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Annex : 1

Legal Frame work Study

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FINAL REPORT ON

LAND SECURITY

LEGAL ASSESSMENT AND ANALYSIS

RESETTLEMENT AND ANALYSIS

RESETTLEMENT ACTION PLAN
TAIZ MUNICIPAL DEVELOPMENT AND
FLOOD CONTROL PROJECT

ANNEX1 TO VOLUME I OF THE OCTOBER 2001 DRAFT OF THE RESETTLEMENT ACTION PROGRAM

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BACKGROUND

The World bank intends to finance the Taiz Municipal Development and Flood Control Project in the Republic of Yemen. In the course of preparation of the project. the Bank found that a group of locals, belonging mostly to a minority group of Ethiopian stock (the Oustees), had encroached on six(6) sites in the project area. Construction work contemplated under the project would require the involuntary resettlement of the Oustees. Consistent with the World Bank policy, the project team has assessed the resettlement options of the Oustees and has recommended that the Taiz Governorate provide an alternative settlement site suitable to all parties.

The World Bank's assessment and recommendations will be set out in the Resettlement Action Plan (RAP). I was asked, as a legal consultant, to assist the project team in the preparation of the RAP. Land security legal analysis was required from consultant to be incorporated in the RAP.

Moreover. I was required to assure the clean title of the land intended for the RAP. The TOR mentioned that it is the Works Bank's understanding that: (1) the piece of land initially intended to be made available to the Oustees (the Initial land) is owned by the Ministry of Awqaf (MA);(ii) that the MA has granted tenancy rights over the Initial Land to the Ministry of Public Works and Urban Development MPWUD(with the intention to transfer such rights to the Oustees) and also another individual (the third Party);and(iii)that the Third Party has proposed, and the MA has accepted to exchange the initial Land for a piece of land in Taiz witch the third party claims to own and where the Oustees would be resettle(the Oustees land).1

Therefore, I submit this report to the World Bank. This report attempts to answer all nine inquiries and sub-inquiries listed in the legal consultant's TOR, and in the same order they were written down.

PUBLIC EMINENT DOMAIN

First inquiry requested *an assessment of the right of eminent domain in the* ROY, *i.e. the right of the Government of* ROY *and /or the Government of Taiz to compulsory acquisition and/or expropriation of land and other assets for public purposes against payment of compensation.*

The Yemeni constitution, article 20, prohibits the General Expropriation [nationalization] of assets. As for the Specific [particular] Expropriation, same article asserts that it can be lawful only if was based on a court judgment.

In addition, article 7 of the constitution provides that the national economy is based on number of principles. The third principal is the protection and respect of the private property. It shall not be touched, the same article asserts, except in case of necessity and for public interest and for fair compensation according to the law.

Nonetheless, Public Eminent Domain Law(PEDL) gives governmental bodies the right to expropriate and appropriate individual's private property . However, this right is not absolute. Many conditions should exist before expropriation can be considered lawful. The public -interest-Many conditions should exist before expropriation can be considered lawful. The public. Interest-Project, the factor of necessity, the lack of arbitrariness, and that the States doesn't own real estate that can fulfill its need , are the main conditions that should be fulfilled before expropriation or appropriation is permitted under the law.

The law grants ministries, authorities, and public corporations the right to expropriate real estates including lands for executing their public-interest - projects. Like al official authorities in Yemen, governors enjoy the right of expropriation provided the legal conditions are fulfilled. Public eminent domain system in Yemen is mainly governed by the PEDL. However, there are number of other laws that contain causes applicable to the various circumstances when the state decides to expropriate or appropriate real estates. These laws include the State's Real Estates Law (SREL)and the Urban Planning Law(UPL).

1.The Awqaf land examined for resettlement in this report is o longer under consideration as a resettlement site. The title issues dealing with the land ultimately selected is discussed in Annex 2 to Volume I of the Resettlement Action Program.

On January 11,1995, the president issued PEDL after approval of the parliament. This law revoked the previous Republican Decree of law No. 25 of 1992. The law of Public Eminent Domain deals with the right of the government to appropriate real estate for the Public interest. It contains of four chapters:(1)Situations of Legal Expropriation, (2)Expropriation Procedures,(3)EC(EC), and (4)General Provisions. Chapter two; however, has five sections that talks about five kinds of expropriation: Administrative, Amicable, Judicial, Temporary Appropriation, and for Housing Projects.

Circumstances of Lawful Expropriation

Circumstances of lawful expropriation are found in the first chapter of PEDL. Articles 1 of the law grants ministries, authorities, and public corporations the right to expropriate real estates including lands for executing their public-interest-projects. Public-interest-projects, according to article 2 of the PEDL the meaning of public-interest-projects is everything related to the two following types of work: (1) necessary projects which does not have more than one choice of location ,and (2) necessary projects which have more than one choice of location.

The first category includes waterway, natural resources areas (such as oil and gas) airport, seaports, dams, watering and drinking projects. In addition to shelters, trenches, and outlets, security and deftness establishments also falls in this category. The second category includes mosques, seminaries, schools, institutes, universities, military camps, police stations, slaughterhouses, orphanage, markets and roads. Then, there are the manufacturing areas, agricultural establishments, electricity projects, and communication and post services. Finally, gardens, squares, sport clubs, cultural centers, housing establishments, establishments of supply, and projects related to approved development and investment planes are another examples to the second category.

Article 3 of the PEDL affirms that generally expropriation is either administrative or by consent. In the lack of agreement between parities, the entity requesting the expropriation may render to the judicial procedures. However, the most important rule in this chapter states that the State shall not recourse to expropriating individual's properties unless the State does not have public domain that can be used for the same purpose.

Procedures of expropriation are explained in the second chapter of the PEDL. There are five kinds of expropriations; Administrative Expropriation, Amicable Expropriation, Judicial Expropriation, temporary Appropriation and Expropriation for Housing Projects.

I. Administrative Expropriation

Firs, there is the Administrative Expropriation. It focuses on the situation when both parties in the expropriation case are governmental bodies. In this case, presidents of both governmental bodies should try to agree on expropriation of the real estate. If agreement could not be reached, the decision of the expropriation goes to the minister who heads both governmental bodies. If the two governmental.

bodies follow different ministers, then the cabinet decides on the issue of expropriation .Decisions of the minister or the cabinet are final.

Administrative expropriation is not applicable to the property of endowments, entailments. And cemeteries, where expropriation is not lawful unless by a court judgment and according to the law of endowment.

II. Amicable Expropriation

The second kind of expropriation is Amicable Exportation. It is the expropriation conducted based on consent of owner (s)of the real estate. Governmental bodies may come to an agreement with owners on expropriating real estates for some consideration, cash or in kind. It also can be estimated by the EC.

III. Judicial Expropriation

Judicial expropriation is the third kind of expropriation . This section of the PEDL explains the procedure of expropriation through courts.

Government bodies permitted to expropriate shall submit request of expropriation to the Court of Appeal in which real estate is located within its jurisdiction. Request should state the name of the public-interest-project, owners or factual possessor's names, addressees, real estate's location, and a map that shows the area. Along with all required date, the request should state the necessity factor of expropriation.

Court shall schedule a hearing within fifteen days and should inform the RER to stop any procedures related to the real estate. In the hearing, court should make sure that all conditions required by the law exist, especially; the public interest, the necessity factor of expropriation, and the lack of arbitrariness.

IV. Temporary Appropriation

Temporary Appropriation is the fourth type listed in the PEDL. Under this section of the PEDL, governmental authorities can temporarily appropriate real estates at the time of unforeseen and exceptional emergencies. In case of disasters that require the use of certain real estates, governmental authorities may temporarily appropriate such real estate by a decision of the president of the appropriator. This decision should state the period of appropriation, which shall not exceed two years.

Appropriated real estate should be returned to its owner after the end of the period of appropriation. Appropriated real estate should be returned to its owner in the same condition it was received. Owner is entitled to be compensated for any damages. EC determines the amount of compensation in case of dispute. EC decision can be appealed to the Appellate Court. The Appellate Court Should render decision within three months.

V. Expropriation for Purposes of Housing Projects

The last type of expropriation is the expropriation for purposes of housing projects. In this case, housing authorities can expropriate real estates for the purpose of housing projects. However, this should only be conducted through the amicable expropriation procedures.

