

# Rural Mutations in Tribal Areas after the Application of French Real Estate Legislation in Algeria. A Study of Two Models in North Constantine Area after 1863

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## Abstract

This article dealt with the issue of rural mutations in Algeria in the light of the application of French real estate legislation in the second half of the 19th century. At one of the most important stages in which the Algerian countryside witnessed important mutations and transformations, based on real estate and land ownership, especially after the implementation of the Sénatus-Consulte on April 22nd, 1863 and the Warnier Law of July 26th, 1873. These laws brought about radical transformations in the real estate structure by changing the pattern of ownership from collective to individual and opening the doors of speculation for the sale and purchase of land. Also the resulting change in the function of rural areas, with the emergence of structured agricultural fields, known as the population area, which are fertile agricultural areas, of great agricultural and economic importance, exploited by the French colonizer in his economic orientations in Algeria. In addition to the emergence of marginal rural areas of less economic importance and most of them are located in mountainous areas with weak agricultural qualifications. Because of the application of these two legislations, the rural area was divided into a structured and organized agricultural field exploited by the French colonialism, and a marginal rural area that lacks qualifications in which the Algerians are concentrated. It was known as the area of the people.

The application of these two laws had a great impact on the agricultural activity at that time, with the emergence of new agricultures in the field and a new and modern pattern of agricultural exploitation, translated by the type of cultivations (especially industrial and transformative ones). Not to mention the tools used and the new organization by granting land or selling them to the population or creating major agricultural companies affiliated with the colonial authorities. What followed was the provision of labour from the Algerians with what is known as the Taylorism 'khemassa' (in Arabic), and the increase in the number of Colonists and foreigners to work in the agricultural sector. What gave signs of deep rural mutations in Algeria, the effects of which are still today.

**Key words:** Real estate legislation, Sénatus-Consulte, Warnier Law, Agriculture, Countryside, mutation, Population, Production.

## INTRODUCTION

After the French colonization of Algeria and the fall of the Ottoman Empire, the French authorities put their hand as a first step on the lands belonging to the Ottoman authority or what is known as the lands of the "Beylik", as a property belonging to the authority. Then expanded towards the lands called "Habous" lands in a second step. This was especially between the years 1830 to 1850. However, the size and area of these lands was not large and their area represented only a small percentage of the total area at the time, considering that most of the lands belonged to the tribes spread throughout the area. So, the French authorities was thinking carefully about new mechanisms and methods for the acquisition of the tribes lands without direct confrontation with them and without recording any losses. The solution was to resort to the enactment of real estate legislation, which initially appeared to be the demarcation of land ownership for the tribal residents by documenting ownership. Nevertheless, its content is to get rid of the collective ownership system and dismantle the tribal system and make the ownership individual and that was opening up the field for buying and selling lands, after implementing a tight tax policy that leads property ownersto bargaining and pressure to give up or sell. The first and last goal is the settlement and implementation of agricultural economic project in Algeria, by developing an agricultural policy that serves the interests of French colonialism and making Algeria an agricultural and

agricultural economic pole with new and modern components and new crops in the field, especially transformative and industrial ones to export them to Europe in the first place. Also, the implementation of a new population policy increasing the number of Colonists by giving them the largest possible number of lands, expropriating the Algerians (and impoverishing them), forcing them to work in the Taylorism 'khemassa' (in Arabic) system under the authority of the Colon. Thus France would have reached its goals of acquiring land, exploiting it by the Colon, implementing its new agricultural economic project, and the provision of local labour almost free of charge. Almost all of these measures took place in the second half of the 19th century, i.e. from 1850 to 1900, which changed the agricultural activity and created a new picture in the field, which produced important rural mutations in Algeria. We will try to highlight some of its aspects in this article.

