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قانون المشاركة بين  
القطاعين العام والخاص  
بدولة لبنان (AR)

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## NEWSLETTER

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## 01 The GERD Conflict: A Legal Analysis

During the 20th century and the first half of the new millennium, international conflicts erupted because of disagreements over fossil fuel resources, particularly oil. Water rights are the latest incendiary issue among riparian states. The Grand Ethiopian Renaissance Dam and the ensuing international dispute between Egypt and Ethiopia over its filling constitute an example of the classic conflict between upper riparian states and lower riparian states. The overarching question is whether Egypt's right to preserve the integrity of its water share outweighs Ethiopia's territorial sovereignty.

### Customary International Law

Riparian states, or countries whose territorial boundaries include all or part of a river, are the only parties who have the right to conclude international treaties governing such rivers' non-navigational uses. While Ethiopia, Sudan, and Egypt are the only parties currently disputing the use of the Nile, there are many other Nile riparian states: Burundi, the Democratic Republic of Congo,

Ethiopia's average  
monthly rainfall  
was quadruple  
that of Egypt

Eritrea, Ethiopia, Kenya, Rwanda, South Sudan, Tanzania, and Uganda. The overarching principle in customary international riparian law is **equitable utilization**.

Equitable utilization means that each riparian country is entitled to utilize the shared water resource, as long such use is reasonable and does not interfere with other countries' use of the water. As the country farthest downstream, Egypt's use of the Nile does not affect any other countries. In contrast, Egypt, Sudan, and South Sudan could be negatively affected by Ethiopia's unreasonable utilization of the Nile to build the GERD. Some international legal scholars would argue that the equitable utilization principle is vague, because different governments may have varying definitions of which uses are "equitable" or "reasonable".

According to *Trading Economics*, Egypt's average monthly rainfall was 3.78 mm/year during the period from 1901 to 2015. Ethiopia's average monthly rainfall was **quadruple** that of Egypt, at an average monthly rate of 16.32 mm/year. With the exception of the Aswan Dam, Egypt uses water for **"primary purposes"**, which are uses that can only be fulfilled by water, such as irrigation and the provision of potable water. Ethiopia's construction of the GERD is a **"secondary purpose"**, power generation, which could be fulfilled through means other than a dam.

### **The UN Convention on the Law of Non-navigational Uses of International Watercourses**

Unfortunately, neither Ethiopia nor Egypt is a signatory to the 1997 UN Convention on the Law of Non-navigational Uses of International Watercourses. The Convention heavily favors lower riparian states such as Egypt, which are most likely to be harmed by upper riparian states' overutilization of shared water resources. Article 5 of the Convention stipulates that watercourse states should use and develop an international watercourse in a manner "consistent with adequate protection of the watercourse".

Parallel situations elsewhere in the world indicate that overuse of a river can permanently affect the viability of the valuable natural resource.

An example is how Turkey's extensive damming of the Euphrates River has led to water shortages in Syria and Iraq. Another key provision in the Convention is Article 7.1, which states "Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse states". Were Egypt and Ethiopia parties to the Convention, Egypt could easily argue that Ethiopia was causing "significant harm" to Egypt by not amending the filling schedule of the GERD.

### **The 1959 Agreement for the Full Utilization of the Nile Waters**

It is likely that Egypt's omission in signing the Convention was due to a belief that Egypt's water rights were adequately protected by the 1959 Agreement for the Full Utilization of the Nile Waters between Egypt and Sudan. The agreement splits the Nile's waters between Egypt and Sudan, with Egypt entitled to 48 billion cubic meters of water, and Sudan's water allocation set at 4 billion cubic meters. While the 1959 Agreement is a binding international agreement, Ethiopia was not a party to the agreement, and as such, is not obligated to comply with any of the provisions thereof. Thus, Egypt's Nile water allocation **is neither guaranteed nor safeguarded** by the 1959 Agreement.

Apart from Sudan as the original signatory and South Sudan by virtue of Article 34.1 of the Vienna Convention, the upper riparian states are free from any international constraints on their use of the Nile, even if such use detracts from Egypt's historic entitlement.

### **Egypt's Legal Recourse**

Egypt, Sudan, and Ethiopia have not yet been able to successfully reach a binding agreement on the use of the Nile. Since Egypt cannot prove that Ethiopia is violating any contractual obligations, any future legal action that Egypt takes against Ethiopia will be based in tort. The basic argument is that Ethiopia's actions in constructing and filling the GERD violate the principle of equitable utilization, and that Egypt has suffered moral and material prejudice as a result. Ordinarily, the International Court of Justice has jurisdiction over claims filed by states against other states. However, compulsory jurisdiction is limited to three cases:

- 1. Filing a declaration with the UN Secretary-General accepting the ICJ's jurisdiction**
- 2. Submitting to the ICJ's jurisdiction via mutual agreement for a specific issue**
- 3. Ascension to a treaty that explicitly stipulates the ICJ as the dispute resolution mechanism for the treaty's subject matter**

Although Egypt is one of the 73 states that has filed a declaration recognizing the compulsory jurisdiction of the ICJ, Ethiopia has not. Consequently, Egypt's immediate priority is to conclude a binding agreement with Ethiopia grounded in international custom and precedent and in which Ethiopia accepts the ICJ's jurisdiction over any future disputes. That is the only way that Egypt has a chance of enforcing its water rights.



Marwan Gamal  
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## 02 Key Provisions in the New 2021 Personal Status Law

The Personal Status Law No.25 was first promulgated in 1920, then was subsequently amended in 1929 and again in 1985.

