

HISTORICAL PROCESSES AND THEIR EFFECT ON
GROWTH OF ILLEGAL SETTLEMENTS

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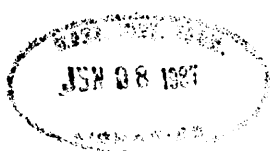
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ABSTRACT

Three main arguments are made in this study: The first is that law should be approached as a central arena of conflict where rights are not absolute, but relative, and where changes occur as the balance of power in society changes.

The second argument is that illegal urban development on the eastern boundaries of Amman cannot be seen as a phenomenon independent of the dramatic socio-economic changes that occurred in the past century.

The third argument, contrary to the common wisdom in the field of planning, is that residents of illegal settlements do not obtain security of tenure unless they consolidate. Thus, consolidation leads to security of tenure instead of the other way round.

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I. INTRODUCTION

When analysts address issues of legality of urban settlements, they tend to use a myopic and ahistorical approach in defining rights to land. The categories used are often reduced to "land ownership" and "land invasion". This study is an attempt to understand how the legal system of a country affects, and is affected by, the struggle among social groups for the control of land. The legal system has significance only as far as the state can enforce it and, thus, force the other groups in society to conform to the law of the state. However, when the state is unable to force reality to conform to the law, it is faced with few alternatives; it either has to modify the law to accommodate for the other groups' interests and perceptions of "justice" or accept a worse situation in which a gradual divorce emerges between the law and its enforcement, that is, a situation in which law lacks both legitimacy and authority, and in which contesting groups may enforce their own "laws". The state often ends up choosing the first alternative.

Thus, analysts should approach law as a central arena of conflict where rights are not absolute, but

relative. To make the above arguments, I have picked a particular case to analyze in Jordan. People's loyalty to the traditional tribe is slowly being replaced by an affiliation with the state-as-nation.

All land in Jordan today is registered under either private or public ownership. The system of private ownership is a recent phenomenon in the history of Jordan. The land system in the region before the creation of the state of Jordan was very different. It was a tribally based system in which land was musha (shared) among the members of the village or the tribe.

The process of breaking up the old musha system and introducing the freehold system took a long time (it began in the early 1930's and is not over yet). During this long period, dramatic changes in the social, political, and economic characteristics of the country occurred. Naturally, these changes affected the land settlement policy; after the state had granted two thirds of the land it controlled in the 1930's and 1940's to individual owners, it became much more reluctant in the 1970's to grant land.

Today Jordan is a state committed to a free enterprise economy with a strong public and private sector, and the old tribal structure is fading away as a social structure.

Jordan is a suitable case study because the legal

system is a recent phenomenon, has been superimposed on a tribal system that is gradually fading.

In this study, I selected a distinct geographical area within Jordan to analyze. This area is officially referred to as Utl ez-Zarqa and Ruseifa (the uncultivated land of Zarqa and Ruseifa). This region is located east of Amman, the capital, west of Zarqa, the second largest city in Jordan, and north of Ruseifa, a medium size town (see figure 1). The Yajouz Road is a 15m wide east-west carriageway that forms a major artery through the site, and connects the three cities together.

Primary and secondary sources of information were utilized in this study. In the first three sections, secondary resources were used to document the historical development of the social, economic, and political developments and their effects on land. In the fourth section, a mixture of primary and secondary sources were used. The fifth and sixth sections rely mainly on primary sources of information.

In January 1986, I interviewed national decision makers, local decision makers, local government employees, tribal leaders, tribal members, and new settlers. This was an attempt to view the spectrum of perspectives on the issues involved. Another source of primary data was field observations, which enabled me to

distinguish between much of the rhetoric and action, between policy and practice.

I found that the unstructured interview format was most suitable for my purposes since different persons were asked different questions depending on their role, position, and experience. This flexible structure also allowed for a comfortable atmosphere in which the interviewees were able to emphasize different aspects of the problem they were more familiar with and express their feelings towards issues. This helped in broadening my understanding of the different perceptions of each group.

This study will be divided into five sections: The first will describe the land situation before the British mandate and under Ottoman rule. It will be shown that as early as the nineteenth century, the region had two systems of land; one was the legal Ottoman land code, and the other the traditional musha land system. It will be shown how the Ottoman code was put to serve the interests of the Ottoman Empire and not the local communities. The second section will cover the dramatic transformations in the state and the society between 1921 and 1973, that is, the period of British mandate, the creation of the state, and the post 1948 war period and the Palestinian influx. I will show how the British dismantled the traditional musha system

and introduced the Land Settlement Law, which transfers communal ownership into individual freehold. The third section will cover the period 1973 until 1983. In this section, the oil dependent economy of the country will be explored as it affected the different groups involved. The fourth section will cover the post-1983 period. Finally, the fifth section will describe the state's legalization process of the Yajouz Road area, and the implications for planning.

II. THE OTTOMAN PERIOD

All land in Jordan today is registered under either private or public ownership. However the system of private ownership known today is a recent phenomenon in the history of Jordan. The actual land system in the region before the creation of the state of Jordan was very different. It was a tribally based system in which land was musha (shared) among the members of the village or the tribe. Doreen Warriner best defines the musha system as " a stage of transition between the completely communal property system...and the completely divided property system" (Warriner, cited in Hamarneh, 1985: 77).

Two modes of production coexisted in the region. One was a strong pastoral-nomadic mode in which Bedouins practiced animal husbandry and primitive agriculture in musha holdings (Hamarneh, 1985: 45). The other was an agricultural mode in which settled communities depended on agriculture instead of animal husbandry as the basic source of subsistence (Hamarneh, 1985: 71). The nomadic Bedouin tribes continually raided the settled communities and extracted tribute from them, which "helped retard the internal evolution of these

communities" (Hamarneh, 1985: 4).

Most of the Ottomans' attempts to control the area had failed because of their inability to control the mobile and well-equipped Bedouin tribes. The camel was the only animal able to cross hundreds of miles in the desert and go without water for several days. The more camels a tribe owned, the more powerful it was since this facilitated its annual migration in search of pastures and water. Access to pastures, oases, and wells was a right shared by the whole tribe. However, herds within the tribe belonged to individual households (Hamarneh, 1985: 50). Camels also gave the tribe flexibility to control and extract tribute from more distant agricultural settlements. "Once tribute had been extracted, the tribe would retreat deep into the desert where they could be neither chased nor subjugated." (Hamarneh, 1985: 49).

The struggle for subsistence was apparent not only in raids by the Bedouins on settled agricultural communities but also in raids between different Bedouin tribes. When a tribe lost in a confrontation with another tribe, it lost its access to pastures and water sources it had previously controlled. This confined the tribe to its locality (dirah) and thus forced it to give up its exclusive camel husbandry and depend more on other animals, such as goats and sheep. This transition

in animal husbandry was to lead to the settlement of the weaker Bedouin tribes and the gradual movement towards cultivation (Hamarneh, 1985: 51). To have access to land, the poor tribe had to pay tribute to the dominant tribe. The Bani Hassan tribe was one of the poor tribes that had settled through this process (Hamarneh, 1985).

As for the strong tribes, such as the Bani Saker and the Adwan, the sedentarization process took a different route. By the end of the nineteenth century, these tribes controlled vast areas of agricultural land. This land was cultivated by non-tribal members who took a share of the crop. As the wealth and herds of these tribes multiplied and diversified, their mobility was reduced. Thus some clans within the tribe started settling, while others continued their traditional nomadic life. Hence, the development of the forces of production of the rich tribes was towards a semi-feudal system and not a communal musha system such as that of the poor tribes (Horani, 1978).

For the settled poor tribes, musha land was distributed more or less equally among the various clans. Then each clan divided its share into parts and allocated them among its households. This system was egalitarian in its division of musha land within a clan. Nonetheless, not all shares of households across clans were the same since some clans had more households than

others (Hamarneh, 1985: 77).

Musha land was reallocated within the clan every two to nine years. This was done to adjust for deaths and newly formed households, and to insure the rotation of low productivity and high productivity plots to all households. Thus, the individual farmer was not allowed to plough the same land he had ploughed in the previous period (Oddvar, 1976: 252).