COMPENSATION

Second inquiry requested *an assessment of the guidelines and practices of governing the valuation and compensation for land and other assets, both in terms of the valuation of methodology and the timing of payment.*

Beside the necessity and public interest factors, fair compensation is one of the constitutional conditions for lawful expropriation according to article 7. Article 1166 of the Civil Code (CC) No. 12 of 1992 states that no one can be deprived from its property except according to the law and in exchange of fair compensation. Only for fair compensation ,ministries, authorities, and public corporations are granted the right to expropriation or appropriation according to articles 1 of PEDL.

Legal Guidelines

Guidelines of compensation differ among the five types of expropriations mentioned in the PEDL as explained below.

I. Administrative Expropriation focuses on the situaton when both parties in the expropriation case are public entities. In case of none-agreement concerning compensation , any of the two bodies have the right to request the Evaluation Committee (EC) to estimate the compensation according to the standards stated in the law . The Decision of the EC in this matter is final.

At the Real Estate Register (RER), the reference of registration is either the agreement between the two bodies or the decision of the EC. Registration shall be done after submitting an evidence of either receiving the compensation by the body expropriated against, or depositing compensation at the RER or the primary court in which the expropriated real estate is located within its jurisdiction.

II. Amicable Expropriation is the expropriation conducted based on consent of owner of the real estate. Cash or in kind compensation may be agreed upon between the governmental body and owner. Otherwise compensation is estimated by the EC. If the real estate was communal, the consent of all owners is required.

The governmental body expropriator should inform the RER to mark the expropriated real estate to prevent any transactions in regard to the real estate.

If EC decision was accepted by both parties, either in writing or after the end to the period of twenty-days-notice without rejection, it becomes final, binding, and unappeasable for both parties. If decision was rejected within the mentioned period, procedures of the amicable expropriation are considered to be cancelled.

The president of the EC, in this case, should inform the RER to remove the mark preventing any transactions concerning the real estate.

The agreement of both parties and the lack of rejection within the twenty-days-notice period are prerequisite before registration at the RER takes place. In addition, RER should make sure that the owner has received the compensation amount or that the compensation in kind has been registered under his /her name.

The owner can inform the expropriator and the RER of his non-agreement of expropriation if expropriator fails to pay the owner the compensation amount or to register the exchanged real estate under the owners name within thirty days from the written agreement or the date of the EC decimation. As a result, all expropriation procedures will be considered cancelled.

III. Judicial Expropriation is the third kind of expropriation. The section judicial expropriation in the PEDL explains the procedure of expropriation through courts.

Governmental bodies should request the Court of Appeal in witch real estate is located within its jurisdiction of its intent of expropriation. Request should state the name of the public-interest-project, owners or factual possessor's names, addresses, real estate's location, and a map that shows the area. Along with all required date, the request should state the necessity factor of expropriation.

Court shall schedule a hearing within fifteen days and should inform the RER to stop any procedures related to the real estate. In the hearing, court should make sure that all conditions required by the law exist, especially; the public interest, the necessity factor of expropriation, and the lack of arbitrariness.

Afterwards, court shall designate the EC which has to determine the fair compensation within one month. The law require the court to tender its decision in an urgent manner (summary judgment). However, court decision shall be made after amicable agreement is sought between both parties. Expropriator shall pay all expropriation fees even if his request was rejected. If possible, expropriator should pay compensation within two months.

If the real estate being expropriated is the owner's only real estate which he/she lives or the source of his income. The owner's situation at the time of compensation should be conducted in a way that guarantees that the new situation is at least the same like before.

Only after compensation is properly paid, court shall notify the RER of the name of the expropriator.

IV. Temporary Appropriation is the type of acquisition of real estate where governmental authorities can temporarily appropriate real estates at the time of unforeseen and exceptional emergencies. In case of disasters, that require the use of certain real estates, governmental authorities may temporarily appropriate such real estate by a decision of the president of the appropriator. This decision should state the period of appropriation, which shall not exceed two years.

For this matter, the Governor of the Governorate where the real estates is located shall form a committee that consists of an engineer, one of the governor's employees, representative of the appropriation body, and a representative of the owner of the real estates. Committee's task in to write a report that records the real estate's status in the day appropriation. Report should be attached with photos and blue prints. Compensation determined by the EC should be according to such report and after taking in to consideration the value of equivalent real estates.

Appropriated real estate should be returned to its owner after the end of the period of appropriation. Appropriated real estate should be returned to its owner in the same condition it was received. Owner is entitled to be compensated for any damages. EC determines the amount of compensation in case of dispute. EC decision can be appealed to the Appellate Court. The Appellate Court should render decision within three months.

If the real continues to be under temporary appropriation for more that two years, owner has few options. One is that he/she can request to renew the temporary appropriation in exchange of new compensation. Second, owner can request to Change the statues of his temporarily appropriation real estate from a temporally to a permanent expropriation .Finally, owner can request the court to return his/her real estate in addition to be compensated for the damages of delay . Moreover, owner may bring a claim to the administration or to the competent court if he/she believes either the decision of temporary appropriation or the period of appropriation were lacking the legal grounds.

V. Expropriation for Purposes of Housing Projects is the last type of expropriation mentioned in the PEDL, where housing authorities can expropriate real estates for the purpose of housing projects. However, this should only be conducted through the amicable expropriation procedures. Similarly, the owner and the expropriator should determine the compensation in this situation.

Estimation Committee

According to the PEDL, president of the Appellate Court in the Governorate shall establish a permanent or temporary EC, which can be established to deal with all Governorate cases or as *ad hoc*. EC should be formed of a judge (president), an engineer, representative of the expropriating body, and the owner or his representative. If there was more than one owner and they did not agree on one representative, than the majority decides (with respect to their shares in the real estate). Otherwise, the president of Appellate Court shall appoint an expert as a representative of the owners.

Decisions of the EC are taken based on the majority cast. If representatives of either party fail to attend, after having been informed, the president of the EC shall obligate the respective party to assign another representative. EC should listen to both parties and review the relevant documents and information. If needed, experts can be asked to assist. Expropriator should pay to the member of EC and the experts the appropriate fees determined by the president of the Appellate Court.

When estimating compensation, EC should consider, (1)current value of real estate during estimation, (2) current situation of buildings, establishments, and plants on the real estate, and(3) the improvement of the location or benefit of the remaining part of the real estate or the increase of its value. These guidelines should be stated in details in the EC report.

Additional Guidelines

The PEDL also contains some more general provisions relating to the estimation of compensation worth mentioning in this report below.

If the remaining of the real estate becomes useless as result of expropriation , owner can request the court to include the remaining part to the expropriated real estate . Such request should be submitted during the tow yeas period.

Owner is entitled to compensation if the partially expropriation resulted in damages to the remaining of the property. Compensation can also be given to any property owner harmed by the execution of the project even if he/she was not part of the expropriation.

All transactions made to real estates are to be considered void if they happened while EC or the court was still handling the compensation process.

Areas where there is no RER, registration of real estates is to be done at courts which shall make records or such purpose.

Appellate Court, where real estates are located has the jurisdiction to hear all requests and claims rising form the public eminent domain. Appealing to the Supreme Court does not cease the execution of Appellate Court decision.

Governmental authorities that decide expropriation should inform the State Real Estate Authority (SREA) of such decision before starting the expropriation procedures.

Expropriation procedures are exempt from the stamp tax and all real estate registration fees.

Compensation, Estimation of Public Property. PEDL stipulates that the President of the Appeal Court in the Governorate a temporary or permanent estimation committee, in each Governorate, and for each case. This committee consists of a judge, an engineer, representative of the expropriated entity, and the owner of the expropriated real estate. In the estimation process, the law stipulates that the estimation committee should look at number of standards such as prices of similar real estates in the area and the situation of plantations and establishments.

In case of partial expropriation, the improvement of the location or use of the remaining expropriated estate can be on of the factors to look at by the estimation committee. If the remaining of the expropriated estate becomes useless, court should order the expropriation of the whole estate. This request by the owner should be filed within two years. If partial expropriation resulted in material

damages to the remaining of the estate, the owner of expropriated estate and the owner of any other damaged estate are entitled for compensation.

The PEDL stipulate that the Appeal Court of the expropriate estate location has the jurisdiction over all requests and claims resulted from the expropriation. It is possible also to appeal the decision of the Appeal Court to the Supreme Court. (Art. 18-26 PEDL).

