



The politics of accessing desert land in Jordan



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ABSTRACT

With the dramatic increase of the population in Jordan, the value of land has rocketed up. Urban sprawl into semi-desert or desert areas, initially not surveyed or settled by the British and considered as state land, has brought to the surface the problematic status of those lands. Likewise, the profitability of irrigated agriculture based on groundwater has generated a demand for land in the Mafraq, Zarqa and Amman governorates. These trends have spurred tensions between local tribes and the state. This study focuses on land tenure and conflicts in the semi-desert and desert areas of Jordan, with a focus on the expansion of irrigated agriculture within the Azraq basin. It is based on field work and interviews with different stakeholders at various levels. We first provide a summary of the main historical developments regarding land tenure in Jordan, with a focus on the status of semi-desert and desert land. We move on to examining the different ways by which state land can be privatized and then review instances of conflicts around rights to desert land in the past 30 years, further taking the Azraq water basin as a case study to shed light on the particular case of groundwater-based agricultural expansion. We then articulate our discussion through the lens of legal pluralism, look at the interplay between state and tribal power, and analyze the twin strategies of accessing land and water in desert areas. We conclude by showing the historical continuity of the land tenure relationships, while singling out Jordan's state land management regime.

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1. Introduction

Arid rangelands or deserts are, at first sight, of little value. But in most of the Middle-East and North-Africa Region, necessity (urban expansion) and economic opportunities (e.g. groundwater-based irrigated agriculture, tourism or mining) are fuelling an expansion of human settlements and activities into these hitherto neglected areas. This expansion and the associated generation of wealth, raise critical questions on land tenure and rights, challenge the category of 'state land' (Kelly and Peluso, 2015), and reignite tribal claims for desert lands (see for example Gertel et al., 2014 for Sudan, and Sims, 2015 for Egypt).

Although the gradual transfer of land to investors and developers is a widespread phenomenon that may occur through the land market, it thrives on weak land management administrations and procedures, fuzzy and unregistered land rights (see Mahdi, 2014 on

Morocco, for example), but also on the mechanisms through which 'state land' can be appropriated, rented or privatized (Kelly and Peluso, 2015). This is particularly true in Arab countries where the 'state land' category may have been inflated by land nationalization and/or includes (often dominant) marginal/unused/desert lands. The interests of local dwellers, farmers or herders – who more often than not belie the concept of an 'empty space' – may be threatened by state projects or state-sponsored large (often foreign) companies, diffuse homestead building and commercial agriculture, or the claims of other local tribes, as observed by Casciarri (2015) in Sudan. State ownership and the ways state land may be privatized are often challenged (or contradicted) by the principle of *wada yadd* (direct reclamation of unused public land), where unchallenged and uninterrupted use of land during a certain time (typically 15 years) may open a right to ownership (like in Jordan (Madanat, 2010) or Egypt (Sims, 2015)).

Nowhere is the growing value of desert land better illustrated than in Jordan. With the dramatic increase of the population in the country, notably through the successive waves of Palestinian refugees (1948, 1967, 1973), returnees from the Gulf (1991), Iraqis,

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and most recently Syrians – the value of land in Jordan has skyrocketed. Urban sprawl into semi-desert or desert areas, initially not surveyed or settled by the British or the Jordanian government and considered as state land, has brought to the surface the problematic status of those lands. In particular, the profitability of irrigated agriculture based on groundwater has generated a thirst for land in the Mafraq, Zarqa and Amman governorates, east of the Hijaz railway. These trends have spurred tensions between local tribes, claiming historic ownership of land, and a state unwilling, under the prevailing conditions of market boom and speculation, to give away what it considers as state ownership. This paper addresses the political tensions between the state and desert land appropriators, that speak not only to the future of the country's vast desert lands, the affirmation of state power, or the political stability of the regime, but also to the resulting overexploitation and future of Jordan's precious groundwater resources.

Most of the earlier studies on land tenure in Jordan have focused on settled areas (see for example, Palmer, 1999; Wahlin, 1994; Mundy, 1994, 1996), the Jordan Valley (Nims, 2005), or urban/perurban areas (with the work of Razzaz, 1992, 1993), with little work on disputed rangelands and deserts (Tarawneh, 1999, is an exception), especially in the past 15 years. This study contributes to filling the gap on this issue and focuses on land tenure and conflicts in the semi-desert and desert areas of Jordan, with a focus on the expansion of irrigated agriculture in the Azraq Basin. It is based on the collection of literature and newspaper articles on land tenure/conflicts in Jordan, interviews with 50 farmers/investors in this area, and semi-structured interviews of nine Key Informants from the Ministry of Agriculture, the Ministry of Irrigation and Water Resources, and the Department of Land Survey from 2013 to February 2015. Whether coming from farmers or officials, information on land transactions is frequently limited and often *ad hoc* (the reasons for which will become clear later). Because of the sensitivity of the topic and the reluctance of some interviewees to be cited, we anonymized reported information and quotes.

