

A LAND TENURE PROFILE FOR TUNISIA

by

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Enclosed is a brief description of land tenure patterns and issues in Tunisia. The purpose of the profile is to provide a brief introduction to land tenure systems, land administrative systems and the land tenure issues in current development strategies in Tunisia. The question which guided the literature review was, how do rules about access to land influence the outcomes of development projects? If development project designers and managers have even a rough set of answers to this question, they should be able to achieve more predictable and positive results from their efforts.

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TUNISIA LAND TENURE PROFILE

I. Land Tenure System

Tunisia entered its independent era in 1956 bearing the legacies of Ottoman and French rule. Complex forms of social organization were inherited as well, most notably a large measure of tribal organization in the countryside. All of these influences are evident in the land tenure forms and issues still confronting Tunisia today.

Forms and Trends in Tunisian Land Tenure Systems

Broadly speaking, Tunisia's tenure development has entailed the transformation and gradual displacement of Islamic tenure forms and of traditional, often tribal forms of administration with a system based on secular law issued and administered by a state bureaucracy. Instead of Islamic, tribal, Turkish, or French-derived law, legislation issued by the Tunisian state has come to encompass more and more of the tenure picture. ~~Milestones have included the~~ elimination in 1965 of Islamic Shari'a courts formerly authorized to deal with land and inheritance; the abolition in 1969 of the sheikhat, a tribally based unit formerly the basic administrative unit. It was replaced by the sector (secteur), headed by the chief of the sector (chef de secteur).

The immediate post-independence period witnessed a concerted effort to do away with two prominent traditional collective tenure forms. One of these, the habous, or endowment, was religiously sanctioned and fixed land in a perpetual mortmain status. It came in three forms: the public habous, land whose income was endowed for public purposes; the private habous, a mechanism designed to maintain the integrity of property and avoid subdivision to heirs upon the death of the owner, with income from the property being divided among the heirs; the mixed habous, a form combining features of the public and private habous.

The other major tenure category targeted for abolition was and has been collective tribal land. The requisition and disposition of lands, some of the most productive in the country, owned by foreigners constituted another focus of state action in the post-independence period.

Despite the changes, some elements of the pre-independence period have carried over into the new state's tenure regime, most notably the interest in the principles underlying the registration and titling of land. These activities are still largely based on the French-instituted land registration law of 1885 based on the Torrens system. The drive to register and title lands on an individual basis continues to be a prominent feature of tenure policy, one that has been relatively consistent throughout the independence years. Sharp policy swings have centered on the issue of whether to promote a system of private ownership with little state control or to promote one with a high degree of

state control and collective ownership (or at least great restrictions on private property prerogatives). These orientations manifested themselves in the following three phases:

- 1) 1956-64: During this period the main thrust of policy was to promote individual ownership. Tribal members could obtain individual title to specific parcels of land. In part this was seen to be a way to encourage bedouin settlement, although it met with little success.
- 2) 1964-69: The promotion of cooperatives marked the focus of this period. Rather than attempt to individualize ownership, lands were to be viewed as belonging to the group, with supervision of use and authorization to cede or lease land in the hands of the state. The 1963 law regulating cooperatives required land consolidation and restricted land transfers to cooperative members. Land was "attributed" to co-op members, not owned by them; members held shares in the co-op, not land titles. This forced and highly restrictive form of cooperativization met with stiff peasant and landlord opposition and was scuttled in 1969-70.
- 3) 1970-present: The year 1970 saw a return to an emphasis on private individual title. Efforts were made to convert collective and co-op lands to individual private property. Although there was an apparent consensus on the ends, the process of attempting to sort out claims often generated such conflict that the effort had to be given up. Land registration and titling have figured prominently in this most recent stage.

By the early 1980s almost 60 percent of Tunisia's land was privately owned. Of former state land which was brought into the co-ops of the early 1960s, most has come under private ownership, and the goal is to convert nearly all of state co-op land to private ownership (ADP 3:76).

