 70% were authenticated by notaries, while 20% were registered. There are dramatic variations among provinces, and some results are counter-intuitive, for instance the indication that no parcels covered in Sana'a Governorate were registered.

**Table 7: Documentation of Land Parcel Ownership**

Governorate Name:	Authenticated Document by the Notary Public		Registered Ownership		Illegal Holding		Unregistered		Total
	# of parcels	%	#	%	#	%	#	%	
<b>Sana'a</b>	43	100	0	0	0	0	0	0	43
<b>Abyan</b>	20	56	13	36	0	0	3	8	36
<b>Taiz</b>	34	89	2	5	2	5	0	0	38
<b>Ibb</b>	49	78	14	22	0	0	0	0	63
<b>Lahej</b>	16	64	8	32	0	0	1	4	25
<b>Al-Hodeidah</b>	53	84	3	5	0	0	7	11	63
<b>Hajjah</b>	51	93	4	7	0	0	0	0	55
<b>Hadhramut</b>	5	100	0	0	0	0	0	0	5
<b>Aden</b>	7	70	2	20	0	0	1	10	10

<sup>19</sup> The existing system of land registration and a proposed new law are treated much more fully in a World Bank report on urban land policy in Yemen (World Bank 2005: 5-56 & 122-131).

Other questions were asked concerning registration later in the survey, but these unfortunately did not distinguish between registration and recording with notaries; the figures for land rights recorded include both.<sup>20</sup> Still, they are enlightening in some respects.

Table 8 below describes the percentages of plots of land whose ownership is recorded with the government in each governorate. Nationally, the average is 48.4% recorded, and 51.6% unrecorded. Shabwa has the highest percentage of unrecorded parcels (81.8%), followed by Sana'a (72.3% unregistered land) and Hadhramut, with 59.7% unregistered land. The figure is surprisingly high for Sana'a. It is notable that most parcels are not registered in any fashion. This goes contrary to the impression created in much of the literature that almost all parcels are deeded and registered with the local notary. While survey questions discussed earlier suggest that the notaries enjoy relatively high trust, it seems that many landholders have nonetheless failed to register their deeds with them, and that the coverage of the traditional system is much less complete than is often imagined.

**Table 8: Is the ownership of this parcel registered with the Government?**

Governorates	Yes	No	Total
	%	%	
Sana'a	27.7	72.3	100.0
Taiz	41.0	59.0	100.0
Ibb	66.0	34.0	100.0
Lahej	65.2	34.8	100.0
AL-Hodeidah	55.0	45.0	100.0
Hajjah	58.3	41.7	100.0
Hadhramut	40.3	59.7	100.0
Aden	46.3	53.7	100.0
Shabwa	18.2	81.8	100.0
Abyan	65.7	34.3	100.0
Total	48.4	51.6	100.0

Respondents were asked whether they knew where to register their land. Table 42 in Annex 3 indicates that most informants (59.2%) said that they did know where to register their land, while 40.8% said they did not. Sana'a had the highest percentage (87.3%) of respondents who did not know where to register their land (perhaps because the option between the notaries and the Land Registration Act register exists and is not well understood?) followed by Taiz (75.2%) and Ibb (49.6%). The highest percentages of those who know where to register lands are in Shabwa (87.7%), Aden (78.5%), Abyan (77%), Lahej (73.5%) and Hadhramut (60.4%). It is notable that these were all in the former PDRY.

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<sup>20</sup> Comparison of these tables with Table 6 is made difficult by the fact that the Governorate of Shabwa is not included in that table and totals are not provided for that Table..

There does appear to be a significant, though certainly not universal, demand for registration of land rights. Respondents did consider that registration of land increased their security of tenure. Table 43 in 3 indicates that overall, nearly 60% of respondents considered that registration increased security of tenure, while slightly over 40% did not. In Sana'a 87% responded that registration would not increase their security followed by Taiz (64.2%) and Ibb (42.4). In Aden and Lahej, a much higher percentage were convinced that registration increased security of tenure (100% and 84.2% respectively). These figures are tracked fairly closely by those in Table 44 in Annex 3, which shows the percentages of those who would like to have their land registered. Overall, 55.7% would like their land registered, but again the figures vary significantly from governorate to governorate. Aden has the highest percentage of those who would like their land registered (91.2%) followed by Lahej (90.2%), but figures for Sana'a (21.7%) and Hodeidah (24.7%) were much lower.

Issues: What do these figures suggest with respect to the present system of records of rights in land, and with respect for proposals to upgrade those systems? They indicate both that registration with notaries is not quite as universal as it is sometimes suggested, and that there is a significant unmet demand for registration. The existence of much greater demand in some areas than in others may have implication for areas in which to pilot the new registration system under consideration in Parliament, if it is eventually enacted. On the other hand, some of the divergences are somewhat curious (the low demand in Sana'a, for instance), and so would need further investigation. That investigation should discriminate carefully between registration of documents with notaries and registration under the Land Registration Act.



