

EFFECTIVELY UTILIZING PROPERTY AS CAPITAL: *A Palestinian Perspective*

By Hiba I. Hussein

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I Introduction

The overwhelmingly popular subject of turning property into capital, especially in developing nations, is a subject of great consequence for developing nations globally. Nevertheless, Palestinians face a unique twist to the subject of land and property. Where many lesser-developed nations are often unaware of or neglected in the process of codifying land matters and property rights, Palestinians on the other hand, are extremely aware of the importance of these aspects even if they are somewhat unsure of the exact process or legal measures for validating them. However, many people do not make the connection of a flourishing and well- functioning property system with having a viable economy and a strong and adequate rule of law, and this is where many nations falter.

Issues of land and water are two areas where Palestinians are constantly influenced by government decisions and regional situations. Occupations have forced Palestinians to become overly aware of the importance of their land rights, the necessity of establishing title to their lands and registering them formally. In the last sixty years, the landscape has shifted considerably. In 1945, around 5.6% of historical Palestine was “Jewish” owned but by 1949, this number was nearly 78 percent.¹ The UN Security Council Resolutions 242 and 338 have become the minimum concession point for Palestinian final status negotiations even today, outline area that consist of only 22 percent of historical Palestine. And this number has even decreased with the continued construction of the Separation Wall and settlements within these lines.

Unlike many developing nations, the occupied Palestinian territory (OPT) does not face the same issues of squatters and “extra-legal” individuals within the area in the same way as do places such as Egypt (ex. Cairo) or Mexico (ex. Mexico City).² Rather, there are issues of displacement, troubling questions and issues dealing with a massive refugee population, and land acquisition through methods of settlement expansion and security facilitation. Traditionally, Palestinians have passed their property down to their families over the years from generation to generation. This method, along with a inadequate record keeping, has create a situation where many find themselves, as far as the courts are concerned, without proper verification for their property, relying on family records, word of mouth, and even neighbor and community recognition of property lines and ownership.

II. Background

Years of occupation have attributed to the various land laws that are incorporated to form the existing system today. Israel, as a current occupier, used a mixture of the Ottoman, British and Jordanian law, especially that of the Ottoman period of rule, while incorporating military codes and amendments in order to reformulate the laws and meanings. Under Ottoman law, which was mostly based on Islamic law it was stated that if land was uncultivated for a period of three years or more, then it became non-“private.” This measure was also adopted by the Israeli system. Land was to have clear borders and be registered, however, many landowners lived a distance from

¹ PNA Ministry of Planning “The Palestinians’ Historic Compromise” p. 1

² Herando De Soto in “The Mystery of Capital” (2000) refers to the sector of people establishing themselves on land that is not “officially” owned by them or in the property system as “extra-legal”.

their land or abroad. Many did not want to pay taxes on this distanced land that provided little or no income.

As a result, these lands were then deemed as “state” land where they fell under regional jurisdiction and their respective military commanders. In this way, much of the settlement land and other property acquired by the settlers and then Israel, were accomplished in a number of ways, such as:

- ❑ Sale—this method was used usually with landowners living abroad, some records show that it was done under false pretenses or by “force” of threats, on occasion
- ❑ Logged as “absentee”—this happened especially during the wars where those that were exiled in 1948/1967, these individuals were considered absentees
- ❑ Administrative purposes—this was for “security” reasons or other military jurisdiction purposes

Registration and reclassification of land was dealt with under the Israeli courts and existing property system. However, specifically in the West Bank, the Ottoman land code, mixed with Jordanian and Israeli amendments, (as of 1993) still applies. Ottoman land codes are mostly based on Islamic law, and this in turn, affects the ways in which property is viewed. Nonetheless, the Palestinian National Authority (PNA), through the newly established Land Authority, is quickly working to reform and transform the existing land laws, policies and codes to meet the needs of the population today.