## **GENERAL CONCEPTS**

### **Legislation**

Legislation is a set of general, binding, and abstract legal rules issued by the competent public authority in the state with the aim of regulating the relations and behaviour of individuals in society, which is usually the legislative authority, with the exception of the executive authority. Legislation is also called written law because it includes codified legal rules in the form of a written document, which guarantees much confidence and stability in transactions between individuals and achieves many advantages. Among these advantages, is that legislation can be used as a tool for community development and to achieve certain social goals. Its issuance in a written form by a competent authority gives the legislation clarity and specificity, as it is possible to ascertain the existence of the legal basis easily, making it easier for individuals to know their rights and duties. (Kadi, 2020)

### **The Real Estate**

Real estate is the fixed thing that is stable in its place, not transferable from it to another place, without damage. The legislator defined it in Article 683 of the Algerian Civil Code: "Every stable and fixed thing that we cannot transport without damage is a real estate. Otherwise, it is movable property.

The real estate, then, is the fixed thing that is not transferable from one place to another without damage, and this is in contrast to the movable, which is by its nature movable and transportable. Therefore, we find that the Algerian legislator has distinguished in the Civil Procedure Code between movable and real estate in the section on jurisdiction.

From this point of view, all kinds of land are called real estate.

### **Real Estate Legislation**

Based on the first two definitions of legislation and real estate, real estate legislation is defined as a set of written, general, binding, and abstract legal rules issued by the competent public authority in the land-related state by setting controls and procedures for acquiring and owning these lands and defining their borders and ownership in their area, size, type and location, with articles specifying how to transfer it by sale. Also, renting, or benefiting from it, or dispensing with it and assigning it with specific conditions and modalities.

Accordingly, the intended real estate legislation in our study is a set of laws and decrees that apply to lands, by setting controls for determining their ownership, type, location and methods of transferring ownership, which is the general content of real estate legislation that falls within the context of the topic of research.

### **Agriculture**

Agriculture means any activity related to agricultural and animal production, and the consequences of feeding or manufacturing operations in all its forms. Therefore, it we can say that agriculture is primarily an economic activity that targets plants and animals. If it is considered as an economic activity, it means that many of other sectors will get the benefits resulting from this activity, especially the labour sector, the manufacturing sector, the trade sector, etc. This enhances the importance of agriculture and farmers in societies through the ages. Only some traditional agricultural methods were and are still practiced using simple tools, and in the livestock sector used to depend only on natural pastures, that is, they were of a non-productive nature. The aim of which was self-sufficiency, and some material revenues that would suffice for a dignified life. Today, agricultural production has its main goal: to meet the needs of markets and the high demand for agricultural products in all its forms. Thus, obtaining feasible returns suitable for

agricultural projects that are being established, and are using advanced tools and equipped buildings to accommodate large numbers of agricultural units, plants or Animals. In addition to a radical change in the nature of food and its impact on the rapid growth of plants or animals, which are either fodder prepared by agricultural experts to suit the production methods of animals in our time, or concentrated foodstuffs included in plant foods. (Bouhoot, 2014).

## **The Rural Area**

The rural area is the areas outside the urban area. They are characterized by several characteristics, the most important of which is its small population density, and the type of economic activity that is often linked to the land.

There are several definitions of rural areas:

1- (Dictionnaire de la géographie et de l'espace des sociétés, 2013)

Areas with low population density that leave big area for fields and forests for land use, but not necessarily for agriculture in the economy or in the community. The countryside includes villages and small towns that are centres of public and private services. (Monot, 2018)

According to the geographer and sociologist Bernard Kaiser (Rural Renaissance, 1990), rural space is a particular mode of social life and use of space based on four main elements:

- \* Low human and building density showing the predominance of plant landscapes (agriculture, forests, meadows, etc.).
- \* Economic use mostly agro-sylvo-pastoral.
- \* A lifestyle of the population characterized by belonging to communities of limited size and a special relationship to place (individual housing, travel distance to access services).
- \* A specific identity and representation indicated by the peasant culture.