OUSTEE'S PROPERTY RIGHYS

The third inquiry was regarding *an analysis of the real and personal property right of the Oustees derived from ownership, possession, tenancy, and/or adverse possession.*

To answer this inquiry, this section would try to explain whether the Oustees could be considered under the law to be the lawful owners of the land from which they are to be settled. IN brief, the answer would be yes. Indeed, the law considers the Oustees the lawful owners of the land from which they are to be settled.

As explained below the seisin-in-fact statues of lands where the Oustee's shakes/houses are currently built gives them a legal right to obtain from the authorities(SREA) a full title ownership over an "alternative land:. Under the law, SREA is obliged to transfer to Oustees the title of the land from which they are to be settled. Moreover, the law requires, when possible, that settlement land transferred to Oustees to be "in the same area" where they are ousted form and should "fulfill the same purpose sought in the seised land". In another word, the law requires that the settlement land transferred to the Oustees to be suitable for the Oustee's living purposes.

Such Oustees right to own the land form which they are to be settled derived mainly from article 59 of SREL and 147 of the ER-SREL. SREL law states that private persons, who seises public property , including Public Domain, such as the Oustees, do have legal rights over seised land. Article 59 of the SREL maintains that people who informed the SREA within the period [after the announcement which most likely has never taken place] have the right to buy or lease the [public] land seised. It is, therefore, clear how the general rule articulated in the law giving Oustees the right of obtaining title of the public land seisin-in-fact by either buying leasing.

Then there is the article of the law providing for the right of obtaining an alternative land as compensation of seised land? The law grants Land compensation in case seisin of public land was in violation of the "area planning," which the case of suburbs of water channels where current Oustees shakes are located. Oustees, in this case, and according to the law shall obtain an alternative land in the same area. As possible, alternative land should fulfills the same purpose sought in the seised land.

Even in the case of sale or lease mentioned above, the value of sale or lease of seised land is determined by a specially formed technical committee, and in accordance with standards set by the Minister of MPWUD taking into consideration the situations of the low-income people.

Please note that the above-mentioned rights of Oustees are as described in the law and considered theoretical. In practice, I have not heard of Oustees such as the ones in the RAR was capable of practicing such rights. Lack of awareness, difficulties of procedures, weak judiciary and lack of support all contributed to this situation.

Real Property

1. Land:

Article 120 of the Civil Code (CC) divides the property to two types: private and public. Private property is the property owned by the private persons. Public property owned by the state. Public property can become a Public Domain property if was dedicated for the public interest by fact, law or decree. Consequently, as long it stayed dedicated for the public interest, no person can own any Public Domain property through any means. Also, all transaction over Public Domain property are prohibited by the law as long it stayed dedicate for the public interest.

The lands where the Oustees built their shack, huts or shanties are actually either in the *Sawail* beds (flood waterways) or the outskirts of the *Sawail* (singular is *Saila*). Article 2 of SREL classifies the waterways of rainwater and the Great *Masail* the receives the floods coming from the *Sawail* as Public *Marabiq*. Article 41 of the SREL states that all Public *Marabiq* are fully owned by the state and part of the Public Domain. In another words, the law protects waterways, *Swail*, Great *Masail* and their outskirts, possession or adverse possession. Likewise, tenancy tights or any other rights can not be given or gained by any person over any Public Domain property. In addition, article 7 of the SREL clearly affirms, "Adverse possession rules does not apply [all] lands and real estates owned by the state, even if they were not registered in the SREA (State Real Estates Authority) or the RER".

To implement this chapter of the law, article 63 of the Executive Regulations of the SREL (EC-SREL) required the SREA and its branches in the governorates to make an inventory of all the State *Marahiq* and to specify their locations and put them on special maps that contain all their information. These procedures have not been done properly since the enactment of the EC-SREL in 1995.

Accordingly, since the enactment of the SREL in 1995 (or the old *Marahiq* Law No 16 of 1978), the Oustees procession of the lands where they built their houses does not grant them title over these lands. However, if there is anyone of the Ousteees who has been in possession of a land before 1995 (or 1978), the issue of ownership over the title of the land by adverse possession may be valid. If the right of land title was therefore established for any of the Oustees, article 5 of SREL applies. It provides that the owners of property that became Public Domain property should be fairly compensated in accordance with the PEDL.

However, the above mentioned rules regarding public property, including Public Domain, are not absolute. There are number of exceptions worth mentioning here . First, not *all Marahiq* are Public *Marahiq* that considered Public Domain. Article 42 of the SREL explains that as exception form the previous article (41) , the *Marahiq* attached to the agriculture lands are considered annexes to theses agriculture land. /This is applied if the alleviation of the *Rabaq* (singular of *Marabiq*) not more than 20%. Owners of these agriculture land are not granted the title of the attached *Marabiq* except after the vanishing of all neighbor's communal usufruct rights.

Second, although article 44 of SREL provides that the usufruct rights to the Public *Marahiq*, such as pasturage, collecting wood, or **others**, continue to be granted to the public, it is not clear to me the meaning of others mentioned in this article. Is the (Usage-Habitat) right one of the other usufruct rights granted for the public under "others" mentioned in article 44? Does the use of Public *Marahiq* lands by the Oustees for their inhabitation qualify as one the usufruct rights protected by this article? Probably.

Finally, article 58 of SREL considers the possessor of any states lands or real estates before the enactment of the law (1995) as an aggressor who should be punished according to the law. Any aggression (acquisition), of any lands or real estates owned by the state, by any way, is punished by the SREL, article 47.to a 4-5 years in jail. Initiation, facilitation, or assistance of such aggression (acquisition) is punished by the SREL, article 48, to up to one year in jail and up to two years if the convict was an employee at the SREL. Article 55 of SREL also prohibits the possession of any state owned lands or real estates.

According to the same article 58, punishment; however, is waived in case possessor informed the SREA, in writing, of all information about the land possessed. This should happen within three months from the date of announcement of SREA in the different media means. The article concludes by assuring that after the passing of such period, all possessors would e considered aggressors and the SREA should take all needed administrative measures to acquire the lands possessed and prosecute the aggressors before justice.

Next article provides that persons, who seises public property, including Public Domain, such as the Oustees, DO have some rights over seised land. Article 59 of the SREL maintains that people, who informed the SREA within the period, have the right to buy or lease the land seised. If using the land was in violation of the planning of the area, then he/she should be given an alternative land in the same area. As possible, alternative land should fulfills the same purpose sought in the seised land. Technical committees should be formed to determine the values of lands sale or lease according to the standards set by the Minister of MPWUD taking into consideration the situations of the low-income people.

Oustees have the legal right mentioned in article 59 above for number of reasons. First of all, I doubt that the SREA actually made that announcement properly via all media channels since the enactment of the law in 1995. If announcement was not mad, which is very likely, then Oustees still can take full advantage of tittle or usufruct rights implied by article 59.

Secondly, I doubt even more that SREA would prove that such announcement has been conducted properly in accordance with the law. This would make the SREA employees in clear in violation of the law. The second reason is the fact that there are today many states lands still under the seisin of "aggressors," including Oustees seised lands, only means that the SREA employees did not do their duties as per the law. The SREL requires the SREA employees to acquire all public property and prosecute aggressors before courts. The evident failure of the SREA employees to acquire all the public lands, including the ones where Oustees seise today, may be interpreted as "facilitation" to aggressors
of public land. This facilitation is indeed punished by article 48 to up to two years in jail for the employees of SREA.

This is supported by article 147 of the Executive Regulations of SREL (ER-SREL) that states that public lands [including Public Domain] under the seisin in fact by people prior to the SREL [of 1995] shall be sold or leased to the people who seised them. Different kind of procedures and conditions should be observed in trisect to the nature of land seised. For example, article 148 allows the transfer of lands, in which personal houses have been built, to the person who seised the land. However, he/she should have already built a personal house in which can not be removed without avoidable

damages. It is also required that the house is built within a residence block or stable residence community, In addition, plot of sold or leased land should not exceed the plot in which the house is built including and
annexes (maximum two times of the house area). Moreover, low-income people enjoy better payment arrangements (almost 5 years installments) for the sold lands described in article 157 of the ER-SREL.

2. Houses:

Oustees Houses in the project land were built by the Oustees themselves. There is no claim by anyone of the Oustees direct ownership of these house (separate from the land). The question is: however, what happened when the Oustees are forced to leave and the houses need to be destroyed.