III. Economic Growth

How can Palestinians now turn their land, which is still influenced by the guidelines of *sharia* into an engine for economic growth? Ernesto Zedillo recently wrote, “Historically this lesson is clear: economic growth reduces poverty more than anything else, and the private sector is the key contributor to sustained economic growth.” In most developing nations, one will find a large, often informal, entrepreneurial sector shaping the backbone of the economy. This is no different in the Palestinian economy. At present, within the Palestinian economy, as in many developing nations, small and medium-sized businesses (SMEs), in their various forms, make up the largest portion of the Palestinian private sector at 80 percent and are taking this position here. Although many are treading water, SMEs have been able to withstand some of the effects of the crisis environment and economic downturn. They are often family owned and operated businesses with few staff members, making them more flexible than many of the larger businesses for dealing with the circumstances. Yet, making these business legal is often a time consuming and rather extensive and confusing process.

In the occupied Palestinian territory (OPT), there is not the problem of the extra-legal urban sprawl that happens in many areas of the world. It is much easier for the proper authorities to know of new businesses and who owns what and most residents of the area also are aware of this. With the mass land transfers and acquisitions of the Israeli population, especially in the form of settlements and the Separation Wall, more Palestinians have been encouraged to prove title to and register their property.

However, Palestinians still find themselves under the effects of ancient laws passed-down over generations that even with the mixture of more recent decrees, have left Palestinians behind, less competitive, and with terms that have not been fully defined for them and the “definition, use, and distribution of property rights has lagged hurting the economy rather than adding. The Peoples’ concept is not necessarily the governments or occupier’s concept.”³

Property and Strengthening the Economy

It has been stated time and again the effects of not having an effective property system. Ernesto Zedillo, the former president of Mexico, recently stated that, “Lack of legal status and title to property keep entrepreneurs marginalized from, among other things, credit institutions and protection by the justice system.” Additionally, “what is not good is that these reforms assume that these countries’ populations are already integrated into legal system and have the same ability to use their resources in the open market.”⁴ It also requires, at a minimum, macroeconomic stability and reforms, appropriate legal and regulatory framework, proper governance and greater access to basic social services. Without this simple foundation, poverty will continue to be problematic. In the occupied Palestinian territory, where poverty is reaching over 60 percent, you will find gaps in many of the essential areas previously mentioned.⁵ The Country Assistance Strategy (CAS) has stated that a “lack of access to land as a major contributing factor to rural poverty and income-earning potential.”⁶

The Palestinian issue must be looked at on multiple levels. One must consider the history of property ownership, the influence of Islamic law on how property is regulated and established, as well as, the existing legal environment that supports land and property. Under Islamic law, property is divided into This has a major affect on the existing situation, especially where international investment has because virtually non-existent during the last few years of crisis.

Possible Strategies

In effectively using property to influence economic growth, society can achieve a number of benefits such as: Land registration, increased security, greater investment, use as collateral and increasing credit supply. The World Bank case studies have stated that having efficient land markets “reduced transaction costs in land and credit markets, increased labor mobility, investment, transformation of land into liquid assets, and enhanced cost and “allocative” efficiency in resource use.” The method links land registration to financial development through two channels in the case of Thailand, which is also applicable to OPT: the role played by land registration in enabling land to become a collateral asset which enhances financial development by expanding the market base (number of credit worthy borrowers) for loans, and by reducing financial intermediation costs. Thereby highlighting the influence of banking policies on the ability to view property as capital.

³

⁴ De Soto p. 210.

⁵ World Bank 2003 “27-months of Closures, Curfews and Intifada. This rate is based on those living on US\$2 a day.

⁶ World Bank CAS for the Kingdom of Cambodia for a Land Management and Administration Project, (2002), p. 2.