## **THE MOST IMPORTANT FRENCH LEGISLATIONS IN ALGERIA 1850-1900**

One of the most important legislation that led to real estate mutations in Algeria is the Sénatus-Consulte and Warnier's law, as the ordinance of Sénatus-Consulte is a decree issued by Napoleon III on April 22<sup>nd</sup>, 1863. It is considered as one of the most important legislations applied in Algeria, given its goals that strike the tribal structure and aims to divide the rural tribal society into "douars" and thus make individual interest dominate the social fabric instead of cohesion and solidarity.

The second article of it stipulated the distribution of the members of the same tribe among the various douars belonging to the tribe, i.e. the replacement of the social unit with a new system whose nucleus is the douars.

Under this decree, one tribe was distributed among three or four districts, and each new unit became known from its geographical location. It is subject to several methods, as well as detracting from the strength and dominance of the tribe over the lands.

As for the Warnier Act of July 26<sup>th</sup>, 1873, which is considered as a supplement to the Sénatus-consulte, this law is one of the most dangerous laws that have been applied to the Algerian rural area, as its danger lies in the fact that it radically changed the real estate structure of the Algerian countryside, opening the door to buying, selling and speculation in Algerian lands for the benefit of Europeans.

The application of the Senatus-Consult and Warnier's law in the two tribes of this study has given at that time, the following results:

## **THE SITE OF THE TWO TRIBES**

### **The Location of the Moya Tribe**

It is located on the southern slopes of the Atlas chain North of Constantine and exactly at the Massid Aisha Mountain. Its population density ranges between 25 sq/km<sup>2</sup>-30 sq/km<sup>2</sup>. The individual owns between 1-2 livestock (cows), and the value of the annual tax he pays is between 8 and 12 French francs annually. Part of its lands has the character of a "Aarch" and part of it has the character of ownership (Sidi Abd al-Malek, Al-Jaradana and Beni Haroun). (Peyerimhoff, 1906)

### **The Location of Al-Alma Masala Tribe**

It is located on the southern summit of the Atlas Hills and exactly on the Mount of Sidi Driss, adjacent to the Moya tribe. Its population density ranges between 25 sq / km<sup>2</sup> – 30 sq/km<sup>2</sup>, characterized by the same economic characteristics of the Moya tribe, as the per capita share of livestock ranges between 1-2 cattle (cows) with an annual tax between 8 and 12 French francs. As for the character of its lands, it is ownership. (Bajaja, 1975)

### **REAL ESTATE MUTATIONS**

#### **Real Estate Mutations in the Al-Alma Massala Tribe**

The application of French legislation on Al-Alma Massala tribe resulted in the creation of the Douar of Ouled Brahem in the north of the municipality on Sidi Driss Mount, on mountainous lands with an estimated area of 5650 hectares, and the creation of a colonial environment in the south on fertile and flat lands, which is the centre of Beni Hmidene, whose lands were an 'azel' (in arabic) of Constantine on an area of 1091 hectares.

#### **A - The colonial centre of Beni Hmidene in Al-Alma Massala tribe**

It is located south of the Douar of Ouled Brahem. It is bordered on the West by the centre of Dar Al- Fouini, with an area of 1091 hectares. It was established in 1874, on the lands of Beni Hmidene, Ouled Brahem, and Draa Beni Waqad.

**Table 1.** The distribution of lands for Al-Alma Massala tribe during the colonial period 1878-1901:

Kind of property	Property	Reserves		Public lands	Global area	
		State	Municipality		Area (H)	Area (%)
Douars and centres	Private					
Douar Ouled Brahem	4086	305	1144	115	5650	83.81
Beni Hmidene Centre	946	5	108	32	1091	16.19
Area (H)	5032	310	1252	147	6741	100
Area (%)	74.64	4.59	18.57	2.18	100	

Source: Directorate of Land Survey of the Wilaya of Constantine + Wilaya archives

From the table, we can notice that the Douar's area is 5650 hectares, or 83.81 % of the total area, while the centre occupies an area estimated at 1091 hectares, or 16.19 % of the total area. It is located in the region between Sidi Driss and Constantine hills Smendou on very fertile plane lands. It has important water resources, such as the Smendou Valley.