Also subject to titling have been lands within what are known as Public Irrigated Perimeters which benefited from deep well-drilling by the state. Much of this land was previously of little agricultural importance. The state purchased land parcels, consolidated them into contiguous blocks, and then began selling the land back to farmers. Cultivation of these lands has been closely state controlled. This procedure has evidently favored those with claims developed immediately prior to state intervention.

The Current Situation: The Characteristics and Scope of Tenure Types

Excluding forest and uncultivable land, four major tenure categories exist in Tunisia. All are the object of a current titling and registration drive.

- 1) Collective Lands: By the beginning of the 1980s, these lands constituted slightly less than a quarter of all lands (23 percent, or 2.3 million ha). Most are communally owned by specific segments of tribes. Also considered collective are lands farmed jointly by sets of brothers or extended families. Most of the land in the central and southern portions of the country fall within this category.

- 2) State Lands: Excluding forest lands (900,000 ha), the state domains encompassed 800,000 ha or about 10 percent of the country's agricultural land by the early 1980s. These largely consist of lands which before independence were owned by foreign colons or settlers and which after independence were requisitioned by the state and came to be operated as state farms. Although limited in extent, these include some of Tunisia's prime agricultural land. Some of this land is currently being leased to individuals with the intention of ultimate sale.
- 3) Private Lands: This has become the major tenure category in Tunisia today, accounting for 58 percent and 5.2 million ha. A distinction is made between two types of private property: (a) lands of "extreme indivision" which have no previous history of documented title and are subject to multiple claims,* and (b) lands privately held by families for several generations and bearing what is known as "Arab title." Multiple ownership and ill-defined boundaries are characteristic of this form.
- 4) Public Irrigated Perimeters (approximately 190,000 ha): These lands, upon which the government invested heavily in sinking deep wells and constructing water channels, are organized as private holdings subject to close government supervision and control. Rules governing the operation and disposition of irrigated perimeters are spelled out in a 1963 agrarian reform law and its revision in 1971. Holding size maxima (3.2-64 ha) and minima (0.8-5 ha) were set. Payment for irrigation and technical services was demanded based on the value added to farmers' income attributable to irrigation. The consolidation of holdings was implemented to adapt the layout of holdings to the water delivery network. Farmers were obliged to maintain the highest possible cultivation standards. Despite the last stricture, irrigation evidently is being utilized only at 75 percent of its potential. One possible reason is the wide range of holding sizes, especially maximum holdings. Some are too large to manage efficiently.

Other Basic Features of the Current Tenure Situation:
Distribution and Size Characteristics

Tunisia's agriculture is dominated by small and fragmented farm units. Average farm size is 15 ha, with 44 percent of the farms being under 5 ha. The average number of parcels per farm is 4.2, with over one-fourth consisting of 6 parcels or more. Although distributional inequality is less marked than in

* There is some confusion over where to assign this category. For all practical purposes, Hopkins (1978) sees "little difference between collective lands and lands in extreme indivision. In both cases, the rights are based on an association between a group of people, genealogically defined, and an area of land. . . . [R]ights . . . are theoretically undifferentiated, until now when they are being differentiated essentially on the basis of land improvements."

other countries in the region, the gap between the mass of very small farmers and a much smaller number of large ones is still substantial: 44 percent of farms are smaller than 5 ha and account for only 8 percent of the land; the 1 percent of farms larger than 100 ha account for 20 percent of the land.