## 10. Toward an Agenda for Action

The overall objective of the activity, as stated in the TFESSD application, was to “promote rural land policy reforms for equitable access to land resources, greater empowerment of vulnerable groups and sustainable pro-poor economic growth”. To this end, the activity was to 1) analyze the functionality of existing state and customary land tenure, and property rights as well as reviewing the overall legal framework on rural land; 2) assess the land tenure status as they relate to livelihoods of rural populations, and 3) to prepare an action plan for land policies, governance and legal reforms favorable to poor and vulnerable population groups conducive to greater and legally secure access to productive land, sustainable land resource management and improved livelihoods.”

The Final Report on the study reports on the findings of the community case studies and household survey, which point to a number of key problems, but does not discuss policy and legal reform directions. This is understandable, given the failure of the relevant government agencies to engage with the study team on these issues. What can be done here, it seems, is to summarize the findings and the needs which they identify, and to suggest some measures that should be considered in light of international best practices. In some cases, where the study revealed gaps in our understanding of certain issue, further studies may be needed.

The issues arising from the study and some potential items for an action agenda are summarized below:

- 1) The law on state land and compulsory acquisition of land by the state are relatively recent and are in general in line with current best practices. There are however some fundamental problems in its legal delineation of state land. First and foremost, there is a need to provide a clearer distinction between state and communal land. This will require a clearer definition of communal land, one which refers specifically to uses and customary arrangements. This study did not develop adequate information on communal land and its administration, and there is a need for a study dealing specifically with this matter, followed by legislation on communal land. Second, the definition of marahek, or “public utility land” (water catchment areas), which often determines whether land is publically or privately owned, is both unclear and difficult to apply in practice. This is the source of a significant number of disputes and clearer standards should be enacted.
- 2) In addition, it is clear that implementation of the law concerning state land is badly flawed, and that there are abuses in terms of uncompensated land takings and illegal appropriations of state lands for private purposes. The lack of an adequate inventory of state land will undermine efforts to improve state land administration. Such an inventory, however, should be preceded by the legal reforms identified above as needed, as an inventory in their absence seems likely to result in controversial classifications of land as state land, which only intensify conflict over them. In addition, experience in other countries suggests that the apparently technical task of a state land inventory will not be easy. Those with knowledge of the location of state land parcels profit from that knowledge, and are reluctant to see it become public knowledge. Strong local

participation in such an inventory will be critical to its success, and should be built into the inventory process.

- 3) The law concerning private ownership of land is satisfactory in most respects. Yemen has a long tradition of private ownership and land and rental markets. Those markets are clearly quite active, at least in areas where the economic basis for such market activity exists. The right of pre-emption in Yemeni law, a shari'a institution, has been criticized by some commentators, but more recent scholarship recognizes its value (Sait and Lim 13, Messik 2003). Pre-emption provides a mechanism that allows families and neighbors to retain land within the family or community without interfering too directly with the market in land. However, Yemeni law does not provide a time limit for exercise of the pre-emptive right, and this can leave a buyer in a continuing state of uncertainty. A time limit such as the six-month limit in some former Ottoman countries should be imposed. In constructing the legal relationship between pre-emption and land registration, care must be taken. The legal confirmation of rights provided by registration could negate exercise of the right of pre-emption; if this is not desired, the pre-emption right could be listed among "overriding interests" in the registration law. It would however be preferable to enact a requirement that the right of pre-emption be exercised within a specified period after registration of the sale.
- 4) Issues concerning inheritance under the law on private land are raised by implication by the study findings. Islamic law provides for a large number of heirs and disadvantages wives and daughters as heirs. The latter issue is discussed below, under disadvantaged groups. The former comes up in the study in relation to the level of fragmentation of farmers' holdings, the number of parcels and the distances from the residences of the farmers. The limited data on time used moving from residences to parcels, while incomplete in some respects, is reassuring. The active rental and sales markets in land provide an opportunity for those with fragmented holdings to use those markets to mitigate impacts of fragmentation, if they wish to do so. Reforms of inheritance law, while not entirely without precedent in the Muslim world, face strong opposition if they deviate from shari'a formulae.<sup>21</sup>
- 5) Waqf may offend the economic sensibilities of market economists in that waqf land is permanently held out of the land (sales) market, but it does move in rental markets and in the circumstances of Yemen it performs strong social functions. It supports important public functions and provides access to land for the poor but is increasingly negatively affected by weak supervision and corrupt practices. As in the case of state land, the absence of an adequate inventory is fundamental, facilitating appropriation of waqf for private profit and other corrupt practices. Development of such an inventory would appear to be a priority, but there is a larger need to consider how waqf land can better managed to contribute to the public good. A systematic study of waqf land management practices and optimal use of waqf revenues should be undertaken, and the inventory carried out in the context of that larger study.