However, as “easy” as this may sound, with over half of the Palestinian population living in poverty, many have turned to the banks for loans. The situation, stagnant and unchanging, means that Palestinians are not earning the income necessary for making adequate payments. This is a crucial problem since on a legal level, banking regulations have been given much attention over the years and property guidelines and the effective use and protections of it have not maintained an equal speed. This often contributes to a loss of property by an already struggling working class. If this is going to change, Palestinians must look at several world examples, including how the concept of property was transformed in the birth of the United States, “American property changed from being a means of preserving and old economic order to being, instead, a powerful tool for creating a new one. The result was the expanded markets and capital needed to fuel explosive economic growth. This was the “momentous” change that still drives US economic growth.”⁷

How the PNA Can Assist

The existing situation, with little to no investment occurring, requires the government and proper land authorities to take a lead role in how property is utilized. Some possible suggestions are:

- Legislation;
- Making the registration process less time consuming;
- Creating protections and safeguards;
- Monitoring banking policies with concern to property;
- Supporting better governance at all levels; and
- Strengthening rule of law measures.

The LANDMANAGEMENT Project on Cambodia states, “Property must be defined universally and neither depending on different right-holders (individual, state, community) nor according to its utilization in different sub-sectors of the economy (irrigated and non-irrigated agriculture, forests or urban areas). It also argues that property must be “available to all market players and non-market organizations”—at least in principle.⁸ To provide legal security for property and in turn, be able to convert it into capital, land law alone is not enough. The PNA would benefit from

The problem of land registration seems eternal in Palestine. Land titling and registration, surveys and “cadastring” are issues that considerably restrict the lending and borrowing cycle. It is important that the newly established Land Authority take initiative to register land in the West Bank where only 30% of the land is registered. Areas A and B are available for surveying. The Land Authority needs to increase the number of certified surveyors and launch this program with urgency. It is important to introduce legislation that would permit the development of mortgage-type instruments for using unregistered land as collateral as well as promote the efficient process of land registration.⁹

⁷ De Soto p. 149-150.

⁸ Kirk, Michael. 2000. “Land Policy, Land Legislation and Land Management in Cambodia Findings and Recommendations” GTZ, Germany p.30.

⁹ See PDF-EC Private Sector Development Paper presented on April 29, 2004.

Also, the rule of law, a topic that continues to appear in various aspects of political and economic situations, again needs to be strengthened throughout the branches of the PNA, especially within the judicial system. De Soto quotes Philbrick stating that, “legal institutions can survive only if they respond to social needs.”¹⁰

“But, in fact, most lawyers in developing and former communist countries have been trained not to expand the rule of law but to defend it as they found it. Lawyers are the professionals most involved in the day-to-day business of property. They sit in the key government offices where they can suppress major decisions. No group—aside from terrorists—is better positioned to sabotage capitalist expansion. And unlike terrorists, the lawyers know how to do it legally” (DeSoto p 197).

What is the process w/in Palestine and w/the PNA beyond that of Israeli measures? Property in Palestinian areas is actually quite expensive to come by and rental is just as big of an investment.

For Palestinians, there is a separate authority which manages tasks such as land registration. However, the process is time consuming.
Property tax?

Illegal building—any consequences? Allowed?

How has it worked in other nations where Islam influences government and civil policies.

Case Studies?

Pg. 119 “In the colonies, however, given the lack of effective government and reliable records and surveys, authorities had to accept that improvements made on land, taxes paid, and local arrangements among neighbors were also acceptable sources of property rights.”

Pg. 147 “It proposed no new system, but sanctioned, regulated and conferred a system already established, to which the people were attached.” 14 Stat. 252 (1866)

Pg. 148 “At the beginning of the nineteenth century, information about property and the rules that governed it were dispersed, atomized, and unconnected. It was available in rudimentary ledgers, personal notes, informal constitutions, district regulations, or oral testimony in every farm, mine, or urban settlement.

Pg. 150 “Ultimately, the lessons of the United States’ transition to formality will be found not in the technical details but in the changes in political attitudes and in broad legal trends. In passing laws to integrate the extralegal population, American politicians expressed the revolutionary idea that

¹⁰ Philbrick, “Changing Conceptions of Property Law,” p. 694

Pg. 203 “Property is not really part of the physical world: its natural habitat is legal and economic. Property is about invisible things, whereas maps are resemblances of physical things on the ground.” “Until the obstacles to using formal property systems are removed and the extralegal arrangements have been replaced by the law, people have little incentive to supply the information necessary to keep maps and databases updated and reliable.”