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Antiquities .. Problem & Solution

Dr. Hussein Duqeil



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TURKEY- ISTANBUL

Bahçelievler, Yenibosna Mh 29 Ekim Cad. No: 7 A2 Blok 3. Plaza D: 64
Tel/Fax: +90 212 227 2262 E-Mail: info@eis-eg.org

Egypt: Illegal Excavation of Antiquities .. Problem & Solution

Dr. Hussein Duqeil

On 4 February 2021, Egypt's Dar Al Iftaa¹ issued a fatwa to the effect that it is not permissible to trade antiquities found by citizens even in their own lands.

This fatwa provoked controversy among Egyptians, between supporters and opponents, as the fatwa stated that:

"It is not permissible to trade antiquities; and If someone finds antiquities in a piece of land of his own, it is not permissible for him to dispose of them except within the limits permitted by the ruler and regulated by law, within the public interest requirements; given the fact that these antiquities are considered 'public funds' due to their historical and civilizational values, where all this would serve the society's interest, growth, and progress."²

This report addresses the illegal excavation of antiquities and reveals related secrets that many readers may not know.

The illegal excavation of antiquities in Egypt represents a great challenge, being a problem that has been ongoing for long periods. Despite the legislation enacted by successive Egyptian governments, the reality indicates that the problem has never abated. Rather, it is steadily increasing.

Hardly a day goes by without hearing about cases of excavation carried out clandestinely in search of antiquities. Citizens in possession of original or imitated artifacts are arrested between now and then, but unfortunately they soon return home after the court hears judicial arguments in which lawyers prove that their clients have not violated the law.

This report seeks to explain the problem, state its causes, and suggest a mechanism for solving it, through three axes, as follows:

¹ Dar Al Iftaa is an Egyptian Islamic advisory, judiciary and governmental body established as a center for Islam and Islamic legal research in Egypt in 1313 AH / 1895 AD. It offers Muslims religious guidance and advice through the issuing of fatwas on every day and contemporary issues.

² Twitter, Dar al Iftaa, Fatwa: Trading antiquities impermissible, [link](#)

First, the nature of archaeological excavation, its objectives, roots and types

Second, the reality of illegal excavation of antiquities in Egypt

Third, the causes of the problem and suggested mechanisms to solve it

First, archaeological excavation – nature, goals and roots

Archaeological excavation in general depends on many sciences in achieving its goals and objectives, including the choice of the site where the excavation will take place and in determining the location of exploration. Excavation uses physics, aerial photography, diving equipment, surveying, etc., where a person that undertakes excavation activities uses complex scientific devices and methods, starting from the stage of site selection until the end of the excavation process. Excavation is also considered an art as it depends on many arts such as painting and photography, as well as knowledge of the history to determine the date archaeological discoveries.³

Among the most important objectives of archaeological excavation are: extracting antiquities, recording their descriptions and conditions in relation to others, preserving and restoring them, and using the discovered antiquities to shed light on the past human civilization and its development, and deduce history from it⁴. Archaeological excavation also aims to reveal the values and meanings offered by the antiquities themselves. In addition to the material and artistic value of the archaeological discoveries, antiquities reflect the image of man in ancient times, reveal his ideas and beliefs... as well as draw his relationship with the surrounding environment and people around him.⁵

Indeed, the findings produced by excavations today are more significant than before. Whereas in the past monuments were appreciated for their material value, their magnitude and their high artistic level, however this concept has changed today, as a small porch of ancient pottery has become

³ Fawzi Abdel Rahman Al-Fakharani, Pioneer in Archeology, Qar Younis University Publications, Benghazi, Libya, second edition, 1993, p. 9

⁴ Ali Hassan, A Brief on Archeology, General Egyptian Book Authority, Cairo 1993, p. 40 Op. Cit. p. 24

⁵ Fawzi Abdel Rahman Al-Fakharani, Op. Cit. p. 24

comparable with respect to importance to a beautiful statue, and may exceed it, where this porch may shed light on a civilization that era might belong to.⁶

Archaeological excavations in Egypt date back numerous decades in the past, however, they appeared clearly starting from the era of Muhammad Ali Pasha and his dynasty. In the beginning, excavation was not prohibited for individuals, where trading antiquities was legal. Excavations used to be carried out by antiquity dealers and foreign diplomats.

However, after these operations increased, it began to take a new direction towards restriction of those thefts. On 15 August 1835, Muhammad Ali Pasha issued a decree prohibiting completely the export or trade of all Egyptian antiquities.⁷

During the reign of Khedive Said, it became clear to him that the consuls and major foreign merchants exploited their relationship with him in order to obtain licenses for conducting excavations at their own expense, and then send what they extract of statues, mummies and coffins to their homelands.

Accordingly, in early January 1855, Said Pasha issued a decree prohibiting excavation for antiquities for persons or bodies other than the government, in order to preserve Egypt's antiquities and prevent their smuggling.⁸

On 17 November 1891, a decree was issued stating that individuals may not dig and excavate antiquities except under a license from the Director General of Antiquities and Excavation approved by the Minister of Works, provided that the excavation product belongs to the government.