As for the type of ownership, it can be summed up in four types: private ownership, which represents an area of 5032 hectares, or 74.64% of the total area. Municipal reserves, which have an area of 1252 hectares, or 18.57%, followed by State reserves, with an area estimated at 310 hectares, or 4.59%, and public lands. With an area of 147 hectares, or 2.18%, most of it (115 hectares) is concentrated in Douar Ouled Brahem, which explains the nature of the lands covered by it.

#### **Real Estate Mutations in the Moya Tribe**

Moya tribe was divided into two douars, Douar Beni Haroun and Douar Sidi Abd al-Malek on an area estimated at 3534 hectares, and created a colonial environment on an area of 3610 hectares, which includes three centres:

#### **A - The colonial centre of Hamala in the Moya tribe**

This centre is located at the summit of Mount Massid Aisha. It is bordered on the East by the Douar of Sidi Abdel Malek, on the West by another colonial centre, Al-Wasaf, and on the South by the Graflout centre. Its area is 1519 hectares divided into 17 shares and contains two farms. It was established in 1883 on the lands of 'azel' (in Arabic) of Ain Al-Beida, Beni Haroun and Hamala.

#### **B - The colonial centre of Graflout**

This centre is located South of Hamala Centre, bordered to the East by Douar Sidi Abdel Malek and to the West by the Wassaf Centre. It was established in 1885 on an area of 1587 hectares, divided into 32 shares. The origin of its lands is Douar Disi Abd el Malek lands.

### C- Colonial Centre Wassaf

Wassaf Centre is located on the Western slope of Jabal Masid Aisha. It is bordered to the East by the centre of Hamala and Graflout and to the North by Douar Beni Haroun. It was established in 1886 with an area of 1569 hectares, divided into 28 shares and 3 farms, part of its lands from Beni Haroun. And part of Grarem .

**Table 2.** Distribution of lands for the Moya tribe in the colonial period 1887-1898:

Kind of Property / Douars and centres	Property		Reserves		Public lands	Global Area		
	Private	Arch	State	Municipality		Area (H)	Area (%)	
Douar Sidi Abdel Malek	2092	2324	113	14	250	4790	41.93	
Douar Beni Haroun	1442	/	40	405	70	1957	17.13	
Graflout Centre	1360	/	25	149	53	1587	13.89	
Wassaf Centre	1301	/	/	215	53	1569	13.73	
Hamala Centre	949	/	04	526	40	1519	13.29	
Total	Area (H)	7144	2324	182	1309	466	11422	100
	Area (%)	62.54	20.34	1.59	11.46	4.07	100	

Source: The real estate origin of the Municipality of Hamala + the Directorate of Land Survey of the Wilaya of Mila

Sénatus-consult and Warnier Law Application on the area of the tribe in the colonial period gave a new division of the area by creating a colonial perimeter on an area estimated at 4,675 hectares on good lands compared to the lands of the two Douars (Sidi Abd al-Malek and Beni Haroun). They are located on mountainous lands, with a diversity in the real estate structure of each Centre and Douar, where we find several types of property, namely: private ownership, "Arch" ownership, state reserves and municipal reserves, in addition to public lands. Each centre and Douar differs in the type of ownership and the area of each type. With 7144 hectares, or 62.54 %, which reflects the application of French real estate legislation to the field, especially the Sénatus-Consult and Warnier Law which drew a new face of real estate ownership. Also, municipal reserves that appear in all centres and Douars with an estimated area of 1,309 hectares, or 11.46%, and public lands with an area of 466 hectares, or 4.07%, with a discrepancy in the areas of "Arch" ownership, which appears only in Douar Sidi Abd Al Malek with an area of 2324 hectares, or 20.34 %.