Regional Tenure and Land Use Differences

The northwest (also known as the Tel) has been favored by virtue of higher rainfall and government attention. One of the first and most ambitious post-independence development projects, the Medjerda scheme, was launched in this area. It encompassed irrigation and the organization of farmers into cooperatives. The organizational structures established still exist, though evidently in a deteriorated form. In addition to management problems, the project has been increasingly plagued by absenteeism among farmers. Mechanized cereal cultivation, which is common there, lends itself to a pattern of farmers spending only limited periods of time doing agricultural work while the rest of the time is spent in town. Another project in the area (in Sedjenane and Béja) is designed to improve soil conservation practices. It entails a voluntary land consolidation component. The program is being administered by a special agency, l'Office de Développement Sylvo-Pastoral du Nord-Ouest. This area has much less of a tribal heritage than do other regions.

The northeast (known as the Sahel) is largely an area of olive-growing with increasing levels of vegetable cultivation. ~~Olive-growing has been linked~~ historically to endowment (habous) tenure in which enzels, or perpetual fixed-rate leases, had been established. Owner absenteeism and long-term enzel arrangements are evidently less common than they used to be. Abolition of the habous, rising land values, and increased involvement in vegetable-growing, with its high management and labor demands, are largely responsible. Landowners, wishing to avoid being locked into long-term fixed-rate enzel-type leases are apparently opting for short-term sharecrop arrangements.

Central Tunisia is characterized by a combined pattern of small-farmer dryland agriculture and animal husbandry, mostly sheepherding. Collective land is the dominant form of tenure here. This region has been the recent focus of increasing government attention. Several PPIs have been established in this region.

Southern Tunisia suffers from irregular and insufficient rainfall. Population density is low, with most people being concentrated along the coast and in the north where rainfall is higher than average for the region as a whole. Private ownership of land is most prevalent in the best ecological zones for tree crop and grain cultivation, i.e., along the coast (Lee 1979:37). Other areas of intensive agricultural activity are located around oases. Collective land tenure dominates in other areas. One tenure institution notable in this region is the mugharassa. It involves an arrangement whereby a person would cultivate the land of another, sharing the product, "until a period determined by both parties when the land would be divided in half" (ibid.:97). This institution is held to have been instrumental in the establishment of olive tree culture and to the settlement of bedouin. Absenteeism by large landowners is apparently common.

II. Land Administration Systems

Tenure administration occurs through three relatively distinct structural overlays. The formal hierarchical structure with the Ministry of Agriculture at the top is linked to subdivisions for various national services (e.g., extension). These services are replicated or represented at the governate level, being under the authority of the governor. At the same time, representatives of the various services maintain links to the parent service branch in the capital. This setup is a source of confusion and conflict. At the two sub-governate levels, the delegate and village levels, administrative machinery is at best rudimentary.

A more recently introduced structure is regionally based and under the overall authority of the Regional Council of Agricultural Development (Conseil Régionale de Développement Agricole, or CRDA). The council has five regional branches.

Finally, there are the administrative structures established in connection with special projects. Examples include the Agency for the Agrarian Reform of Public Irrigated Perimeters (l'Agence de la Réforme Agraire des Périmètres Publics Irrigués, or ARAPPI), the Office for the Development of the Medjerda Valley (l'Office de la Mise en Valeur de la Basse Vallée de la Medjerda, or OMVVM), the Office of Sylvo-Pastoral Development of the Northwest (l'Office de Développement Sylvo-Pastoral du Nord-Ouest), etc. All of these agencies perform composite duties, many of which directly involve tenure issues.

A key question is how these structures interface with the problems farmers confront.

Land Disputes and Titling Problems

These issues have become increasingly important since the 1964 Law for the Compulsory Registration of Private Land and the overall drive to dissolve collective lands into individually owned holdings. Regulations governing such land were codified in the 1965 Code of Real Property Rights (Code de Droits Réels).

Procedures for resolving land disputes and titling problems may be initiated at the local level. But their ultimate disposition occurs only at the top of the administrative hierarchy by the Director of Land Affairs, a branch of the Ministry of Agriculture in Tunis. Land courts (tribunaux immobiliers) decide all requests for land registration. Title record-keeping is also highly centralized. The Land Service (Service de la Conservation Foncière) records all transactions involving land in a land book. The latter two bodies are linked to the Ministry of Justice. Technical work concerning land boundary setting is done by the Office of Topography and Cartography, which is under the Ministry of Supply.