The village musha system was very similar. Land was divided among villagers into shares, and each villager could cultivate an area equivalent to his share. The location of this share changed every time land was redistributed. The length of time was agreed upon by the village community (Oddvar, 1976: 252).

Despite the impressive equality considerations in this system, it had its own defects. Farmers lacked the incentive to make long-term improvements on the land such as terracing the land to protect it from soil erosion, manuring the land, or growing forest and fruit trees (Oddvar, 251). Walpole, who became the director of the Department of Land and Surveys in 1946, described agriculture in musha land as "more in the nature of a mining operation than the practice of good husbandry; the cultivator during his occupation took as much out of the soil as he could and put nothing back" (Walpole, 1948).

Because of these defects, many tribes and villages selected trusted groups from their leaders to allocate permanent partitions of the land to the households, with each household getting a share in both the superior and the inferior quality land.

Land to the east of the Jordan River remained under Ottoman rule for four centuries, until the First World War, when the British colonized the region. During the first three centuries of their rule, the Ottomans adopted a traditional Islamic system of land tenure. According to this system, land was classified into two categories:

1) Ushr lands: Regions that became Moslem by choice and without resisting the Moslem state were considered privately owned. Owners of such lands enjoyed the full ownership of land but had to pay the Ushr tax, which is one tenth of the yield of the land.

2) Kharaj lands: Regions that became Moslem after resisting the Moslem state expansion were considered the domain of the state. These lands were given to individuals to cultivate. In return, the individuals had to pay the Kharaj, which is a form of taxation ranging between 25 and 50 percent of the yield of the lands.

However, this system was never fully implemented by the Ottomans since they lacked total control over the

region.

During the nineteenth century, the Ottoman Empire embarked on a program of reform. As part of this movement for reform, the Ottoman Land Code was introduced in 1858. The Land Code classified lands into five categories (Ziadeh, 1979: 8):

1) Mulk lands: Private property held in full ownership. Mulk land was limited to urban areas. Land ownership comprises two rights: the ragaba, or right of absolute ownership, and the tasarruf or the right to the usufruct of land. Both of these rights belonged to the individual in this category.

2) Miri lands: Property owned by the state. Most of the agricultural land was classified as Miri land. The ragaba or absolute ownership belonged to the state, while the usufruct or tasarruf to the individual. This land was either held as part of the royal-domain or was leased to individuals to exploit it and pay dues or taxes to the state through various conditions of tenure.

3) Waqf lands: "Land dedicated to God" or land held in perpetuity with the income devoted to the upkeep of a charity or the family of the constituter of the Waqf. However, only Mulk land and not Miri land could be transferred into Waqf land.

4) Mawat lands: "Dead land" or unoccupied land which has not been left for public use. This part includes

land lying outside the confines of villages and cultivated areas.

5) Matrukah lands: " Abandoned" land or Mulk, Miri, or Mawat land that is reserved for public purposes.

The main purposes of the Land Code were

not to help the cultivator, but to establish a claim to revenue by the government. In order to tax every piece of land, it was necessary to establish its ownership. The state's claim that it owned all the land really only meant that the state did not recognize ownership unless the title were registered and the land therefore taxable... In general the practice was to grant title directly to the cultivator, and to prevent any intermediary between the government and the small individual owner. Hence, [the Ottoman Land Code was] an attempt to centralize the power of the administration against the feudal or tribal forms in existence. The object was to establish a form of individual ownership as against the tribal sheiks" (Warriner, 1948: 17).

Further, the Ottoman Land Code abolished (legally at least) the musha system or any type of collective ownership. Article 8 of the Land Code states that:

The whole land of a village or of a town cannot be granted in its entirety to all of the inhabitants, nor to one or two persons chosen from amongst them. Separate pieces are granted to each inhabitant and a title deed is given to each showing his right of possession (Ottoman Land Code, 1858).

The approach to introduce these changes was to diminish the differences between mulk lands and miri lands. Upon payment of a prescribed fee, the holder of miri land could sell and inherit miri land. However, the state preserved its right to deprive the miri holder

of his possession if the land was left uncultivated for a period of three years (Ziadeh, 1979: 9).

In order for such reforms to take place, it was necessary to establish the ownership of every piece of land through the registration of the tapu (title deeds). However, this step was not carried out in most of the region east of the Jordan River because of the absence of state authority and the hegemony of the Bedouin tribes. Even in regions where it was carried out, the titles established did not correspond at all to reality. The villagers falsified the titles in fear that the registration was a preliminary step in being called up for military service, or for taxation purposes. They registered the property either in the name of the head of the tribe, or in the name of a member of the family who would not be liable for military service (Warriner, 1948: 18). These title deeds were ignored by the people and they continued to farm according to the musha system.

[C]omplete confusion resulted [from the above situation], since there arose one situation established by law under which certain owners held titles to divided land, and a situation existing in fact, in which the persons cultivating the land had claims recognized by custom or presumptive right, which were not enforceable by law" (Warriner, 1948: 18).

The power of the Ottomans and their ability to enforce the law increased with time as the gradual

sedentarization process made the Bedouin tribes more vulnerable to the Ottoman power. The Ottomans established a garrison in the area in the second half of the 19th century. Through this garrison they were able to subjugate and collect taxes from the wealthy tribes, such as the Adwan, who were already dependent on land cultivation and diversified animal husbandry. The Adwan were no longer able to charge other tribes and villages tribute, and were further forced to pay animal tax (Hamarneh, 1985: 62). Bani Hassan, one of the poorer tribes (and one of the main three groups in our case study), suffered heavily from an Ottoman expedition in 1863; "[Bani Hassan] were for the most part wedged between powerful tribes and villagers willing to defend themselves" (Hamarneh, 1986: 65). The Ottoman troops killed a large number of the tribe and took almost all its herds. Much of the tribe's most fertile territory in the Jordan valley was appropriated. The tribe was left with land in the less fertile region to the north-east of Jordan. The boundaries of this area were the town of Jerash to the west, Mafraq to the east, and Zarqa and the Hijjaz railroad to the south (see figure 1.). Not all this land was cultivatable; areas to the west and northwest were cultivated every season while grazing and only scant cultivation occurred in the southern and eastern parts close to the desert. The