It has been explained above that the lands, where the houses are built, are under the seisin in fact by the Oustees. Therefore, article 59 of SREL and 147 of the ER-SREL shall apply. They should be given alternative lands in the same area that fulfill the same purpose sought in the seised land . Technical committees should be formed to determine the values of lands sale or lease according to standards set by the Minister of MPWUD taking into consideration the situations of the low-income people.

Moreover, the fact that the Oustees built their houses in the public lands without interference for long period of time implies the permission of the authorities in charge of public lands (SREA) of the building of such houses. In this case article 1321 of the CC concerning accession may apply.

Accession means the acquiring of right to the establishments in land (0r houses) by addition. Article 1321 provides that if the landowner permitted another to make establishment, plants or other constructions in his land, the landowner is not allowed to request their removal. Landowner has two options. The first option is to own the establishments in his land in exchange of compensation for the money spent or for the increase of land value resulting from the establishments. The second option the land owner have is to transfer the title of the land to the owner of the establishment in exchange of a fair compensation for the land value equivalent to similar land in the same area and same time.

In addition to permission to put establishments (houses) in public lands, the same facts may also constitute the permission of the authorities in charge of public lands (SREA) of the usufruct rights from a public land for purpose of inhabitation by the Oustees. If this was legally established, a whole range of rules derived from the SREL may apply. These rights also recognize the right of usufructury from public lands to be compensated in case there was a need for the land seized for public projects. In this case, articles 1337 and 1338 of the CC may also apply. First article states that it is valid that the usufruct right to e on the right to use or the right to inhibit or both. The scope of the right of use or the right to inhibit is limited to the need of the usufructury and his family. The second article refers the usufructury to the article 1321 explained above concerning the establishments in lands.

COMMUNAL ASSETS

The fourth inquiry required an analysis of the Oustees rights to communal and customary assets.

It was not clear to me every communal or customary assets Oustees has. Mainly shakes/houses, household, livestock etc. could be considered communal assets jointly owned by the inhabitants of the shake /house or at least the husband and wife(s) living in the shake. It is very important to recognize the communal ownership of family belongings since it would probably affect the ownership over the house and land in which they will be settled. It is most likely, in my opinion, that building/putting together the shakes where Oustees currently live has been done jointly by the able members of the family including wife(s) and other females. Seisen of land where shakes were put together probably has been done jointly as well. Moreover, the belongings of the family such as household and livestock and etc. are likely to be bought or acquired by money generate by the various members of the Oustees family including wife(s) and other females. These all would be the substance for compensation in the house

and land where Oustees would be settled .Accordingly, the ownership over the new house and land should be communal among all members of the family. Failing to do so may result in legal claims of ownership that may occur in case of divorce or other incidents.

In any way, the Yemeni CC governs any of the Oustees rights to communal or customary assets, I will try to explain articles 1187 to 1199 of CC of the CC, which talk about the communal and customary assets.

According to the CC, communal assets can be vulnerary by mixing assets willingly, or obligatory by mixing assets by other reasons such as inheritance . To the other partner of communal or customary assets, a person may dispose his/her share of assets absolutely. Permission is required from partner before selling communal assets to others.

PARTICIPATION IN THE RAP

The fifth inquiry was seeking *an analysis of the Oustees to, and the procedure for, participation in the design and implementation of the resettlement process.*

In general, the Yemeni Constitution, Elections Law, and Local Administration Law provide for the importance of people participation in the public life. However, no specific legal guidance provided is found in Yemeni laws and regulations in relation to public participation and consultation. But the main doctrines in the Islamic Sharia and the Yemeni CC do require the importance of always avoiding harms and repairing damages. Therefore, adopting any recognized and practiced guidance that will improve resettlement implementation is consistent with these principles and doctrines.

Guidance should be the type that will improve resettlement implementation in regards to information dissemination, organization and management, adequacy of compensation payment, provision of rehabilitation and support services and monitoring and evaluation. Particularly information is a crucial element in any resettlement program.

Information dissemination to, consultation with, and participation of affected people and involved agencies reduce the potential for conflicts, minimize the risk of Project delays, and enable the Project to design the resettlement and the rehabilitation program as a comprehensive development program to suit the needs and priorities of the affected people. The objectives of any public information campaign and PAP consultation program may be as follows;

- To share fully information about the proposed Project, its components and its activities, with the affected people.
- To obtain information about the needs and priorities of the affected people, as well as information about their reactions to proposed policies and activities.
- To obtain the cooperation and participation of the affected people and communities in activities required to be undertaken for resettlement planning and implementation.
- To ensure transparency in all activities related to land acquisition, resettlement and rehabilitation.

In addition, during the preparation and implementation, local authorities as well as representatives of Oustees should be communicated with and advised on major issues relating to the Project, and particularly on resettlement planning.

Project team should ensure that local authorities as well as representatives of the Oustees to be involved in the planning and decision making process.

Finally, measures should be taken to ensure that the Oustees, their representatives and the local Government of Taiz fully understand the details of the resettlement program, and also are informed about the compensation and rehabilitation packages applicable to the Project.

LAND TENTURE AND TRANSFER SYSTEM

The sixth inquiry was looking for *an analysis of the land tenure and transfer system in the Republic of Yemen, including common property and non-title based system, if any ,together with an analysis of the land titling Oustees for propose of their rehabilitation.*

1. LAND LEGAL SYSTEM

1- Concept:-

This section addresses very briefly some pressing legal issues concerning lands legal system in Yemen. Real estate property rights constitute one of the most serious obstacles to development and reform efforts in Yemen. Ownership of lands, in general, is vague and unstable. Land ownership is not universally registered or verified . State land is vulnerable to occupancy by powerful individuals or groups, encouraged by inaction by the state and non-enforcement of the law. Speculation in land, fraud and forgery of legal title documents is widespread and contribute to continue of violent disputes.

No law exists in Yemen that specifically addresses teal property. However, legal provisions, rules and articles regulating lands are found dispersed in a number of laws, which constitute in general the legal regulation of real property including lands. The most important of these laws are listed in the last section of this report under relevant laws and regulations. Law classifies lands to number of types including uncultivated land, desert land, white land (land outside urban planning zones), and planned land (urban land).

2- Private property:

Yemeni law emphasizes the protection of private property which shall not be violated except when absolutely necessary for public benefit and with fair compensation in accordance with the law. Public expropriation of private property is proscribed, while private expropriation is allowed provided it is done in accordance with a judicial decision.

No body shall dispossess any body from his property except in cases sanctioned by law and by methods laid down therein and against a fair compensation . Any civilian has the right to resort to judicial authorities to protect his rights and legitimate interests and has right to lodge grievances to state constitutional institutions and bodies directly or indirectly.

3- State Property :-

Public property and assets have certain inviolability which should be protected and safeguarded by the state and all civilians. Any infringement or transgression of such property or assets is an aggression and sabotage against socially as a whole. The perpetrator of such wrongdoing shall be punished in accordance with the law.

Public funds are funds, assets and property owned by the state or public body corporate, and shall be allocated to public benefit in deed or pursuant to a law or resolution . Such funds may not be disposed of or be confiscated or put in the possession of individuals as long as these remain public. Individual persons may benefit form public funds according to the purposes for which they are designed and in line with the law . Other than that funds or monies are private property irrespective of whether owned by the state, body corporate or natural persons.

The law stipulates cases and methods of methods of disposing in real property of the state and assignment of public funds and regulates how concessions are given to local government units, and gratis disposition of public funds.

4- Acquisition of Real Estate Property:-

Real estate property is acquired in the following means:-
legal acts, (ii) Legitimate inheritance and will (iii) cultivation of ownerless wasteland (iv) by right of preemption (v) by taking hold (vi) adhesion (vii) expropriation and accession of state property .

Legal Acts. Property transferring contacts are the most common and important of which are contracts of sale. Real estates property sold is not transferred between parties to a contract and with respect to others except from the time the sale contract is registered in the real estate register. This rule s supposed to apply to all situations of transferring lands titles. However, in reality not all transfers of lands title are necessarily registered.

Legitimate inheritance and will. Real property is acquired by inheritance and will in accordance with the provisions of Islamic Shriah (jurisprusence) as stipulated in personal status law. Some of such provisions stipulate the share of a male equals the share of two females, a testator has the right to give by will one third of his estate to an person, a testator may give by will all his wealth if he has no successors, the state inherits that who has no successors.