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<sup>21</sup> See Sait and Lim (2006: 107-128) for a review of inheritance law and attempted reforms.

- 6) Tenancies are an important means of access to land in Yemen, especially for the poor, and their relatively stable terms under customary rules have historically provided a reasonable degree of tenure security. But customary rules are increasingly being challenged under increased pressure on land, weakening bargaining position of tenants as more terms of the tenancy move out from coverage of custom and into the sphere of bargaining. In these circumstances, it would be appropriate to affirm the applicability of customary rules except where varied by written leases. This will provide a degree of clarity in a period of transition. Another alternative would be to provide a statutory regime of tenancy regulation, and this is recommended in Al-Hassan et al. (2000: 30). If by this the authors meant specification of contractual terms in a law, it would be an unrealistic attempt to freeze a relationship within a constantly changing market economy. But what the authors argue for is that the government should strengthen local institutions in documenting sharecropping contracts, so that customary rights are spelled out more fully in contracts and so facilitate their enforcement. They note that the local administration authorities at sub-district level (uzla) are required to endorse and keep records of tenancy contracts and other land transactions, but do not presently have the capacity to do so.
- 7) Post-land reform issues remain a problem in the southern governorates. The Prime Ministerial decrees meant to resolve issues of agricultural land affected by land reform in the southern governorates appears to have been only very imperfectly implemented, with a failure by government to deliver on intended ameliorative measures to help former land reform beneficiaries. An independent review of implementation and implementation of an appeals process is clearly indicated by the information received in the community studies.
- 8) Improving the system for recording of land rights has been a focus of law reform discussions in Yemen in recent years. This is an important concern, and reforms in this area can make a substantial contribution to security of tenure. While it is not a panacea, and will not itself address some of the other problems noted here, the draft registration law currently before Parliament reflects international best practice. There are of course important issues that must be dealt with in planning its implementation. Systematic adjudication of rights in land offers an important opportunity, especially urban areas, coastal areas and the south, for more effective adjudication of conflicting claims than is currently available. It will however only serve the public interest if its implementation can be kept insulated against the corruption of land administration reported by many informants consulted during the preparation of this report. Systematic adjudication registration is likely not needed at this time in the areas where customary structures and rules prevail. In those areas it will be more cost-effective to rely on sporadic (on-demand) registration responding to applications by particular landholders. In the sporadic registration context it will be important to provide rigorous checking of land claims with local communities to avoid “land-grabbing by registration”. In both systematic and sporadic registration areas, it will be important to work to improve existing institutions, such as the notarial system, which is relatively accessible and inexpensive. Consideration should be given to requiring by law that notaries register certain categories of land

transfers that they authenticate, and to mechanisms for ensuring that a larger percentage of parcels be drawn into the notarial system. .

- 9) Women are clearly disadvantaged by the terms of inheritance law, and even more greatly disadvantaged by the failure in practice to realize their limited rights under that law. Reform of this body of law, while important, is notoriously difficult in the absence of broad demand in society for such reform – which rarely exists given the perceived sanctity of the shari'a rules. It may be more effective to focus instead on realizing the rights which women do have through broad public education and sensitization efforts and build a new awareness of the importance of land access for women. Reformists should not neglect the fact that women are under no disability with regard to buying and selling land. Educating women to participate in the land market, including targeted credit opportunities which allow them to access land ownership, may be more effective in the short run than focusing on rules of inheritance. Finally, Sait and Lin (2006: 129-146) make an important point. Since even the modest shares of inheritances allotted to Muslim women are often not received, it is presumably not the shari'a rules but rather other pressures in the societies and cultures concerned that are the major constraint to women inheriting land. A narrow law-reform approach to improving the position regarding women's land rights will not be likely to succeed. Ameliorative measures should focus in the first instance on securing women's rights under shari'a, and support should be provided for civil society organizations committed to this objective and offering legal and other support to women claiming their full rights under shari'a.
- 10) The situation of disadvantaged ethnic groups deserves priority attention. Their lack of secure access to land, especially owned land, is a violation of the humanitarian values of Islam and condemns them to continuing poverty. An appropriate initial step would be formalization through registration of their informal settlements on state land.<sup>22</sup> A second key step would be an official pronouncement to make it clear that they should not be discriminated against by sellers of land, followed by a public information campaign to raise awareness of the law, and launching of legal aid programs to allow them to challenge violations of new their new rights. Government should consider relying on civil society organizations committed to the elimination of discriminatory practices to push forward this agenda.
- 11) There is growing competition for land. This is driven in some parts of the country by the development of new water technologies which have enabled larger- scale cultivation and created economic opportunities. Land values are rising rapidly. This is resulting in some forced sales of private land and questionable appropriations of state and communal land by private interests. In others, such as the mountainous hinterlands, the limited land base