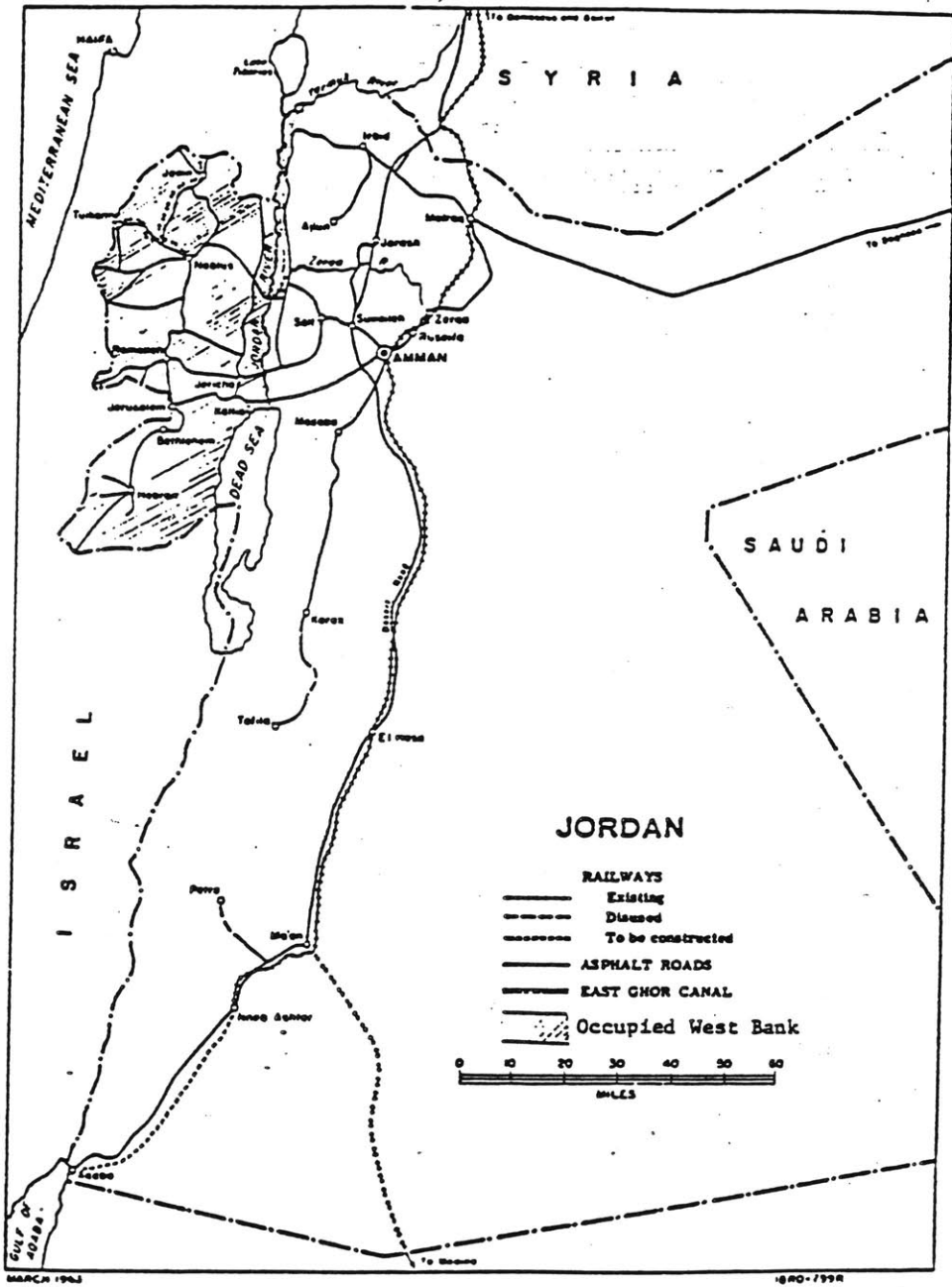


Fig. 1

Khalayleh and Zawahreh clans within the tribe were mostly herders rather than farmers. Thus, their share consisted of less fertile strips of land at the southern edge of the tribal holding (what is now called Jureiba and Utl ez-Zarqa and Ruseifa).

To avoid agricultural yield taxes on the least fertile holdings which of Bani Hassan, the clans controlling these areas denied their use of the land for cultivation or grazing. Thus, these areas were categorized by the Ottomans as Mahlul land, that is, land taken back by the state if for good reason it remained uncultivated by its occupants. However, the Bani Hassans continued to practice their scant cultivation and grazing in these areas. "Still twenty years after the expedition, the Bani Hassan seemed to have recovered slightly. They began cultivating corn patches and building mud huts; their herds of goats and sheep were of fine quality" (cited in Hamarneh, 1985: 66).

By 1921, the endogenous social formations had neither developed dominant social groups on the national level nor generated a surplus to maintain their political hegemony (Hamarneh, 1985: 5). Thus one could speak of neither a "Jordanian" economy nor a "Jordanian" society.

In conclusion, it is neither the "Ottoman Land Code" nor the musha communal land system that governed and regulated the relations between the tribes, the settled communities, and the Ottoman state. It was the outcome of the struggle between the two legal systems represented by the groups concerned and their perceptions of "right" and "justice". The state of "confusion" described by Warriner above reflects the nature of "law" as described in this study: an arena where social groups struggle to promote their interests and claims.

III. CREATING THE STATE AND TRANSFORMING THE SOCIETY

1921-1946: The British Mandate

After the first world war, the Ottoman Empire lost its control over the Middle East to the British and the French. East of the Jordan River became, for the first time, a separate political entity named the Emirate of Trans-Jordan. Great Britain's colonial policies were not economically motivated but strategic. In fact, there was a net positive transfer of value from Britain to Trans-Jordan. Further, the budget of the government, which was largely financed by the British, far exceeded the productivity of the society-- a phenomenon that continues to characterize Jordan today (Ameri, 1981: 73). This was not surprising. The area was poor in resources, and the British were interested in it because of its strategic importance as a central location with respect to Palestine, Syria, Iraq, and the Arab Peninsula (Ameri, 1981). British aid was provided to build the administrative structure and, most importantly, to build a security force that was able maintain internal stability.

One of the main concerns of the British was breaking up the traditional musha land system and

establishing the system of modern private ownership of land¹. On the 24th of July, 1923 Jordan was formally separated from Turkey. Article 139 of the treaty required Turkey to deliver to the British all the records it possessed concerning land and property in Trans-Jordan (Department of Lands and Surveys Annual Report 1974: 13).

As these exogenous factors speeded the process of settlement of Bedouins, land became more important for local communities. Several village boundary disputes, ownership disputes, and inheritance problems encouraged the British to enact a special law in 1930 to form a commission to investigate boundary disputes between villages and to formalize village demarcation that had already been established (Oddvar, 1976: 253).

The British were keen to get agricultural land registered as private holdings so that a systematic agricultural taxing system could be introduced to generate local revenue for public expenditure and reduce the subsidies provided by the British to run the government. The Lands and Survey Department embarked on a plan to survey and establish all agricultural villages boundaries. With this accomplishment, Jordan "witnessed

¹ In 1935 the High Commissioner came up with a series of development schemes that he thought would stimulate growth in the country. One of these schemes was to expand the Land Department to expedite breaking up of the musha system.

the birth of the (village entity) as a strong social unit" (Oddvar, 1976: 253).

The second step was to settle individual rights within the "village entity" and give farmers individual titles to land (Oddvar, 253). For this purpose, the Waters and Lands Settlement Law was enacted in 1933. According to this law, village lands were divided into sectors and quarters. In each quarter, the names of landholders and their exact shares were established. Individual plots were demarcated and plotted, and farmers were given individual title deeds to their plots. Although this land was still classified as miri (state's land), the holder could enjoy all the rights enjoyed by a private owner (except for inheritance, since miri land is divided equally between male and female heirs, while mulk land is divided unequally, with the male getting twice the female's share).

As for tribal land, if land was cultivated, it was treated the same way as village land. Uncultivated tribal land, like any other uncultivated land at the time, was of no interest to the state.

After the Lands and Survey Department completed the demarcation and registration of agricultural land, the next step was to embark on the demarcation and registration of urban areas and rural settlements. The existing layout of towns and villages was accepted as

is. Then the title deeds were settled through a certain period. The owner of a property in the area had to claim it officially, and others were given one month to object to his right to ownership.

During the 1930's, the policy of the government was to return the mahlul lands for a nominal price to their former owners, or to peasants who would cultivate them to increase government revenue through land taxation. This led to a situation in which "corruption was widespread and considerable mahlul land had been taken away from its rightful owners by an unjust official" (cited in Hamarneh, 1986: 172).

Thus, the Land Settlement Law resolved many problems that existed in the musha system. Its positive impact was in minimizing boundary disputes, stimulating long term investment in agricultural land, and creating a base for tax structure in the country. Its negative impact was in facilitating the sale of land to large owners, and the fragmentation of agricultural land through inheritance (since there was no redistribution mechanism in the new law), and finally the lack of security of sharecroppers and tenants since the new law completely neglected their rights².

² See Doreen Warriner, Land and Poverty in the Middle East, 1948 for a more detailed analysis of the effects of the new law on land fragmentation and the exploitation of sharecroppers and land tenants.

1946-1973: Creating the State

In 1946, Trans-Jordan was granted formal independence. By that time the structural changes and transformations of the country had started taking place. These transformations were coupled with certain economic activities introduced by the British such as transportation systems and markets for imported commodities. Thus, the transformation towards a nation-state with a capitalist economy was advancing steadily.

After the early 1950's, the government turned its attention towards economic and social development. Since the private sector was weak and external aid came through the central government, the government played the main role in these plans. These plans were disrupted and altered significantly due to the 1948 and 1967 Arab-Israeli wars. The economic implications were the loss of most of the fertile and developed areas of the region. The social impact was the forced migration of thousands of Palestinians from the West to the East Bank. In 1947 Amman's population totaled about 60,000. After the occupation of Palestine in 1948 the population of Amman increased to 100,000. Most of the refugees were settled in refugee tent camps in the eastern parts of Amman. These tent camps were consolidated gradually into settlements of tin and corrugated sheet shacks, and

ultimately into concrete dwellings. The war of 1967 brought an additional 150,000 Palestinian refugees to settle in Amman. Those also settled mainly in the eastern parts in tents and shacks, and under overcrowded conditions.