According to the law, real property rights resulting from estate inheritance rights shall be registered in estate inheritance right register. No proclamation or act on behalf of successors may be done before registration in real estate register.

Civil Code provides for the right of preemption. A neighbor, a partner or an owner of ownerless property has the right to acquire a real estate adjacent to his own, or that in which he is a partner or in which he shares property, even though its owner transfers its ownership to another by a valid contract (Art (1187) to (1226),(1274). No law suit to preemption shall be heard after three days from the person who is present in the town and aware of the sale transaction, or after one month from the person who is present but unaware of this sale or after one year from the one who is absent from the country(Art 17).

Taking hold/ Right by prescription. A person taking gold of a real estate for thirty years has the right to acquire ownership of such period, in accordance the conditions stipulated by law (Art (1220)CC). No law suit of ownership by other shall be heard against hold after this period (Art (1220-1225) CC. Excepted from this are inheritances, endowment and partnership law suits (Art (81) CC). Prescription and tacking hold provisions are not applicable to State owned teal property even if such property is not registered in the RER or at the SREA.

Adhesion. If the owner of land permits other to erect a building or their structures on his land, then that who erected such buildings or structures take possession to the land if legal conditions for this possession are met (Art 1321-1322 CC).

Cultivation of ownerless wasteland. Ownerless waste land may be cultivated by permission of the head of state if its rightful owner is unknown or undetermined or it some one claims right to and does not cultivate it within a period of three y ears (Art(1250)CC). If the rightful owner n known and determined then it shall not be cultivated except by his permission (Art 1252 CC).
Anybody who cultivates a wasteland may possess it, but a natural person may mot possess for the purpose of building more than twenty Libyans (Art 1255 CC).

Accession to state property . Real estates dispossessed from private property shall be acceded to state property, such as in case to taking possession for public interest in accordance with PEDL. In addition, real property of a deceased person with no successors may be acceded to state property.

5- Legal restrictions rebutting real property.:-

These restrictions sometimes rebut on free holding and in other instances on authority of the holder to make use or dispose of and limit such property in consideration of public interest or private interest that should be protected. For example, there is the Right of Easement or Servitude resulting from neighborhood or otherwise. Another is that a testator may not give by will more than one third of his estate. Some other examples of such restriction include:-

Dispossession of real estate property. The law permits government authorities such as ministries, public corporations, agencies or authorities, to acquire real property owned by natural persons or private body corporate, against a fair compensation to implement public utility projects. Acquisition may be affected by agreement of the two parties (i.e. the government body and real property owner). This is called "acquisition by consent". The other method of acquisition is by the government authority resorting to judicial authority and serving the owner an order to acquire possession of the property if no agreement is reached with him and the judicial authority ordains its acquisition. This is called "Judicial". The law stipulates rules and conditions for both types of acquisition sets out how compensation is estimated and litigation procedures as well as how property right of acquired estate are transferred . More details on this respect found in this report above.

Limitation of Property. A natural person may not possess more that Ten Libnas (Libna is 22 square meters) of cultivated wasteland(Art(1250) CC). Sale contract of wasteland or fallow land purchased from the state are restricted if such land is not used within a period of two years, or five years for desert land, after its sale.

Right to preemption. This is one major restriction to the right or transfer of real property, were by, the seller is not free to choose the buyer until stakeholders such neighbors, partners.. etc express their unwillingness to possess the real estate (Art (1187),(226)(1274)CC).

6- Protection of real property:-

There are forceful and explicit provisions in the constitution concerning protection of property. The CC also entails responsibilities, obligations and duties on usurper of other's property, some of such provisions binds the usurper to return to estate or land usurped to its owner and bear consequences thereof (are (1126-1160)CC).

Yemeni Penal Code contained land related crimes. For example, it is considered a crime if any person or party who destroys or spoils a real estate not under his/her possession. If this was committed by using force or threat punishment in increased up to five years imprisonment. Fraud in selling lands is also punished to one-year incarceration. Then, anybody who splits or removes perimeter or mark put for marking area or levels of boundary of land or as partition between properties shall be penalized to one-year imprisonment.

Moreover, usurpers of others land are punished by two years imprisonment. Next, any illegal act that creates or establishes a real or original right by consequences or lease or by any sort of consolidation on state land and real estates shall be null and void and punishable in accordance with the law.

Whoever wants to prove a real property right must submit to the land and Real Estates Register the documents proving his identity and sustaining his right. Real Estates Contract shall not be valid until registered in the Register.

Methods and ways of proving ownership, as set out in Law of evidence are also one major way of protecting real estate property.

7- State Land and Real Estates.

The law provides that the land and real estates are considered State owned in number of situations. They include known State property, property which are proved to be state property, purchased or acquired by the state for public benefit, property which pass to public treasury or in return for due debts, wastelands, flatlands or woodlands unless claimed by some owner(s), desert land, unless proven to be property of some owners(s),watersheds, coast and their protected zones and uninhabited islands, lands not owned or of no successors, and finally other land or real estate according to laws in force.

State land and real estates property can not be disposed of freely except for a public benefit or according to directives of the President of the Republic. Only by a Council of Ministers decision, government bodies may acquire state land free of charge, for the purpose of execution their duties defined by law.
White lands owned by the state with in city structural planning zones shall not be disposed of by selling or leasing in ways that may impedes or obstructs town planning. Fallow land may be disposed of by selling or leasing through open auction or direct sale or lease to whoever desires according to priorities set out by law.

Certain rules regulate the statues of State lands disposed of prior to enactment of SREL. Special commissions established by a Cabinet resolution shall deal with Land disposed of for the purpose of building personal residence Land disposed of for the purpose of investment projects lands that were granted to phony project shall b e recovered. Lands issued for remedying cases resulting from nationalization should be treated in line in the above rules.

The law sets out basic criteria for sale and lease of state land and real estates, determination of their price values and deadlines for payment. They include that lease shall not exceed 30 years period. Second, SREA may cancel by a cabinet decision lease contract if clearance of land is necessary for erecting public benefit installation. Third, the Cabinet with a resolution should set without the need for judicial decision. Forth, if leaseholder is in default of contract the contract is automatically invalidated without the need for judicial decision. Fifth, lease or sale contract of fallow land and the utilization thereof shall be rescinded if the leaseholder or beneficiary uses the land after two years of making the contract. If the land is desisting, the contract is finally terminated after five years. Sixth, state land and real estate sold to a buyer shall be transferred along with the right of easement. Owner, in this case, is not entitled to any claim to compensation in respect of such rights. Finally , if land or real estate become due in whole or in part pursuant to a judicial decision, the state is not liable to return any amount except what the buyer has paid of the price value.

II. REAL ESTATE REGISTRATION

There is no doubt that the real estate registration system in Yemen does not work efficiently. The number of disputes bear witness to this. The Ministry of Justice have begun to recommend changes and included the reform of real estate registration in its plan to reform judiciary. Few years ago, it formed a committee to review the organization of land registration and the institutions responsible. The committee consists of representatives of the Ministry of Justice, the SA and the MPWUD.

Investment in the City of Taiz is severely curtailed by the inability to acquire secure title to land. Although there is a real estate registration system it is ineffective. There are numerous disputes relating to land which are clogging the judicial system and the service of the City Secretariat. Land values are increasing and many of the problems arise from unscrupulous people deliberately selling the same property several times or selling land that belongs to the State or MA.

The Real Estate Registry (RER) Keep ledgers to record deeds, but they do not maintain a cadastral index map and have no effective way of ensuring that the location of the property is correctly represented or that previous deeds refer to the same piece of land on the ground. This is made worse because Scribes and Notaries can be relatively easily "persuaded" to prepare and approve document that are fraudulent.

Public confidence n the RER is low as registration does not of itself secure title. The RER has been operational since the beginning of nineties and is not improving its services. They have had little external assistance and it is not supeising that they have not yet been able to implement all the reforms recommended by number of studies and recommendations.

Most transactions are never even registered at the RER> This results in huge losses of income to Government, exacerbates the problem and creates even more disputes.

A rapid increase in the value of land, especially marked since 1990, has tempted many to deliberately sell or acquire land fraudulently. It is relatively easy to get away with this practice and the profits are high . Land disputes are a serious problem for cities and the Judicial system Riots, physical violence, shooting and even murder have been experienced because of land disputes.