In August 1897, a decree was issued by Khedive Abbas Helmy II, stipulating punishment of anyone that excavates in government-owned land without a license⁹.

In 1912, Law No. 14 for Protection of Antiquities was issued, stating that every antiquity in all parts of the Egyptian country, whether it is on the surface of the earth or underground, is considered the

⁶ Arab Organization for Education, Culture and Science, Archeology Excavation Movement in the Arab World, 8th. Conference on Archeology, Marrakesh, Morocco, Tunisia 1989, p. 41

⁷ Ashraf El-Ashmawy, Legitimate Thefts: Tales of Theft, Smuggling and Attempts to Recover Egypt's Antiquities, The Egyptian Lebanese House, 2012

⁸ Younan Labib Rizk, Egypt in the eras of Abbas and Said..., Dar Al-Shorouk, 1st. edition 2007

⁹ Youssef Hamed Khalifa, Egyptian Antiquities (Issues and Seizures), General Egyptian Book Organization, Cairo 2012, p. 27

property of the government, and stipulates that people are not allowed to excavate, as excavation is limited only to scientific missions¹⁰.

Second, the illegal excavation for antiquities in Egypt

Although the illegal archaeological excavations have been existing in Egypt for decades, as shown above, however, the situation has worsened since the January 2011 Revolution and the events that followed it.

Former Minister of Antiquities Mohamed Ibrahim announced on 21 September 2013 that the number of artifacts that had been stolen since the January Revolution amounted to about 2,000 pieces.

In its issue of 9 November 2013, Al-Ahram newspaper cited a report published by the British Spectator magazine, that showed that there is a remarkable growth in looting of Egyptian antiquities, where thieves are reported to sell what they find of archaeological treasures to foreign collectors in London and the United Arab Emirates¹¹.

In August 2017, Al-Bawaba News cited a resident of Akhmim, Sohag, as saying: "The search for antiquities is no longer a hobby or a temporary job performed by those who believe that under their house there may be an ancient cemetery or a collection of artifacts, but rather it has gone beyond that to become an organized activity.

Those interested in illegally excavating in search of antiquities are similar to mafia gangs, some of which specialize in uncovering places where antiquities may be present, and others work in promoting the discoveries of cemeteries or grave pieces."¹²

Nowadays, illegal excavations occur on a daily basis throughout the country, from Aswan to Alexandria and from Sinai to Siwa. After it had been limited to the Upper Egyptian governorates, however, these days, rarely do you find a governorate that is not exposed to illegal excavation. An

¹⁰ Anton Sfeir Bey, Collection of Laws -1856 -1952, Volume I from A to T - p. 5 Law No. 14 of 1912

¹¹ Hussein Duqeil, Repercussions of the 2013 coup on Egypt's monuments, Egyptian Institute for Studies, [Link](#)

¹² Al Bawaba News, Antiquities Theft.. in a Way that May not Violate God's Law!, 21 August 2017

antiquities official stated that: "All archaeological sites in the Delta are exposed to encroachment, and that the Ministry of Antiquities is going in the wrong direction."¹³

During the last week of February 2021, some 2452 cases and violations were seized, most notably, possession of antiquities, and digging and excavating for antiquities¹⁴. The security services were able to seize 2,690 cases and violations, most notably, possession of antiquities, and digging and excavating for antiquities, during the first week of the same month¹⁵.

During the third week of January 2021, some 2715 cases and various violations were seized, most notably, possession of antiquities, and digging and excavating antiquities¹⁶. During the second week of September 2020, the security services succeeded in seizing some 2,792 cases and violations, most notably, possession of antiquities, and digging and excavating for antiquities¹⁷.

What indicates that the problem is aggravating is the fact that the seized violations announced by the competent authorities do not represent 10% of the actual number, according to many informed sources. The former Secretary-General of the Supreme Council of Antiquities, Dr. Mohamed Abdel-Maqoud, had stated that most of the seizures are fake antiquities, and that the real artifacts do not exceed 10% of them¹⁸.

Among the consequences of the illegal excavation in search of antiquities in Egypt, is that they pose threats of destruction and smuggling of antiquities abroad in a way that we cannot seek restoring them again in accordance with international charters and treaties, in addition to causing many casualties, deaths and injuries in the excavation sites, where tunnels often collapse on them.

In 2015, a 27-year-old young man, Mahmoud, disappeared in mysterious circumstances, and his family searched for him tirelessly for three years until they were able to find him in 2018, as his remains were found by the security services in the desert of Qena Governorate, together with other

¹³ Ibid.

¹⁴ Masrawy, Ministry of Interior: Seizure of 2452 antiquities cases and 972 firearms in a week, 27 February 2021

¹⁵ Mostakbal Watan News, Possession of antiquities, digging and excavation.. 2,690 tourism security cases seized within a week, 6 February 2021

¹⁶ Al-Watan, Efforts of Ministry of the Interior's bodies across the country in a week.. 422 cases, 23 January 2021

¹⁷ Al-Wafd, 2792 antiquities cases seized in a week, 12 September 2020

¹⁸ Arabi21, Archeology Mania in Egypt.. A Journey to Escape Poverty, 23 February 2020

persons that were with him¹⁹. It was found out that they went on a journey to search and excavate antiquities, believing that there was a treasure there.