By the late sixties, the Bani Hassan tribe was completely settled. Most of its members were still working in cultivation and animal husbandry. However, their less fertile land in Utl ez-Zarqa and Ruseifa was still not legally theirs. It was categorized as "unsettled mahlul land".

In an interview with one of their tribal leaders, he explained that the tribe assumed that the transfer of land would be a routine procedure like that in other regions in the country. In the early 1960's, the settlement of titles in the area was starting; the land was surveyed and demarcated, and lists of holders of land were prepared by the Land and Survey Department. But the process was suspended when areas south of the Bani Hassan lands were found to be rich with phosphate minerals. The government decided to suspend the title settlement process, and leased the land in the area to the Phosphate Company. The Bani Hassans were promised that the land would be registered in their names once the extraction of phosphate was over within an estimated ten year period. Officials from the government,

however, maintain that the areas north of Ruseifa never belonged to the Bani Hassan tribe.

IV. 1973 - 1983: AN OIL ECONOMY WITH NO OIL

As a Jordanian economic analyst sarcastically, but rightfully, pointed out, Jordan can claim the world's only non-oil exporting oil economy (The New York Times, April 2, 1983). The country enjoyed a remarkable economic boom between 1973 and 1983 as a result of the grants from oil producing Arab governments and remittances from expatriates working in the Arabian Gulf states. During that period, grants from the Arab countries rose more than 16 fold, accounting for about one third of GDP (Gross Domestic Product) and covering about one half of the Jordanian trade deficit. Remittances of Jordanians working in the Gulf states rose from \$15 million in 1970 to \$900 million in 1981, accounting for about one quarter of the GDP, and covering 40% of the trade deficit (Inception report, 1985). Real annual growth rates of the gross national product (GNP) increased at an average of 10% a year, gold and foreign exchange reserves increased 6 fold, and capital formation increased 11 fold (Sattloff,8).

As most of the Arab and International aid was channeled through the public sector, the growth in the bureaucracy was enormous. By 1975 total government

expenditure accounted for 75% of the country's GDP. In the same year, the government employed 40% of the labor force in the country, and accounted for over 33% of the economic consumption expenditure and over 50% of the capital formation (cited in Ameri, 1981: 117).

The repercussions of the economic boom for the building industry and land prices were phenomenal. Urban land prices increased five fold between 1970 and 1980. Government revenues from land registration increased from JD 551,000 in 1971 to JD 24,479,000 in 1981. During the same period, the salary of an average civil servant increased by a mere 50%.

Needless to say, this prosperous period was not enjoyed equally by the different groups of the society. However, a large segment of the urban working class was able to reap some of the benefits of growth during the period. Many were able to obtain work in the Gulf Countries as professionals or skilled and semi-skilled workers, and others who stayed behind were able to obtain better wages as the demand for labor by the building industry increased and the supply of skilled labor decreased. Remittances sent back by migrant workers to their families were mostly invested in land and real estate due to the lack of secure alternative investments. Thus, land was not only used as a

production input and a consumption good (Harvey, 1982:ch.11) but also as a store of value (Gilbert, 1985: 132).

This period also brought more segregation with rapid urban growth. Areas west of Amman municipality were inaccessible to lower and middle income groups. About 90% of the areas annexed by the municipality were zoned as upper income residential plots that were beyond the means of middle or lower income groups³. Access to housing or land for lower income groups became more difficult than ever before. A study in 1979 found that about 40% of the population of Amman lived at densities of 4- 5 persons per room and that it was very common to find 10 people living in one room. Such cases were concentrated in the eastern parts of Amman, mainly in Palestinian refugee camps. Thus, middle and lower income groups were excluded from the formal housing market despite the fact that their level of income

³ According to the National Planning and building code of 1979, housing areas "A" and "B" (upper income areas) should have a minimum plot size of 1000 and 750 sq.m. respectively, while housing areas "C" and "D" (middle and low income) should have a minimum plot size of 500 and 300 sq.m. respectively. Given the single family housing pattern dominant in Jordan, this minimum size arrangement makes the formally subdivided areas inaccessible to lower income groups. In a study done by the World Bank in 1985, it was found that "unsubsidized housing at conventional standards,... is affordable only by families in the upper third of the income distribution, and then only by families which can make down payments of twice or more their annual incomes" (World Bank, p 73).

seemed to have improved. As Gilbert rightfully predicted: "Rapid land price rises will... affect the pattern of urban location, most typically by accentuating social segregation" (Gilbert and Healey, 1985: 11). In this case, it is not only through highest bidding that the land gets allocated to upper income uses, but through zoning regulations, building codes, and other land use restrictions :

Urban land pricing and tenure arrangements, existing practice in terms of plot size, building forms and service systems, established legal financing and institutional arrangements all combined to deny [the poor] people access to reasonable house at prices they can afford (Fox and Jouzy, 1979: i).

Thus, an economic boom is not likely to be accommodated by less segregation in space. In fact, the evidence from both Jordan and Venezuela suggests that in fast growing economies with limited productive investment opportunity spatial segregation is likely to increase. In such situations, this process of speculation takes large areas of land out of the market, thus limiting the supply and increasing the price. Overcrowding, sharing, and all forms of informal settlement cannot be seen as phenomena separate from the formal land market. Both "processes are different manifestations of urban development in a fast-growing oil based economy" (Gilbert, 1985: 132).

During the 1970's, the state embarked on capital

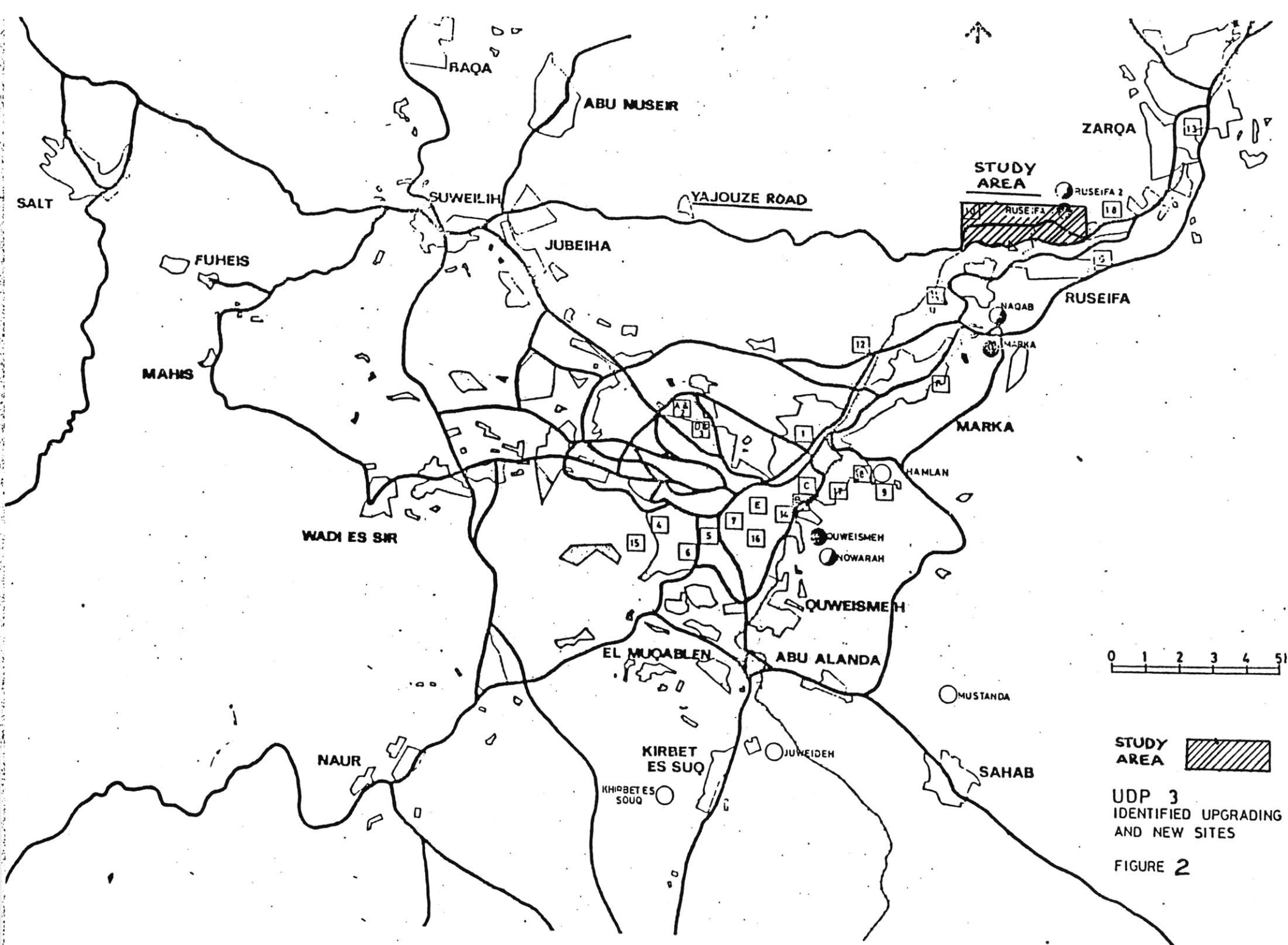
intensive development projects. The lack of public land was a major source of hindrance to the implementation of these projects. A study carried out in the late 1970's identified an "enormous" deficit of public land. The main reasons for the deficit were that:

Public agencies do not have the means to acquire land for needed public purposes. Part of this inability is... the high cost of land... But part of it arises from the rigidity of the Expropriation Law... The combination ---- lack of money and the rigidity of the law ---- have made it almost impossible to plan ahead regarding land purchase for needed public uses. (Balqa-Amman Region Planning Group, 1979: III-5-10)

As a result of this deficit, the government enacted a law in 1976 that ended a long traditional practice of granting unused miri land (state land) to tribal members for cultivation or residence.

Such a group is the Bani Hassan tribe. Parts of their holdings were never properly registered (see previous chapter). According to the new law, they were invaders of public land in Utl ez-Zarqa and Ruseifa. However, the Bani Hassan tribal owners were anxious to cash in on the rising value of land in their area, as the sharp rise in land prices in the western parts of Amman forced many middle and lower income groups to seek land outside the eastern boundaries of the city. Hence, a thriving unregulated land market emerged along Yajouz Road east of Amman (see figure 2).

In an interview with one of the people who bought



land in the area and built on it in 1980, he explained why he moved from Amman to this location:

With the continuously growing population in the Refugee camp, and the restrictions on horizontal and vertical expansion, the overcrowding in the camp became unbearable. When I decided to get married, I knew I had to leave. The cheapest place I could find for rent was a room in an overcrowded area for 70 JD's a month,..... my salary was only 100 JD's then. I was told by a relative about the Yajouz Road lands. I visited the area, talked to some tribal owners. I realized it was an excellent opportunity, especially since the minimum plot size restriction and all other setback and building regulations did not apply. I bought a 200 sq.m. plot for JDs 300 [\$900].

Thus, the informal urban development on the eastern boundaries of Amman cannot be seen as a separate phenomenon independent from the dramatic socio-economic changes that occurred in the seventies. First, the flow of financial capital through remittances to lower and middle income groups trapped in refugee camps and other overcrowded areas, provided them with the incentive to actively seek better living conditions through relocating. Second, as these groups sought better and less dense areas, land values were increasing dramatically, and most of the annexed lands were zoned as upper income residential, thus keeping these areas out of the reach of the middle and lower income groups. Therefore, the only access to housing for these groups other than renting and sharing, was to target land that is least valuable, outside the municipalities limits,

and under title dispute.

The only document used in such a transaction is referred to as hujja (proof). This hujja, although considered illegal by the Land and Survey Department, has legal standing in the court system if two witnesses undersign it. In this hujja, the tribal seller guarantees to protect the buyer against the encroachment or invasion of other tribal members or neighbors. However, it is explicitly mentioned in the hujja that the tribal owner cannot protect the buyer from unpredictable state action (see copy of hujja and translation in Appendix B).

Abu Hisham, a member of the Bani Hassans benefited significantly from this informal market. He inherited three hectares in the area from his father. He subdivided these and sold two and a half hectares at different points in time in the last ten years. He sold a whole hectare to an extended family of settlers who established their "own neighborhood," and the rest he sold to individuals with areas ranging from 150 sq. m. to 1000 sq. m.. Part of the land he kept for himself was on the main road. He built two shops, rented them out, and built a house on a 1000 sq. m. plot. His house is located on the edge of the plot to allow for further subdivision of the land.

Thus, the Bani Hassan members participate in

illegal subdivision and sale because it comprises one of the main sources of income to many tribal members, and increases the value of legal holdings adjacent to the disputed area (Jureiba).

V. THE POST 1983 PERIOD: THE STRUGGLE OVER LAND

With the fall of oil prices in the early eighties, economic conditions changed dramatically. Grants from the Arab countries were slashed. The contracts of thousands of Jordanian workers in the Gulf were terminated, leaving Jordan with an army of professionals and skilled workers who could not be absorbed by the limited Jordanian economy. The effect on the speculative land market was dramatic. A large number of completed dwellings in the upper income areas could not be sold. The confidence in land as a secure source of investment deteriorated. Thus, land supply exceeded land demand and prices plunged down dramatically.

The effect land speculation had on the economy in the long term was negative: First, agricultural production went down as a result of the fragmentation and urbanization of large tracts of agricultural land. Second, industry and other productive sectors were deprived of huge sums of capital as it all poured into land and real estate speculation (an estimate of JD 300 million had circulated in land speculation in 1982). Third, the availability of capital fueled consumerism which increased the total value of imported goods in 1983 to ten fold its 1973 level. Further, the

government was indirectly subsidizing rich developers and land owners through the provision of infrastructure free of charge:

Here developers/land owners get parcelation and building loan arrangements, ask prices at the top end of the market, and then proceed in the confirmed knowledge that the public sector will come along with the roads, water, power and sewerage regardless of the cost, the low density of the development, the number of beneficiaries and the distortion of priorities in geographic and socioeconomic terms (Jordan Urban Project, 1978, 21).

The state's formulation of the conflict into a case of land invasion has not changed the Bani Hassans' perception of their "right" to land and their sense of "justice". In describing similar situations, Doeble points out that "while tenure is generally considered a legal category, it is, just as fundamentally, a matter of the state of mind of the persons concerned." (Doebele, 1978:110). In this study, I argue that the legal system has significance only as far as the state can enforce it and, thus, force the different groups to conform to the law of the state. However, when the state is unable to force reality to conform to the law, it is faced with few alternatives; it either has to modify the law to accommodate for the other groups' interests and perceptions of "justice," or accept a worse situation in which a gradual divorce between the law and its enforcement emerge, that is, a situation in

which other contesting groups enforce their own "laws."

Building the Land:

In 1983, a special force was created to "protect state owned land and maintain law and order on those lands": the Public Land Protection Patrol. If a settler is caught building the skeleton of the house, without yet installing the roof, the patrol would demolish the whole structure, fine the settler, and possibly put him in jail. However, If the roof is installed, the structure would be left intact, but the settler would be fined and possibly jailed.

A grocer along the Yajouz Road commented on the strategies used by the settlers for building by saying "necessity is the mother of invention." I understood his message later as I was driving in the area on a Thursday evening. The number of construction sites in the area was striking. Each site was a hive of construction workers carrying materials, digging the earth, setting reinforcement, hammering the scaffolding, pouring concrete. Since Friday is the official day off in Jordan -- hence the day off for the patrol -- Thursday evenings are usually the busiest days for construction workers in the area.