Proof of registration is required by banks prior to mortgage and by the MPWUD prior to granting building permission. Others have little incentive to register as: registration does not enforces collection of transfer tax and Zakat.

An enormous amount of time is wasted dealing with property disputes. It would not be and overstatement to estimate that up to 5% of properties are subject of dispute in Taiz. The disputants initially bring their case to the police and /or the prosecutors. If not solved amicably the courts it is estimate by lawyers that 80% of court cases are involved with land disputes.

All official authorities involved are desperate to solve these issues. It becomes impassible to undertake their normal duties or provide adequate services because of the land disputes. Disputants who want their cases resolved continuously invade their offices. The loss to the courts and governmental authorities in terms of man-hours and resources has not been calculated, but it will be substantial percentage of the total budget of either organization.

Transfer taxes: Transfer taxes are set at 3% of the stated price. Often agreements is reached between the parties to understate the sale price so that payments are less. 3% is an average figure used internationally and should not deter the land market nor prevent registration if good security were really given through the registration system.

In addition to transfer tax a Zakat of 2.5% may be charged on the profit made on a sale (The difference between the price paid for the property and the sale price). As there has been significant inflation over the last years this can be a considerable sum.

It is estimated that not more that one third of sales are registered, and these are often undervalued. It is likely that more than one billion Rials are lost to government annually in unpaid transfer taxes.

Registration in Aden and the other southern offices is mainly concerned with land allocation and restitution following the requirement to return land to original owners and provide land to the landless. The tax laws in the Southern Governates are geared towards preventing registration of transactions. Land is allocated at a nominal price but the transaction costs can reach 17.5% of value. Clearly, people will avoid registration with these taxes.

There is also a registration fees. Registration fees very between 10000 Rials and 20,000 Rials dependent on the stated price. A similar argument to that outlined above applies to registration fees.

Ministry of Awqaf and Government Lands: If a person tries to sell or squat on privately owned land, they are likely to be rapidly confronted by the owner. The MA probably owns more than 50% of land in Taiz, but they have no comprehensive record of their land and lack the capacity to optimize the income derived from their land. Examples of their land; being taken and sold fraudulently; being squatted on; or being used for parks, roads, etc. Without compensation are common. Examples were

also given of properties being rented out some years ago and the tenants still paying very low rents (less than 1000 Rials per month) for high quality accommodation.

Few years ago, we heard that the MA have established a committee, which includes the Land Registry and MPWUD, in order to make an inventory of their land and being top administer their property more efficiently. It is not clear what was the outcome of this committee.

The SREA suffer from the same problems as the MA, but have not yet started to deal with the issue. They have to addition problem that land with a slope greater than 20 degrees in restricted for development and sales, but they have no means to monitor or control this issue. We were informed that the SREA intends to establish a committee and follow the example of the MA.

The actual sums of money lost annually from their capital investment and from poor land management are unknown. It is likely to be measured in terms of billions of Rials per annum because of the quantity of land and resources involved . The firs t stage in rectifying the situation is to ensure their land is located and registered.

I legal sales of their land will then be prevented by the RER once it effectively operational.

Lands Check: Clearly it would be advantageous to have clear ownership details about lands involved in this project. This would required a full-scale investigation of tittle project involving survey, review of documents, whether registered or not, taking evidence from owners and their neighbors and preparing a complete legal opinion of all property involved. During this process, all outstanding disputes would be known and probably resolved. This is the approach recommended before any action can be taken.

In Yemen, it is a common practice to acquire land and begin development but wait for a few months before completing payment. In this way disputes should come to light before very high expenditure is incurred. This is symptomatic of the problem, but not good solution!

Many of ht disputes have arisen in the last few years. In the sixties and early seventies most or Taiz area probably was owned by not more than one thousands people. Each land parcel had a name and there are Amin's and other individuals who can recall the parcel names and locations when presented with aerial photography if it is available (there was one in Sana'a in the early used as the basis for tracking subsequent transactions in order trace the legality of present day ownership. Unfortunately the people who can remember the early seventies situation are getting old and their knowledge is dying with them. For some bigger projects, this method can be used as one of the processes for checking how clean the lands title today.

Legal and Organizational Issues: Law 39 of 1991 concerning the Real Estate Registry (RERL) currently governs land registration in Yemen. This law was prepared following unification of North and south Yemen and was designed to unify the land registration system used throughout the county. The law allows either a deeds registration system or a title registration to operate, although it is apparent that the deeds system is only seen as an interim measure.

The law is brief and does not include details concerning the function and duties of the registrar, procedures for first registration and adjudication of tittle, specific details on registration of different kinds of rights, easements and encumbrances, register formats, standard forms, prescription or indemnity .

A comprehensive study on the laws governing land issues should be prepared by a qualified Yemeni lawyer with assistance from an expatiate expert versed in all aspects of real estate law is necessary.

RERL requires the Prime Minister and the Cabinet to pass regulations and appoint officers for implementing the law. Republican Decree No. 32 of 1993 concerning the Organizational regulations of the Survey Authority (OR-SA) was passed and the Survey Authority (SA) was given the responsibility for land registration. The OR-SA also talks about the organization, regulations and functions of senior staff of the SA.

The RER, currently under the SA, is recognized as the institution responsible by both the private and public sector. The Ministry of Finance refer to them to ensure transfer taxes and Zakat are paid. City Secretariat, MPWUD and Ministry of Agriculture also recognize the authority of the existing RER. Nevertheless, courts refer to them only for advice during disputes and may take registered documents as better evidence than unregistered documents.

RER should be autonomous. As they approve or deny registration on the basis of law it should not be possible for any superior organization to instruct them in their operation. Only courts have the authority to instruct the RER to register a specific individual or company. Internationally a land registry may be under a specific ministry or under none at all, but the autonomy is necessary . It is common to have the RER within the Yemeni equivalent of the Ministry of Justice of the RER than to change its organizational base.

There has been some discussion about establishing a new RER. This would be extremely detrimental and make the current situation worse0especially if it become possible to register in separate places! It is a major (and very expensive) exercise to recruit and train new staff, locate premises and begin afresh. The existing records are valid legal documents and would have to be transferred and integrated with a new system or organization. The existing staff has a good understanding of land matters and are will versed in the use of ledgers and the legal requirements for registration.

Practice and procedures in the office of RER: At least there are 9 RER offices operating in Yemen. The operating practice of each office is similar. The offices run on a typical deeds registration system which includes legal checks and transcribing the relevant details from deeds into ledgers that are across referenced.

There are several problems with the current procedures:

- The description of the land in the deed is rarely sufficient to uniquely identify its position on the ground. This makes it possible for the same parcel to be sold more than once, for parcels to overlap and for descriptions to bear little relation to the land on the ground .

- Scribes preparing documents are easily "persuaded" and there bare few safeguards that will reveal inaccuracies when documents are checked at the RER.

- Land belonging to the State and the MA is not recorded. It is thus not possible to ensure that deeds are not transferring this land to private individuals without authority.

- Land with a slope greater than 20 deg. Should not be sold as it is reserved the state. There is no way of knowing if the land has this slope under the current system.

- It is a slow and cumbersome process to locate deeds and a good root of title through the ledgers. It the previous deed number is not recorded, is inaccurately referenced or not available laborious checks through.

Thousands of ledger entries would be required to locate the deed relevant to a particular parcel of land or owner. The names of the owners are not always conclusive or unique. Deeds registration systems rely on the competence and integrity of the legal persons drafting the documents

and the RER staff checking them .As this integrity cannot be assumed, the RER should provide sufficient checks to ensure good security of title and a clearly transparent procedure that can be independently verified.

Note : The World Bank is currently providing assistance with Judicial Reform. The Judicial Reform Plan by the former Minister of Justice included an important part about the issue of land registration. Although about 80% of the cases in the court deal with land disputes, the assistance from the World Bank to review land security during projects preparation.

There is not special systems exists concerning to transfer of common or non-title based property. Same systems explained above may apply to such type of transfer. Similarly, no specific registration system exists for other assets different from the ones described above.

CLEAN TITLES 2

The seventh inquiry was seeking *analysis of:*

(one) The right of Ministry of Awqaf to make the Oustee Land available to the Oustees;
(Two) The extent to which the third party's title to the Oustees land is clean;
(Three) The extent to which the Ministry of Awqaf's title to the Oustees Land clean; and
(four) The extent to which the tenancy (or other real property title) granted by the Ministry of Awqaf to the Oustees is clean and has the effect of guaranteeing to Oustees the requisite of title.