We first provide a brief summary of the main historical developments regarding land tenure in Jordan, with a focus on the status of semi-desert and desert land. We move on to examining the different modes by which state land can be privatized and then review instances of conflicts around rights to desert land in the past 30 years, further taking the Azraq Basin as a case study to shed light on the particular case of groundwater-based irrigated land. We then articulate our discussion through the lens of legal pluralism, looking at the interplay between state and tribal power, and analyzing the twin strategies of accessing land and water in desert area. We conclude by showing the historical continuity of land tenure relationships and situating our findings in the wider debate on desert land reclamation.

2. Historical context

The history of land tenure in the Ottoman Empire and during the British Mandate has been the subject of substantial scholarship. We provide here only a summary of the historical background, while the reader is referred to seminal works such as Fischbach, (2000); Mundy and Saumarez Smith, (2007); Owen (2000), or Bunton (2007) for further details. Early rules governing the usufruct of lands were a result of the expansion of the Ottoman Empire and the conquest of new lands. Local inhabitants of Islamic faith, or converting to it, would pay a tithe called *ushuri* equivalent to one-tenth of the production of their land, while non-Muslim – if allowed to keep their land – would pay a tribute called *kharaj*. The Sultan could also grant *iqtaa* land to private individuals such as military officers as rewards for their services (with the obligation to cultivate the land). In all cases, the Sultan or Emir was to remain the

ultimate owner of the land (Islamoglu, 2000; Sait and Lim, 2006; Mundy and Saumarez Smith, 2007).

The Land Code issued in 1858, in parallel with the Civil Code (*Mejelle*), aimed at making a kind of land inventory for taxation purpose and increasing tax revenue, and exercising greater state control over the empire (Carroll, 2011; Islamoglu, 2000). The Code organized a system of taxation that would apply to every piece of land, either privately owned (*milk*) or part of a domain called *miri* (land under the custody of the Amiri, or prince), that included all arable fields, pasturing grounds and woodlands. *Miri* holders would enjoy the use of the land after being registered officially and against payment of a fee (*tapu*), on condition that it remained cultivated (Fischbach, 2000). *Milk* land was directly composed of former *ushuri* and *kharaj* lands and also included land for dwellings with appurtenant plots not exceeding one *dunum*.¹

State ownership extended to two other categories of land, *matrūka* (such as roads, threshing floors or market places), and *mawat* ('dead' or wasteland such as mountains and rocky places far from villages). Anyone cultivating such land could "upon payment of a fee, be issued a title deed to the continued usufruct of the land" (or even gratuitously if it was considered a question of need) (Bunton, 2007: 35), the land being then reclassified as *miri* (Fischbach, 2000: 27). *Waqf* land was another class of land dedicated to some pious purpose and put under the custody of God, and therefore "protected by the strongest legal and religious sanctions known to Muslim law from seizure by the state or its officers" (Shehadeh, 1982).²

Although not mentioned in the Code, the category of state land (*amlak al-dawla*) appeared during the Ottoman times and differed from *miri* in that the state did not sell usufructuary rights to it but rented it on a yearly or short-term basis, keeping greater control on this land (Fischbach, 2000: 52). *Miri* land left uncultivated for three years (and then called *mahlul*) would revert to the state. Large tribes such as Beni Sakhr and 'Adwan lost part of the land they considered as part of their *dira2* to the treasury through this mechanism (Fischbach, 2000).

After being entrusted with a mandate over Palestine in 1921, the British confirmed the validity of the Ottoman law but passed several ordinances (Bunton, 2007), such as the Mawat Land Ordinance (1921) that made the reclamation and cultivation of *mawat* land unlawful (*ibid.*). The British first conducted a land valuation study, dividing the surveyed area in *hawds* ('basins' of no less than 25 ha) and ascribing a taxation figure for each of them, based on the estimated productive value of the land (grade). A land settlement program ensued, whereby plots would be ascribed to specific 'owners'. Between 1933 and 1950, altogether 7.77 million du of agricultural land belonging to 412 villages out of a total of 480 for the whole country were settled (Fischbach, 2000: 115 and 158).

Two important points for our discussion must be noted. First the British land settlement program was limited to the villages of the provinces of Ajlun, Al Balqa, Al-Karak and Ma'an, where agriculture was practiced and where taxes could be levied. Tribes residing in or claiming semi-desert rangelands and desert lands could use them as pastureland, occasional agriculture, or dwellings, and could in theory apply for registration to have these lands under their names. Many tribe members refused to go to such an extent for fear of taxation or conscription, or to manifest their opposition to the state's claims over land (Razzaz, 1992; Madanat, 2010).

Second, the settlement gave rise to the expanding category of 'state land', which included not only the personal properties of the deceased Sultan Abdulhamid II, the *waqf* lands that were under

¹ One Turkish *dunam*=919.3024 m²; the *dunum* has later been redefined as 0.10 ha, to fit European units.

² The tribe's grazing grounds and camping unit (Al-Sirhan, 1998).

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