One of the construction sites was a fifty square

meter room with ten people working on it. The owner of the site, Abu Khalaf, a sixty-five year old man, was working diligently with his five sons and four other workers. He has a family of thirteen and rents two rooms in Ruseifa for sixty Jordanian Dinars (JD 1 = \$ 3). Two of his sons migrated to the Arabian gulf states in 1977 to work. They sent their father JD. 1000 in 1982 and asked him to buy a piece of land for building a bigger house that could accommodate all the family when the brothers get back. Such an amount was insufficient for any piece of land in the formal market, and Abu Khalaf had to seek the informal market and bought a 250 sq.m. plot from the disputed holdings of Bani Hassan for JD 3 per meter. To build this house, Abu Khalaf had to sell his small transport van for JD 1200 and borrow JD 600 from his relatives. Abu Khalaf did not believe he was invading land, he was merely buying land that he could afford. I asked what would happen when the patrol found about his house on Saturday. He replied: "At best, I will be arrested from one week to a month, and fined 30 to 100 JD's. At worst, they will demolish the house in addition to the arrest and the fine."

In another construction location, I talked to an informal contractor. He said the owner of the site was a school teacher. He was not around because he had evening classes, but he would take part in the

construction all Friday. Although the owner was not around, the construction work was advancing as quickly as on other sites. The contractor explained that he had just as much at stake to finish over the weekend as the owner of the site; otherwise he would run the risk of being put in jail. Should the patrol catch a contractor building for someone with no legal title to land, he would be imprisoned and forced to pay a bail of 2000 JDs before he is released. He would also have to write a pledge (commitment) not to accept any construction jobs on state's land. The contractor I talked to had already been to jail once, but a small contractor in a declining construction market had no other alternatives for work.

In a different location close to the main street, a concrete structure was rising from behind a two meter high earth mound. I later was told that if the road overlooks the building site, the settlers may bring in several truck loads of earth to form a mound to obstruct vision from the road. This gives them the opportunity to move in all the building materials and prepare the foundations without being seen by the patrol.

VI. INTERVENTION THROUGH PLANNING: WHAT ARE THE IMPLICATIONS?

In this section, I will analyze the possible intervention policies for future planning. But first, the existing physical characteristics of the area will be summarized.

Physical Characteristics:

The study area is located along both sides of Yajouz Road as it passes north of Ruseifa (see figure 3). Almost all dwellings are made with reinforced concrete structure and concrete blocks. Most of the dwellings are inhabited, but some are uninhabited one room structures. These are built just to establish the holder's right to the plot. As the road approaches Zarqa shops start appearing on both sides of the road; there are carpenters, car mechanics, blacksmiths, small grocers, and bakers. The settlements get more closely spaced. Unpaved roads and dirt tracks branch off on both sides from the Yajouz Road to serve dwellings. However, the roads branching on the northern side are straight and parallel, while those on the southern side are crooked and narrow. This is explained by the accumulation of experience of the settlers with time,

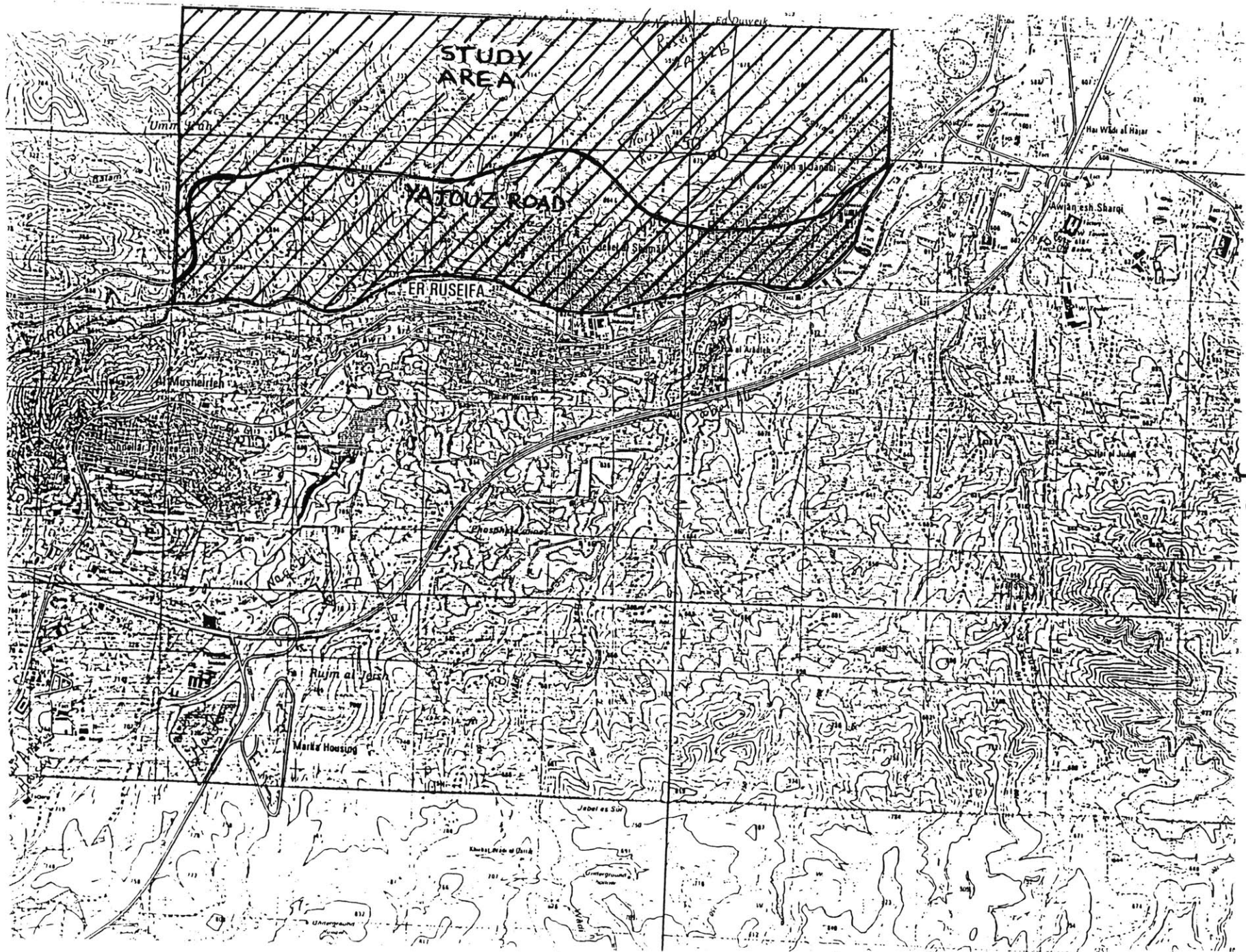


Fig. 3

for the settlements south of Yajouz Road are somewhat older (they date from the early seventies) than those north of it (from the late seventies)⁴. Building standards seem to vary widely. In general, building standards seem more homogeneous and simple south of the road than north of the road, where some houses have elaborate stone facades, while others are one-room, unfinished concrete shelters.

As for services, a survey in the area in 1982 gave the following percentages of households for each type of service (cited in the Urban Development Department draft for the third phase of proposed upgrading):

- o Metered Electricity 0.0%
- o Private Generators 26.3%
- o Power from neighbors 7.1%
- o Metered water connections 26.9%
- o Sewerage connection 0.0%

Two years ago, however, the settlers submitted a pledge to the Prime Minister demanding paved roads, schools, clinics, public transportation, and electricity. Some of these demands were met (see appendix C). Most of the dwellings south of the road are connected to metered electricity, where they have to

⁴ See D. Collier, Squatters and Oligarchs, 1976: 13 for a similar description of how the early settlers become more concerned about the layout of the roads and self-imposed setbacks, etc.

pay a 35 JD yearly fee plus user charge (one Jordanian dinar is equivalent to three dollars). However, areas north of the road have to pay not only the yearly 35 JD plus user charge to get formally connected to the main system, but also a 75 JD price of an electricity steel pole. Thus, few people north of the road are connected to metered electricity. The rest are connected to private generators. All households I interviewed said they were connected to metered water.

Explaining the Phenomenon

One of the main arguments here is that the informal urban development on the eastern boundaries of Amman cannot be seen as a phenomenon independent of the dramatic socio-economic changes that occurred in the seventies: Financial capital flowing into the country was mostly invested in land. This induced land speculation and price inflation. Through remittances, lower and middle income groups were able to share some of the fruits of the economic boom. As a consequence, they started seeking better living conditions. These groups found limited alternatives to enhance their living conditions as most of the annexed lands were zoned as upper income residential areas, thus keeping these areas out of the reach of the middle and lower income groups.