However, in many cases, illegal excavations of antiquities are behind finding archaeological discoveries. For example, it was revealed through illegal operations of excavation last January that 3 archaeological treasures were found in Upper Egypt²⁰.

Third, motives for illegal excavation and the mechanisms of the solution

1) Motives and reasons

There are many motives for citizens to carry out illegal excavations of antiquities in Egypt, that we can summarize as follows:

- Lack of awareness among citizens of the importance of this historical and cultural heritage, and the need to preserve it for their own sake and for the future of their children.
- The dire living reality of citizens, in light of the difficult economic conditions that push some to search for an easy source to meet the essential needs of their families.
- The search for quick wealth that some dreamers aspire to, considering excavation and sale of antiquities as the easiest way to achieve such sinful aspirations.
- The spread of some religious fatwas that permit the process of excavation and search for antiquities. Indeed, Dr. Shawki Allam, the Grand Mufti of the Republic of Egypt, while emphasizing that trading antiquities is impermissible, he made an exception, which might open the door wide to the antiquities trade and not the other way around, when he said:

"It is not permissible in Islamic law to trade antiquities, or dispose of them by sale or gift or other actions, except upon permission from the ruler or regulated by law..."²¹

¹⁹ Youm7, A journey in search of the unknown.. Remains of a worker found years after his disappearance in search of antiquities, 30 November 2018

²⁰ Al-Watan, 3 archaeological treasures found in Upper Egypt in one month, 5 February 2020

²¹ Al-Ahram, Mufti's opinion on trading antiquities buried in land owned by individuals, 25 February 2018

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In fact, antiquities manifest history and civilization of the nation, and they have a public interest that boosts progress and prosperity of the country. Therefore, it is necessary that the legal fatwas be well explained and well understood.

- Poor legislation that prevents the illegal excavations, despite the existence of Antiquities Protection Law No. 117 of 1983 and its successive amendments. However, the amendments did not seriously criminalize excavation in a way that may prevent its occurrence.
- The extremely tedious routine procedures adopted by state institutions entrusted with working to register archaeological sites and lands to be included within the possession of the Ministry of Antiquities, to secure and monitor them.
- Lack of an appropriate number of guards affiliated with the Ministry of Antiquities, authorized to secure archaeological sites and areas under the supervision of the Ministry
- Lack of an appropriate number of police personnel and secret informants authorized to monitor and report such criminal acts, in addition to the preoccupation of the police force in general in recent years with political issues that dissuaded them from their primary tasks of securing individuals and preserving the nation's savings and property.

2) Mechanisms to solve the problem

Following are some mechanisms and solutions that need to be discussed and immediately entered into force as soon as possible:

- Raising citizens' awareness about the importance of Egyptian antiquities, and their historical and civilizational value, with the need to focus on the fact that illegal excavations are considered a moral and legal crime; harmful to the homeland, its history and security.
- Completing registration of archaeological sites, to help protect them. This registration is not a simple matter, as it requires a great effort; therefore, it must be adopted by the state.
- Increasing tight security on archaeological sites and areas, and conducting security patrols to limit the spread of the phenomenon of illegal excavation, which has spread throughout Egypt in an alarming way.

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- The need to issue a clear fatwa from Al-Azhar and the Dar Al-Iftaa²² to ban trading antiquities.
- The need to encourage citizens who find antiquities by chance, to report them, by allocating an appropriate reward that motivates them to do so²³.
- The need to amend the Antiquities Protection Law in a way that prevents illegal excavations completely. Despite the successive amendments to the law, the latest of which was in 2020, it needs further amendments.
- The need to enact legislation that helps legalize establishment of private museums and collections, so that everyone who owns antiquities has the right to establish his own museum after registering the artifacts, with subjecting these private museums and collections to the supervision of the Ministry of Antiquities.

Conclusion

Let me conclude this report with a quotation from Dr. Youssef Hamed Khalifa²⁴, an expert in the seizures of archeological excavation cases, stating that: The process of illegal excavation and search for antiquities, trafficking in and smuggling them outside the country has unfortunately become a recurring matter. We read about it in newspapers and magazines and hear about it in the media on an almost daily basis.

Those who maintain such activity either belong to the upper class, the wealthy people, taking advantage of their influence and power in order to gain more assets and possessions, or from the destitute poor class that is trying to get out of the yoke of poverty, that sometimes die and are buried in the pits they dig after the dirt falls on them. However, most recently appeared swindlers that exploit the greed of the rich and the needs of the poor, and those are always the winners.

²² Twitter, Dar al Iftaa, Fatwa: Trading antiquities impermissible, [link](#)

²³ Official Gazette, No. 32, August 11, 1983, Law No. 117 of 1983, Article 24

²⁴ Youssef Hamed Khalifa, Op. Cit., p. 13