The current drive to decentralize and regionalize some of these activities is embodied in the assignment of titling, irrigation management, and conservation duties to the five regional branches of the Commission of Regional Agricultural Development. Where the administrative machinery of special projects

(e.g., PPI, Agence Sylvo-Pastoral, etc.) exists, it is possible to initiate the referral of problems, claims, etc., through these organizations. Cases still must be filtered upward to the Land Service (Service Fonciér) for final disposition. For collective lands, authority lies with Conseils de Gestion, composed of members of local tribal descent groups which evaluate criteria for making title changes. Recommendations are then forwarded to the Conseil de Tutelle Régional, chaired by the governor. If approved, the request is transferred for final disposition to the Ministry of Agriculture's Land Service in Tunis.

Land Use Decisions

Modalities of land use decisions vary by sector.

In the private sector, such decisions are in the hands of the owner unless there have been major government improvements on the land such as the drilling of a well. In sharecrop arrangements, the landowner determines the crops that will be grown.

In the co-op sector, co-op boards composed of farmers make the crop decisions. In the state farm sector, government crop priorities are implemented by managers who are agricultural college graduates.

Water and Irrigation Management

Again, variations occur according to sector. In the Public Irrigated Perimeters (PPIs), time slots for water use are allocated on a rotational basis. Administrative authority lies with the Agency for Agrarian Reform of Public Irrigated Perimeters (Agence de la Réforme Agricole des Périmètres Publics Irrigués, ARAPPI). This agency replaced the Ministry of Agriculture Directorate of Land Affairs and Legislation as the overseer of PPIs in 1977. The ARAPPI collects a subsidized fee for water use in their areas. There evidently is much friction between farmers and officials over water allocation.

In the Medjerda Valley scheme, the project authorities administer water allocation, a task made especially complex because of the intricate canal system there.

For private sector farmers with privately dug wells, the only restrictions apparently imposed are where rates of groundwater depletion are deemed dangerously high. Under those circumstances, restrictions exist on additional well-drilling.

A legal principle operating in private lands is that of "servitude." It resembles the common-law easement and is "a right attaching to one immovable and imposing a burden on the other" (Salacuse:501). An example would be owners of low lands having the right of unimpeded access to the flow of waters from adjacent high lands. Mechanisms for allocating water and resolving disputes vary by agricultural sector. In areas of collective landownership where the water source is attributed to a group, irrigation water is allocated according to the amount of land held. Presumably, tribal leaders or representatives would be in charge under such circumstances.

III. Current Tenure Issues in Agricultural Development

1. Dealing with Land Fragmentation

The combination of land fragmentation and small farm size poses a severe handicap in attempts to upgrade production technologies and to conduct pesticide and herbicide and irrigation operations in a rational and efficient way. In irrigated lands, which tend to be but a fraction of the size of nonirrigated holdings, fragmentation poses potentially disastrous consequences. One of the most notable of these is overcultivation.

Generally held responsible for promoting fragmentation are Islamic inheritance rules which provide for the acquisition of equal shares of the patrimony by sons and of half-shares by daughters. These rules remain in effect today despite the introduction of a civil code which supersedes Islamic law (the Shari'a) in governing inheritance matters. The 1956 Code of Personal Status does little more than equalize inheritance rights between the sexes; it is not meant to limit property subdivision. It should be noted that in the still sizable collective lands sector, use rights--not ownership rights--are transferred. The now outlawed institution of religious endowment (habous) had served as a vehicle for maintaining the integrity of the patrimony.