### ECONOMIC MUTATIONS

The rural community before French colonialism was distinguished by an economic system based on agricultural and pastoral activity, translated by commercial exchanges based on barter through local markets using simple traditional tools. When France came to Algeria and by the mutations that the Algerian countryside witnessed, like land ownership and demographic dynamics, France worked to change the economic system from a traditional agricultural system to a modern agricultural system in which new machines and equipment were used. It proceeded to introduce new agricultures in the field such as vineyards, citrus fruits and tobacco...with an economic logic. This new situation for the People and in light of the French policies targeting fertile lands, the Algerians were pushed back to the poor marginal areas, especially the mountainous ones, which caused an imbalance in the economic activity of the Algerian rural population. From the use of forests, forcing the population to go to the farms of the centenarians to work in what is known as the Taylorism ("khamassa" in Arabic).

This dynamic is embodied in the existence of a developed agricultural economic system. Whose domain is colonial environment with fertile lands, and a fragile economic system whose domain is mountains and marginal areas occupied by the people and the Algerian rural population.

These mutations gave a new economic situation in the field of our study, represented in the following:

**Table 3.** The economic situation of the colonial centres in the two tribes for the period 1871-1895

Tribe	Centre's name	Area (H)	Agricultural economic situation							Agricultural equipment	
			pills	vines	olive	orchards	Sheep and goats	cows	Horses and mules	Agricultural machinery	Farm buildings
moya	Hamala Centre	1519	200	26	07	/	200	75	180	34	15+5wheatmills
	Graflout Centre	1587	500	20		65	200	35	125	16	23
	Wassaf Centre	1569	520	23	10	06	225	81	168	39	13+wheat mill and olive press
<b>Al-Alma Massala</b>	Beni Hmidene Centre	1091	490	115	/	70	310	120	220	54	32+6 wheat mills

Source: M. de Peyerimhoff 1906 Survey on official colonisation 1871-1875, torrent printing, Algiers

The areas transformed into colonial centres witnessed major economic mutations, as the exploitation of the field shifted from traditional exploitation practiced by the people, relying on simple traditional means and subsistence agricultures, to new cultivations introduced to the field, such as rum, which became a significant area compared to the area of other crops. Its area reached 115 hectares in the centre of Beni Hmidene in Al Alma Masala tribe.

The Colonials also worked on introducing agricultural equipment (plows, harvesters...) into agriculture to facilitate work and give more production.

These colonial areas were also equipped with agricultural buildings such as warehouses and stables...etc. As well as the development of transformative industry, with the emergence of olive presses and wheat mills.

## CONCLUSION

The application of French real estate legislation in the North of Constantine, specifically in the area of the two tribes, led to:

The demise of the tribal system, as the applicable French legislation led to:

- Dividing the Moya tribe into two Douars and creating a colonial environment that includes three centres: Hamala, Al-Wassaf, and Graflout , taking into account the fertility and quality of the lands, as the colonial environment was established on fertile lands compared to the lands of the two Douars located in the far north of the municipality on hilly lands .

The division of the Al-Alama tribe is an issue and the appearance of DouarOuledBrahem in the northern side on the slopes of Mount SidiDriss, and the creation of a colonial environment centred in Beni Hmidene on fertile, flat lands.

The emergence of new types of property where private property dominated, in the two municipalities with the emergence of municipal lands strongly in the area of the tribe of Al Alma Massala, especially in the centre of BeniHmiden.

A major economic mutation, especially in the colonial centres, where the traditional agricultural system, which is based on subsistence agriculture, was replaced by a modern and developed system that includes new crops such as vineyards and equipping the centres with new agricultural equipment.

These mutations in the two tribes produced what is known as the centre and the margin:

Moya tribe, whose centre is in the colonial environment (the centre of Hamala, Graflout , and Al-Wassaf), and the margin is represented in the two Douars (DouarSidi Abdel Malek and DouarBeni Haroun)

-Al Alma Massala, the colonial periphery represents the centre, which is the southern part of the BeniHmiden tribe, which currently occupies the plain area, and the margin is Douar Ouled Brahem, which represents the mountainous region of Sidi Driss.

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