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<sup>22</sup> Because the residential areas occupied by these groups are often on the verge of urban areas, which should be a priority for systematic registration efforts, the donors supporting such systematic registration should, in order to meet their own standards regarding involuntary resettlement, provide against displacement of these populations. They should be provided secure rights in the land they occupy and those rights should be registered.

may not be providing needed livelihoods for the next generation. A number of measures suggested above, such as clearer records of rights in land and an adequate legal regime for communal land, would mitigate this problem, but there is reason for a broader concern with emerging landlessness. Government should consider a survey of rural households which assesses the extent of landlessness, its rate of growth and its causes, and proposes measures to improve land access. Mobilization of state land and waqf land resources to more effectively to provide land access to the poor could play a critical role. But an adequate response will require the development of a purpose-driven agenda that recognizes that in this transitional period both limiting the growth of landlessness and providing new avenues for access to land for the landless poor are priorities.

- 12) It is clear that land dispute resolution mechanisms are not functioning well. This is unfortunate, because in the absence of adequate dispute resolution the rule of law will remain weak and this in turn will undermine property rights and security of tenure. Here one is dealing with a set of institutions separate from those involved in land administration, but their reform is equally essential to a reliable system of property rights. The weakness of the judicial system and formal mechanisms of redressing wrongs puts weaker social groups at a distinct disadvantage, limiting their voice and capacity to act. In efforts to strengthen formal land dispute resolution through the courts, those planning reforms should bear in mind that the amins (notary publics) are held in high regard and represent an important resource in dispute resolution. Care should be taken to ensure that they are well-integrated into any reforms.
- 13) Customary and statutory law do not in Yemen stand in the stark opposition that exists in some developing countries. This is due to the pervasive influence of shari'a in forming both systems. It is however true that inefficient and haphazard integration of modern and customary norms are contributing to growing land concentration. This is in part because of lack of clarity in defining the legal scope of custom and statute, for instance in the case of communal lands, but it is also because of lack of integration of land administration institutions in the country. That institutional dualism is as important as disconnects in the land law. Both legal and institutional harmonization are needed. The local institutions dealing with land administration, both civil and traditional, need to be re-examined, asking whether there are institutional forms that could allow greater public participation in local land administration and better integrate traditional authority with local representation of national land administration institutions.
- 14) Water law remains a problematic area which so directly impacts land values and access to land that it cannot be ignored in any study of land rights. One of the major areas of contention in rural areas concerns the division between state and private owners of rights relating to marahek, which are water catchment areas. According to the State Lands Decree, public marahek is considered state land, and its definition is based on the angle of slopes, a standard that rural people find unclear and confusing, and this has led to large number of disputes (Prettitore c. 2007: 3). New and clearer standards are needed. At the same time, this study does not provide a comprehensive picture of problems affecting the water sector, and more study and analysis of the problems in this sector are needed.

Many of these ideas are not foreign to the landholders of rural Yemen. From their comments during the community case studies, they know that the state and waqf land resources need to be better utilized, that communal properties need to be documented, that the rule of law needs to be strengthened to protect owners and other right-holders, and that new rules are needed to manage the transition from a subsistence economy to a market economy.

How can the attention of the Government be focused better on these issues? Government is already moving forward toward enactment of a law on land registration and piloting of systematic land registration in some urban and peri-urban areas. But with respect to rural land issues, the relatively modest level of interest in this study displayed by key government agencies which had been seen as potential partners suggests that simple encouragement will not be effective.

A workable strategy might include support for a) the gathering of further information on communal land rights and development of a strategy for their recognition; b) introduction of a substantial land tenure section into a periodic national survey of agricultural households, such as the FAO agricultural census, to allow tracking of trends in a number of areas, including land distribution; c) piloting of systematic land registration in urban and peri-urban areas; d) exploration of the prospects for a serious study of waqf land use, management practices and revenue streams, with a view to developing a more purposeful strategy to ensure its contribution to the public good, and e) activities of civil society organizations devoted to protection of property rights, both generally or for key stakeholder groups such as smallholders and tenants, including legal aid programs and CSO-managed information campaigns to increase land rights literacy. Conditions in Yemen would appear conducive to an approach emphasizing legal empowerment of the poor.

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