2 The land discussed under this section is no longer under consideration for use in resettlement.
The discussion is maintained in the report, however, to increase general knowledge about these issues and because these points may become relevant under another IDA project.

1st. The right of Ministry of Awqaf to make the Oustees Land available to the Oustees:

The question here is related to the wrongful practice in Yemen nowadays, which mixes the endowment property with the state Property. This practice is derived from the fact that MA replaced t other traditional endowment manger, *Mutawali.* Consequently, the staff of the MA are currently dealing with the endowment property as public property forgetting the independent entity, especially from the State, of the Waqaf as a system. Hence, the leasing of the Initial Land to MPWUD cheaply for the purpose of compensation the Oustees should be checked whether it is consistent with the duties of the *Mutawali,* MA currently, as described in the prevailing laws and regulations.

Endowment in Yemen is governed by the Republican Decree of the Law No. 32 of 1992 concerning the Endowment (EL), articles 779-786 of the CC, the Republican Decree No. 99 of 1996 concerning the Regulations Organizing the Procedures of the Leasing, Usufruct, and Investment of the Endowment's Property and Real Estates (ELR). (also the previous one issued in 1995 by Ministerial Decree), and finally the Republican Decree No. 144 of 1995 concerning the Organizational Regulations of the Ministry of Endowment.

Number of rules governs any transactions, such as leasing or subleasing, on the real estates of endowment. For example, leasing endowment land should be towards the interest of the endowment land.[El,Art.57] **the Mutawali** should invest, manage, and use the endowment land according to the purpose it was endowed for [El,Art.67] Leasing should not exceed three years although may be renewed. [EL, Art. 72] it is not permitted to lease the endowment land for less than the rent of similar land in the same time. [EL, Art. 73].

The ELR was issued for the purpose of implementing the endower's intention from the endowment. It came to organize and control the transactions concerning the endowment real estates and to invest them in the best way. It aim to prevent the illegal exploitation of the endowment real estates. [ELR art. 3].

As for the legal leasing of endowment lands for the purpose of building ,which is the case of the Initial Land, the ELR requires some conditions to be existent in the land intended for leasing: (1) not to be suitable for agriculture, (2) to be close to the urban expansion, (3) not to be in the boundaries of mosques, seminaries or gardens close to the old cities, (4) useless to the endowment to be invested.

ELR article 64 provides that *the Mutawali* cannot waive or reduce any of the endowment dues. Only the Ministry of Awqaf can, after a court judgment, reduce some of the dues of some situations.

Before these rules can be investigated in relation to the Initial Land, the endowment deed (*muswadat alwaqaf*) should be obtained. However, from the quick review of the two documents of lease (to the MPWUD) and sublease (to the Oustees), it does not seem to be consistent with the rules and conditions mentioned above.

2nd. The extent to which the third party's title to the Oustees Land is clean:

From the information I obtained from my sources, it was clear that there were some problems in th Oustees Land (Albarara). The fact that of it is currently part of undivided inheritance would cause alto to difficulties.

However, I learned later that the idea of exchanging the Initial Land (endowment land) with the Oustees Land (Albarara area) is not an option any more. Partially this is because of the reason mentioned above about the difficulties with the owners and partially because the owners took long time without finalizing the procedures that they were supposed to fulfill.

3rd . The extent to which the Ministry of Awqaf's title to the Oustees Land clean:

In regard to the legality of exchanging the endowment land for another land, it is controversial issue from the legality point of view. In anyhow, it does require some legal condition procedures described in ELR article 55 including that the land becomes useless and after the approval of Higher Council of Endowment.

I also learned later that the plan was that the Oustees would settle in the Initial Land for the time being and the idea of exchanging lands would have to wait for awhile (could take few years). The houses that would be built in the Initial Land would be given to the Oustees and the land would be subleased according to the permission of Taiz branch of the Ministry of Endowment.

This situation definitely would not provide the Oustees of the security of title not only over the subleased land from the endowment but also to the houses built on the endowment land.

D. The extent to which the tenancy (or other real property title) granted by the Ministry of Awqaf to the Oustees is clean and has the effect of guaranteeing the Oustees the requisite security of title:

Both two documents, the lease to the MPWUD and sublease to the Oustees, does not guarantee the Oustees the requisite security of title over either the tenancy or the real property. Number of reasons contributes to this conclusion.

One is the fact the texts of the documents which clearly states the lease and most importantly the sublease can be revoked easily either form the MA or the MPWUD. In addition, even within the three years period or its renewal, ELR provided that endowment lease terminates in case of either of the eight situations listed in ELR article 35 takes place.

Second, the EL and The ELR provides that the endowment lease terminates at the end of its period (three years Max) Although period can be renewed, the renewal should always be in the interest of the endowment itself.

Third, the sublease requires the Oustees to pay monthly rent. The sustainable commitment of government, including the MPWUD and Welfare authorities, to provide the Oustees with the assistance in this respect is not clear yet. Moreover, the rent can be increased to the equivalent of similar lands in the similar time.

Finally, my source reported number of outstanding issues existing in the Initial Land. Part of the issues are related to previous lease of the same Initial land to a businessman in the area called Mohamed Almaqrami bout three years age. Almaqrami, who was supposed to build a market and parking lot in the Initial land but never did, is in continuous conflicts with another person form the same areas called Noman Alkamil who is claiming ownership of at least part of the Initial Land. In fact, we discovered that he has already went to court and obtained a court judgment in 1994 against the authorities approving his ownership of at least part of the Initial Land. The court executed this judgment later on in 1995 since the authorities did not appeal the judgment in behalf of Alkamil. Although many sources assured the accurate ownership of the Initial Land by the MA, Alkamil claims that he bought the land from the rightful owners, Abdu Noman and sons and has a final court judgment in his hand. All documents supporting this information can be delivered if required.

JUDICAL PROCEEDURES AND GRIEVANCE PROCESS

The eight question was about *an analysis of the applicable administration and judicial procedures including the grievance process offered the Oustees, and the normal time frame for such process.*

In addition to the principles mentioned in the SREL and its ER explained above, the main law that regulate the process of estimation and the judicial procedures of grievance is the PEDL. PEDL stipulates that the President of the Appeal Court in the Governorate a temporary or Permanent estimation committee, in each governorate, and for each case. This committee consists of a judge, an engine, representative of the expropriated entity, and the owner of the expropriated real estate. In the estimation process, the law stipulates that the estimation committee should look at number of standards such as prices of similar real estates in the area and the situation of plantations and establishments.

In case of partial expropriation, the improvement of the location or use of the remaining expropriated estate can be on of the factors to look at by the estimation committee. If the remaining of the expropriated estate becomes useless, court should order the expropriation o fthe whole estae.This request by the owner should be filed within two years. If partial expropriation resulted in material damages to the remaining of the estate, the owner of expropriated estate and the owner of any other damaged estate are entitled for compensation .

The PEDL stipulates that the Appeal Court of the expropriated estate location has the jurisdiction over all requests and claims resulted form the expropriation. It is possible also to appeals the decision of the Appeal Court to the Supreme Court. (Art. 18-26 PEDL).

In brief, Oustees's grievances and complaints on any aspect of the land acquisition, compensation , and resettlement should be addressed in a timely and satisfactory manner. All legal and possible avenues must be available to addressed in a timely and satisfactory manner. All legal grievance address mechanism to be established in the Project.

It is important that all Oustees are aware of the established procedures for the proposed grievance redress mechanism. Detailed procedures for redress of Grievances and the appeal process should be publicized among all Oustees through an effective public information campaign.

In principle, Oustees should be able to lodge their complaints relating to any aspect of the compensation policy, rates, land acquisition, resettlement and entitlements relating to rehabilitation assistance programs. Beside the legal procedures prescribed in the laws and regulations, however, special attention should be brought to the content of grievances itself. All obstacles to freely allow Oustees to exercise their rights to grievance should be removed. For examples, the complaints by the Oustees should be allowed to lodge their complaints verbally or in written form but in case it is lodged verbally, the committee, to which it is lodged, should write it down in the first instance of its meeting with the Oustees. Oustees should be exempt from paying any legal fee. All that should not deprived them form lodging complaints and appeals to primary and appeal courts.