The State's Policy for Legalizing Tenure:

Today, all the area south of Yajouz Road has been annexed by the Ruseifa municipality (see figure 4). The area north of the road, however, is still outside the municipal boundaries. Knowing about other Jordanian municipalities' love affair with land annexation, I was wondering why the municipality of Ruseifa was reluctant to annex the area north of Ruseifa until it was ordered to do so by the central government in 1983, and when it did, it only reached up to Yajouz road and not north of it.

The actual legalization of tenure south of the road was being carried by the municipality of Ruseifa in collaboration with the Land and Survey department.

The Mayor of Ruseifa, in an interview said that the annexed areas were "plagued" with endless problems in relation to the legalization of tenure. He could not see ~~how~~ the municipality by itself with its limited resources could take charge of legalizing a larger area than the existing one south of the road. He said for a comprehensive solution, "more coordination among the different government bodies to mitigate the negative aspects of the informal settlements, to stop their future expansion, and to legalize the tenure of existing settlements as soon as possible, will be needed." For

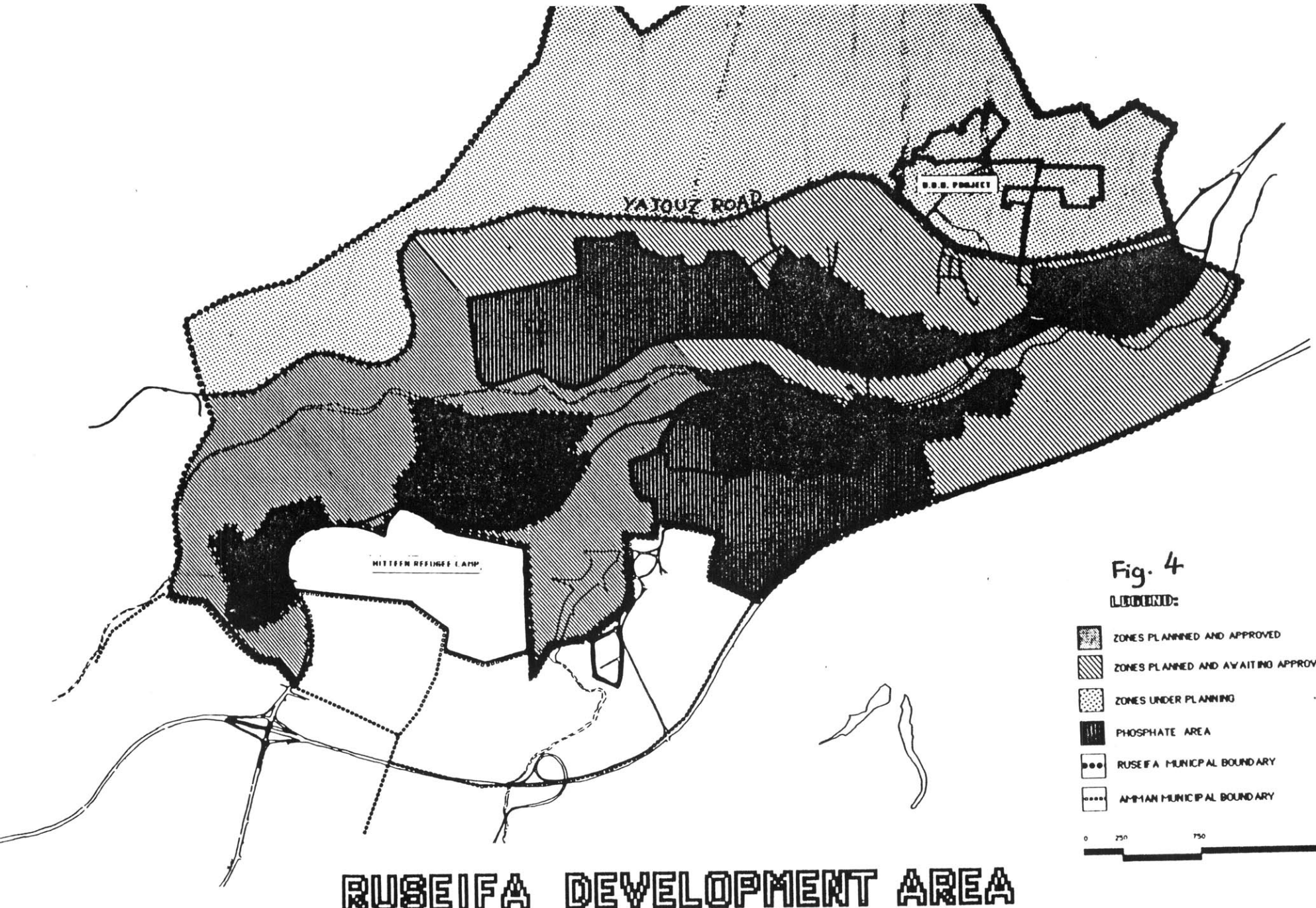


Fig. 4

LEGEND:

-  ZONES PLANNED AND APPROVED
-  ZONES PLANNED AND AWAITING APPROVAL
-  ZONES UNDER PLANNING
-  PHOSPHATE AREA
-  RUSEIFA MUNICIPAL BOUNDARY
-  AM-RIAN MUNICIPAL BOUNDARY



more details, I was referred to the municipality's engineer, who was responsible for the physical aspects of the legalization.

My first question to the engineer was why the annexation came too late and was so limited. He explained that annexing an already built-up area that requires services, and infrastructure, and has tenure problems is the last thing any municipality would want to get involved in. It was later obvious, however, that Ruseifa has no other alternative but to expand in that direction since it is bounded by Amman city boundaries from the west, Zarqa city boundaries from the east, and a military zone to the south. Further, when public land is annexed by a municipality, the control of that land remains under the central government. Thus, the municipality has no interest in annexing public land. In other words, if land south and north of Yajouz Road had been privately owned, or publicly owned but allocated directly by the central government to the municipality, the municipality would have had a considerable interest in annexing it. Now the municipality is "burdened" with the area south of the Yajouz Road, and is hoping the northern part of the road would be annexed by the Zarqa municipality so that the burden gets shared. I asked to see the master plan for the annexed area. Ironically, most of the empty areas

were designated as "Residential B", a zoning category with large residential plots (750- 1000 sq.m.), generous set backs, and building standards.

As for the legalization process, a survey team maps the existing layout of the roads and settlements, the settlers names are recorded next to their houses. Then the municipality offers the settler legal title in exchange for paying the Badal Mithl (equivalent) of the land price plus the registration fees. Empty plots, however, are registered automatically as public land (treasury) regardless of who claims the land.

But how successful has the intervention policy of the state been? As was seen in the previous section, preventing the settlers from building has had limited success so far. For one, the stock of "illegal" houses in the area is steadily increasing rather than decreasing. As for the legalization strategy, the municipality's engineer maintained that less than 20% of the dwellings in the area south of the road have paid the Badal Mithl (equivalent) required to transfer the title to private freehold. The rest have defaulted. Now, the government has given a grace period for one more year and divided it up into four yearly payments. Further, and to urge people to pay, a 100% penalty charge on each delayed payment will be added to the total Badal Mithl. With all that, the municipality

engineer still thinks people will default from payment. He said: "Some of them simply do not have the money, and others don't see the benefits of it."

Implications for Future Planning:

A packaged solution of the dispute is not one of the objectives of this study. However, the following points are meant as guidelines for solutions addressing the actual problems in the area:

1. Basing policies on the concept of "invaded" land is likely to produce inapplicable and unjust policies such as expecting settlers to pay twice for their land, preventing them from building, or expropriating the land without compensation.
2. The legal category of land tenure is of little use when a solution of the conflict is being sought. As Doebele points out, "The critical element may not so much be the precise legal category involved as the perception of the occupant of his security in relation to the investment contemplated" (Doebele, 1978: 111).
3. Following from the first point, no specific tenure system is "good or bad except as viewed as to its actual effects at a given time and under given circumstances" (Doebele, 1978: 123). Thus, the choice of the tenure system should take into consideration the residents'

perception of "justice," the future needs of the government for public land, and the land uses sought.