However, informal ways exist to minimize subdivision and involve family livelihood strategies which seek to prepare at least some sons for nonagriculturally supported lives. This solution is not one likely to be encouraged by the government which has sought to stem urban migration because of high rates of urban unemployment. Instead, the government has sought to intensify agriculture through irrigation and thereby increase the capacity to absorb more people in the countryside. The likely success of that approach in reducing migration is questionable given the severe limits of irrigation water and the high costs of expanding irrigable areas any further.

Some observers (e.g., ADP Report 1:16) have suggested that the current policy thrust to generalize individual ownership is exacerbating the fragmentation problem. Furthermore, land consolidation efforts, such as in the PPIs, promise but short-term, one-generation solutions since traditional inheritance rules still hold sway. This threatens the long-term efficacy of the costly and time-consuming consolidation efforts in the PPIs. One suggestion (implemented in Morocco) is to limit inheritance to one child and to extend government credit to that person in buying out co-inheritors' shares.

2. Grazing Rights

In the past, tribal collective landownership provided open access to pasturelands. Privatization and the granting of individual title combined with mounting population pressure have made access to pasture more difficult and more expensive. The increasingly frequent need of owners of cattle or sheep to pay for such access or to purchase feed evidently has led to a decline in sheepherding. These problems are especially salient in the central plateau and steppe regions where sheepherding traditionally has provided an important income supplement to crop farming. Those likely to suffer most from this

situation are small farmers whose crop incomes are often too low to support the family.

Discussion over the ultimate disposition of grazing lands is still going on. A recent report (ADP 3:22) maintains that "[t]he urgency of titling grazing lands is not immediate and these lands might be better left under communal ownership." Indeed, in some areas title is in fact being granted to groups for communal pasture purposes (ibid.:74). The other side of the argument is that pressures on pastureland are acute and that communal tenure provides little incentive in preserving and protecting it.

3. Tenure Security and Land Titling

One of the most striking and consistent aspects of Tunisia's tenure policy over the last two decades has been the effort to break up collective lands (notably, tribal lands and private and mixed religious endowments or habous) and extend individual title throughout the country. Motivating this effort has been the belief that only by so doing could the uncertainties and disincentives attributed to collective tenure be overcome. Lack of title also constrained farmers' ability to obtain medium- (5-7 years) and long-term credit, which unlike seasonal credit could not be obtained without land title as collateral. [It should be pointed out that the way immovable property is legally defined-- animals and machinery are also included under this rubric, as long as they are attached to a farm--opens up the use of other assets as collateral substitutes for land.] Fiscal motives, notably the desire to raise taxes, were also at play in this policy emphasis.

No doubt, the initiators of the titling drive had in mind the typically run-down state of jointly owned endowment (habous) lands, one of the first targets of privatization and titling. The indefiniteness of property rights and responsibilities has been perceived as something that discourages long-term investments in perennial (especially tree) crops, in irrigation equipment, etc. However, in Tunisia's case, lack of private title has not always prevented such long-term investment. Endowment lands subject to the perpetual fixed-rate leases (enzel) are acknowledged to have provided a substantial measure of security and to have been instrumental in establishing a flourishing expanse of olive cultivation in the northeast. Benefits of this traditional arrangement have not gone unrecognized; the 1963 Code of Real Property left existing enzels intact, even though it prohibited new ones from being established.

Issues raised by titling have focused on implementation, especially the degree of procedural centralization. Despite recent measures to make it possible to initiate titling claims or disputes over such claims at lower administrative levels, final disposition of titling cases remains in Tunis. Costs of going through the registration process also remain high (up to 25 percent of the land's value). This effectively puts registration out of financial reach for many poor farmers. The difficulties and expense of updating title documents threatens the long-term integrity of the title/registration system. One discouraging statistic is that, by 1983, 14 percent of previously granted titles had been cast into ambiguity via inheritance, sales, etc. Another factor which erodes the title system is the high tax levied on land transactions (16.45 percent of the property value) and on inheritance. These taxes discourage farmers from conducting their transactions through formal channels.

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