CAPABILITIES OF AGENCIES

The ninth inquiry was asking for *analysis of the capabilities of agencies responsible for implementing resettlement activities.*

MPWUD

Under the law, the MPWUD is the main agency legally responsible and practically best capable o supervising and executing the resettlement activities. According to the Republican Decree No.12 of 1995 concerning the Organizational Regulations of the MPWUD (Or-MPWUD), one of MPWUD's goals or duties is the supervision and execution of all state's housing projects, including the preparation of technical studies and designs.

PDHUD. The department at the MPWUD most connected to the resettlement activities may be the Public Department of Housing and Urban Development (PDHUD). Article 17 of OR- MPWUD clearly states that it is responsible for (contributing to) the implementing of housing/sheltering programs for people that were affected by natural disasters. It is also responsible for planning the improvement, development, development, protection, and proving basic services to the random and unsuitable housing areas. Moreover, this article provides that PDHUD is responsible for competing the procedures concerning choosing beneficiaries of housing and urban development projects. This includes distributing lands and houses among beneficiaries, writing relevant contracts, calculating unit's costs and putting the financial systems of reimbursement.

PDTS. The second department at the MPWUD connected to the resettlement activities may be the Public Department of Technical (Engineering) Supervision (PDTS). Article 15 of OR-MPEUD provides that it is responsible for the supervising the execution f housing projects. It is also responsible of ensuring the quality of execution of works and the technical monitoring of contractors works during such executions.

GDL. The other department at the MPWUD, which can be used in the resettlement activities, is the General Department of Lands (GDL). GDL is mainly responsible for the administration of state lands under the supervision of the MPWUD. Though, article 20 of the OR-MPWUD states that it is also responsible, when there is a need, for proving lands for housing projects.

SREA. However, since this department could not provide any land for RAP, it might be useful to involve the SREA, which is also under the Minister of MPWUD. Reasons for this are mentioned in this report above in relation to the land transfer to Oustee's and in which they would be settled. MPWUD would probably need to go through the process of acquiring lands from the SREA based on the SREL and its ER.

In practice, MPWUD is the only governmental agency that has the needed manpower; equipment and materials needed for the construction activities. MPWUD has also acquired similar experience in implementing housing projects such as Sawad Sawan in northern Sana'a City (more than 500 houses) and the major project of resettling the people in Dhamar affected by the earthquake of 1982 (more than 2000 houses).

In addition to the MPWUD itself, there are two public corporations under the MPWUD who also acquire substantial manpower; equipment and materials needed for the construction activities. The first is the General Corporation of Constructions and Housing (GCCH) and the General Corporation of Roads and Bridges (GCRP). Beside materials and manpower, GCCH for example, has along experience in constructing big housing projects in Aden since before the unification o f1990. Nowadays it is working on housing projects in Albasateen area, Sahil Abyan, Aden and Sahil Abyan, Hadramout.

Therefore, MPWUD is the official authority that can have the overall responsibility for implementation of the project and the RAP. MPWUD can mange and supervise the overall execution of the project, including resettlement activities and land acquisition, in coordination with relevant agencies. To prepare for and implement the RAP, resettlement committee at local level may also be established by the MPWUD.

MPWUD is capable of working in close collaboration with the local authorities that would be involved in implementation of resettlement and land/house compensation. Taiz Branch of the MPWUD, the Governor of Taiz and Taiz Local Council. Their involvement can be in number of issues including planning, coordination of implementation, information exchange and interagency liaison, internet inspection and monitoring.

These entities could be in charge of organizing the various tasks implied by the resettlement and land compensation programs, including Oustees identification, socio-economic surveys provision of information of Oustees and administration of all compensation related matters.

Finally, there are other governmental agencies that would be involved in the resettlement activities in a way or another. The first is the Ministry of Planning which would be the direct official entity representing the government of Yemen with the WB. Second there is the Ministry of Finance which the projects funds would be channeled through. Last, there is the Central Organization of Control and Audit which would be in charge of the financial audit and administrative monitoring of the project activities.

CONCLUSION

Concerning securing a clean title over the land for Oustees, few points should be explained. Based on the current situation of the Initial Land (Kullaba) in Taiz3, initially proposes to be the Oustees Land, I believe that the RAP had one of two paths of take.

The firs path (option) is to disregard the Initial Land totally and consider new alternative. This path would require, rightfully for the first time, to apply the CC, the PEDL, the SREL, and its ER as described in this report above. For example, SREL-ER's articles No. 14,140-146 as well as number of SREL's articles regarding the acquiring process of public lands and compensation of establishments on the public lands upon termination of tenancy may apply.

In one hand, this option would provide the Oustees with better land security and ownership title (instead of tenancy rights), it would mean, on the other hand, that the whole process starts all over again. The MA is not going to take any part of the process. However, the SREA, which belongs to the Minister of Construction and Urban Planning, is to be directly involved in the compensation process for the Oustees. The Process that grants the Oustees full ownership title over new land alternative, perfectly State's owned.

In this option, the SREA could either provide for a plot of land big enough to meet the RAP standards from the states land under its procession or , in case of lack of land for any reason, acquire the needed plot of land through purchasing or exchange.

This path (option) is suggested by the legal advisor.

The second path (option) is to continue working n the Initial Land, the endowment land in Kullaba area leased from the MA. In this option, RAP would need to try to fix the legal issues affecting the perfect clean title of such land . In fact, Taiz Branch of the MPWUD was pursing sometimes before investigation on the issue of clean title of the Initial Land.

Taking into consideration the content of my explanation related to endowment lands above, this path may have some success if conducted properly and legal steps taken are closely.

3 This land is no longer uinder consideration as a resettlement site. Land tenancy issues for the land selected are discussed in Annexes 2 and 3 to Volume I of Resettlement Action Program.

monitored. I must stress here that extra cautions should be paid to the relevant current complications and outstanding matters. All Legal procedures and requirements should be followed precisely in accordance with the Yemeni laws and regulations particularly the EL and the ELR of the MA. While the MA would continue to take major role in this process, there would be no need to include the SREA.

Most importantly, however, and unlike the first option above, this path is not likely to provide the Oustees with complete ownership title over the Initial Land. Oustees would be acquire only tenancy rights over the Initial Land. Taiz Branch of the MPWUD would transfer its tenancy rights over the Initials Land, from the MA, by subleasing it to the Oustees. However, the Oustees can be granted the ownership perfect title over the houses that would be built on the endowment Initial Land, leased to the MPWUD then subleased to Oustees.

Although the security of house title does not differ much form option one above, tenancy rights over the Initial Land would, at least, be subject to : (1) the EL, (2) the regulations for leasing endowment lands, (3) the lease between the MA and MPWUD, and (4) the sublease between the MPWUD and the Oustees. The Process of pursuing this option would not need to start all over again. However, a lot would still needs to be done to ensure that Oustees tenancy rights over the Initial Land is protected. The lease and sublease agreements should be drafted to grant Oustees the maximum benefits and interests possible under the EL and the ELR. In the same time, the rights and interests of the MA and MPWUD should be limited to the minimum extent permitted by the EL and the ELR.

RELEVANT LAWS REGULATIONS

1. The Yemeni Constitution (of 1990 and amendments of 1994 and 2001).
2. Law No.1 of 1995 concerning Public eminent Domain (PEDL).
3. Republican Decree of the Law NO. 21 of 1995 concerning the State's Real Estates (SREL).
4. Republican Decree No.170 of 1996 concerning the Executive Regulations of the State's Real Estates Law (SREL)No.21 of 1995.
5. Law No. 20 of 1995 concerning the Urban Planning(UPL).
6. Republican Decree No.19 of 1992 concerning the Civil Code (CC).
7. Law 39 of 1991 concerning the Real Estate Registry (RERL).
8. Republican Decree No. 32 of 1993 concerning the Organizational Regulations of the Survey Authority.
9. Republican Decree of the Law No. 32 o f1992 concerning the Endowment (EL).
10. Republican Decree No. 99 of 1996 concerning the Regulations Organizing the Procedures of the Leasing, Usufruct, and Investment of the Endowment's Property and Real Estates (ELR) [also the previous one issued in 1995 by Ministerial Decree].
11. Republican Decree No. 144 of 1995 concerning the Organizational Regulations of the Ministry of Awqaf (Endowment).(OR-MA)
12. Republican Decree No. 12 of 1995 concerning the Organizational Regulations of MPWUD (OR- MPWUD)