4. This study suggests a relation between legalization of tenure and consolidation that is opposed to the common wisdom in the field of planning. The common wisdom suggests that legalizing tenure releases saved capital by the residents and allows for consolidation. The opposite was found in this case; residents do not obtain security of tenure unless they consolidate. that is , once a reinforced concrete structure is built and a permanent roof is installed, the settler feels relatively secure about his investment. In contrast, as long as the land is not built or does not have a permanent structure, the settler is under the threat of losing all rights to the land. This could be the case in other countries which base their land code on Islamic religious law, where establishing the "use" of land for a certain period of time gives the "user" permanent rights to it.

5. The area's "highest and best use" is low income residential; the phosphate it used to have was depleted in the mid seventies, it is not agricultural, and it is located between three cities which employ most of the population. Further, it already houses around two hundred thousand people of middle and lower income groups.

6. The state's legalizing the tenure by turning it into individual freehold involves several repercussions: First, if the same conventional approach is used in zoning, subdivision regulations, and building codes, the effect would be to limit the ability of middle and lower income groups to obtain housing and land. This was shown in the area annexed by the Ruseifa municipality where most of the empty plots were zoned as low density, upper income residential plots. As for the existing buildings, limitations on vertical and horizontal expansion will be introduced. This will render the area as a whole much less responsive to future demand for low income housing, a pressing present and future need of the urban masses.

Second, private freehold will bring the land prices in the area to the formal land market level and introduce speculation. The tribal members will be able to monopolize and control the price and transfer of land in the area.

7. The physical conditions in the area require minimum intervention by planners. In fact, in the newer areas north of the Yajouz Road, there is an impressive accumulation of experience in terms of the organization of site and self imposed physical regulations. Front and back set-backs, strait and uniform roads, and a range of realistic standards are being used by the

residents. Early residents in an area negotiate with new comers to follow the preliminary layout of the street and use minimum setbacks. The areas of plots per household range from 80 sq.m. to 1000 sq.m.; however, a dwelling on a large plot is usually built on the edge of the plot to allow for future subdivision. Most services, except paved roads, are available. This implies that only minimum levels of intervention are needed in the area.

B. Finally, and as far as the law is concerned, new forms of land tenure should be conceived of that take into consideration the traditional claims, the current realities, and future directions. Further, a different approach to land forms of property taxation could be conceived instead of direct recovery of land value.

APPENDICES

APPENDIX A

No ٣٧٣١٢

تذكرة التعديل رقم الحلة

المحصولات

رقم تذكرة التعديل

المحصولات

مجموع الاعمال	حصة	شعير	عذيق	الحصة العشرية من الفواكه والخضار		المحصولات والتعديلات
				فلس	دينار	
٧	٧	٧	٧	٧	٧	٧
٥	٥	٥	٥	٥	٥	٥

مجموع المحصولات محمد الفقيه د... يبلغ مجموع الحصة العشرية... ١٩٥٤

في ١٥ / ٦ / ١٩٥٤ الكاتب

بأمر التعديل أو المفتش

تبييه: (١) عندما تستعمل هذه التذكرة من قبل لجنة التعديل يوقع عليها العضوان والكاتب وعندما تعطين من قبل المفتش و... عليها مع صاحب المحصولات المعدلة.

(٢) عندما تستعمل هذه التذكرة للتعديل تنطب كلمة التعديل في اعلاها ويذكر رقم تذكرة التعديل في الحول الخ

Receipts of agricultural taxes dating back to 1949 and 1954 collected from the Bani Hassan tribe for cultivating Utl ez-Zarga and Ruseifa. These receipts were used by the Bani Hassans as a proof that they had possession of the area during that period.

APPENDIX B

In The Name of God the Merciful

Proof (Hujja) of Land Sale

First Party: M. Mufleh and S. Suleiman

Second Party: A. Mustafa Saleh

The agreement has been made to buy a plot of an area of 650 sq.m. which is located north of Ruseifa, north of Yajouz Road

The full payment has been made.

Boundaries: North Gazi, the brother of Salma
South The same seller
East Hmoud Awad and his partners
West 5 meter wide road

Conditions: The first party will give up his rights to this plot, and he is obliged to protect the buyer from the tribe (clan), or the neighbors. The seller is not responsible for protecting the buyer from the state or any other official authority. Further, the seller is not responsible for future fees (penalties). According to this statement, an agreement has been made witnessed by the undersigned and by God, and God is the best witness of all.

30/ 9/ 1975

Witness Witness Selling Party Buying Party

بسم الله الرحمن الرحيم

حجة بيع أرض

الفريق الأول البائع : محمد صالح وحلم بدرم سليمان

الفريق الثاني المشتري : محمد صالح وحلم بدرم سليمان

لقد تم الرضا والاتفاق على شراء قطعة الأرض البالغة مساحتها ٦٥٠ م^٢ والتي تقع شمال الرضفة شمال شارع يا حوزة وقد تم دفع مبلغ

الحدود : يحدها من الشمال غنا زبي افواكس
من الجنوب نفس البائع
من الغرب شارع ٥ متر
من الشرق صومع دار وصرف ٥

الشروط : يكون الفريق الأول البائع تنازل عن أتعابه بهذه الأرض وعليه حماية المشتري من قبل العشيرة أو الجارين وغير معقولا البائع عن طرف الدولة أو أي مصدر رسمي آخر ولا عن أي رسم تطلب مستقبلا وبناء عليه جرى الاتفاق وذلك أمام الشهود واللبس خبير الشاهدين .

٢٠١٩/٩/١٥

الفريق المشتري
عمار بن مصطفى

الفريق البائع
محمد صالح وحلم بدرم سليمان

شاهد
محمد بن سليمان

شاهد

ملاحظة:

APPENDIX C

In the Name of God the Merciful

The honorable Prime Minister
22/ 9/ 1986
Amman - Jordan

Amman,

Dear Sir:

We the residents of Hay al-Rasheed in the city of Ruseifa extend our respect and appreciation to your person wishing you more strength and advancement under the rein of His Majesty King Hussein, petition your excellency to urge for the legalization of this neighborhood which is inhabited by thousands of citizens. This neighborhood lacks all the necessary services and mainly electricity, for one of the residents has a private electricity generator and sells us each Kilo for 110 Fils, although the Jordan Electricity Company Poles extend through our neighborhood. Also, the roads are unpaved; dusty in summer, muddy in winter which prevents us from reaching our homes.

There are no primary schools for our children, and other schools are too far. There are no telephone services although the telephone lines pass next to our neighborhood.

Hoping your excellency will extend help, God bless you.

Signatures:

(forty five signatures)

بسم الله الرحمن الرحيم

عمان في ٢٢/٩/١٩٨٦

دولة رئيس الوزراء الانغم،

عمان - الاردن

تحية ومعد،

نحن سكان حي الرشيد في مدينة الرصيفة نرفع الى مقام د ولتكم أسى آيات الاحترام والتقدير متمنين لد ولتكم المزيد من المنعة والتقدم في ظل حضرة صاحب الجلالة الهاشمية الحسين الغدى، راجين من د ولتكم الابعاز لمن يلزم بالعمل طسى تنظيم هذا الحي الذي يقطنه عدة الالاف من المواطنين علما بان هذا الحي يفتقر الى كافة الخدمات الضرورية لحماية الانسان وأولها الكهرباء حيث ان احد المواطنين لديه ماتور كهرباء ويبيعنا كيلو الكهرباء بـ ١١٠ فلسات رغم ان اعدة شركة الكهرباء الاردنية تمر من وسط هذا الحي كذلك فالشوارع تراهية مغبرة بالصيف موحلة بالشتاء لا تساعدنا على الوصول لبيوتنا.

ولا يوجد مدارس لاطفالنا فهي بعيدة عنهم ولا خدمات هاتف طما بان اعدة الهاتف قريبة من هذا الحي.

راجين من د ولتكم المساعدة والله يحفظكم ويرعاكم.

عنهم

(عدة تواقيع مرفقة)

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