Recently the new Personal Status bill was discussed in the Egyptian Parliament, and its issuance is anticipated. The bill has added new provisions regulating what is called "Overnight Visitation," and amended certain provisions regarding the custody, marital alimony, and engagement.

### **Overnight Visitation**

The bill proposes the following points regarding overnight visitation:

- Overnight visitation shall not be less than 8 hours and shall not be more than 12 hours for each week, provided that it should be between 8 PM and 10 AM, and in such case standard visitation and overnight visitation should not be combined during the same week of the overnight visitation.
- Overnight visitation may occur up to a maximum of two days each month, and in such a case it is not permitted for the child's host to have additional visitation during the same week. Furthermore, overnight visitation may not exceed seven days per year.
- The Court shall not grant the request for overnight visitation unless the child is over five years of age and the child's health condition is conducive to overnight visitation.
- The applicant could lose visitation and overnight visitation rights if he or she fails to exercise such rights without a reasonable excuse.
- If the child's guardian does not execute the judgment concerning visitation and overnight visitation, the judge first issues warning, and if the child's guardian continues to withhold the child, the judge may temporarily transfer custody to the next eligible guardian for a period not exceeding two months.

- If the father is traveling abroad, the decision to see the child may be requested electronically.
- A person to whom the judgement of visitation was issued in his favor may request the replacement of such visitation with an electronic visitation, and a decision may be issued by the Minister of Justice to identify and regulate electronic centers and their means.

### **Sanctions Related to Overnight Visitation:**

- Any guardian who prevents the person entitled to visitation or overnight visitation from using his or her right without an acceptable excuse by the court, shall be liable to a fine of not less than 1,000 EGP and not more than 5,000 EGP.
- The same penalty shall be imposed on any host who intentionally violates the rules and regulations established in the act of overnight visitation. In addition, the court shall order the loss of the right to overnight visitation for a period not exceeding two months. In the case of repeat offences, the fine shall be doubled.

### **Custody**

The bill introduced certain provisions and changed the order of the guardianship in contrast to the old law. For example, the father is fourth in line for custody, as opposed to 16<sup>th</sup> under the old law, after the mother, maternal grandmother, and paternal grandmother.

The bill allows the guardian or the minor to claim all rights arising out of the application of the provisions of the Act. The legislation also establishes that the Family Prosecutor's Office is competent to make decisions on disputes concerning the conduct of the marital home and custody until the competent family court decides on the subject matter of the dispute.

The previous law stipulated that the mother's automatic right to custody ends when the boy reaches age of 10 and the girl reaches the age of 12. After this age, the judge may decide to keep the custody with the mother until the boy reaches age of 15 and the girl until she marries, without child support if it is found that her interest so requires.

The bill establishes the termination of the **automatic custody by the age of 15 years**, after which the judge will give the child the right to decide to remain in the custody of the guardian, without child support if the guardian is a woman, until the child either reaches the age of majority or marries.

### **Engagement:**

If a party ends the betrothal/engagement for no reason, he or she has no right to recover something that it has given to the other party. However, if the engagement has ended because of the other party, the terminating party may recover what has been or its value on the day of its recovery, except for consumable items.



Omar Adel  
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### 03 Lebanon's PPP Law (FR)

قانون المشاركة بين القطاعين  
العام والخاص بدولة لبنان

En 2017, on a assisté à la promulgation d'une des plus importantes lois s'agissant de l'investissement libanais qui est la loi organisatrice du partenariat entre les deux secteurs public et privé.

En effet, cette loi est venue organiser et délimiter tous les aspects relatifs au partenariat entre les deux secteurs publics et privés s'agissant bien notamment des coentreprises conduites par l'Etat, les institutions publiques et toutes les personnes de droit commun au Liban et ce à l'exception des municipalités ou des fédérations des municipalités qui ont l'option de faire subir leurs coentreprises aux provisions de cette loi. Cette loi inclut tout de même les coentreprises mentionnées dans les lois délimitant les secteurs des télécommunications, de l'électricité et de l'aviation civile.

A ce stade, il nous faut se référer aux provisions de cette loi concernant le processus d'établissement d'une société au Liban conformément à ses articles.

Pour se faire, le conseil suprême de la privatisation et du partenariat

libanais doit consentir à l'initiative de commencer une telle coentreprise. Ensuite, l'autorité organisatrice du secteur en question doit licencier le permis de la coentreprise en question vue sa prise en place dans le comité du projet.

Cette autorité prends en charge toute modification des prix des services dans le contrat, l'imposition des sanctions, ainsi que la suspension, modification, renouvellement, annulation et le retrait du permis.

Le président du conseil suprême de la privatisation et du partenariat ou le compétent ministre propose normalement les coentreprises à débiter. Telle proposition est prise en charge par le président du conseil des municipalités ou celui du conseil de la fédération et ce pour les coentreprise à caractère municipal. Puis, le secrétariat général du conseil prépare une étude sérieuse s'agissant de la coentreprise et ce avant de soumettre un rapport au conseil sur le projet, la possibilité de son exécution par le biais d'un contrat de partenariat ainsi que sur l'intéressement du secteur privé à le

financer et à y investir et le conseil a l'autorité soit d'approuver ou de refuser une telle proposition.

Au cas où la proposition est acceptée, un comité du projet est formé par le conseil et qui prend à son tour en compte l'expertise de plusieurs personnalités à cet égard pour ensuite émettre un étude globale de faisabilité à propos du projet et de tous ses aspects économiques et de ceux relatifs à l'investissement et elle soumet un rapport de tout cela au conseil qui - à l'issue de son acceptation - transmet le dossier au conseil des ministres ou au président du conseil des municipalités au cas où le caractère du projet est municipal.

En se focalisant sur les articles de cette loi, on observe que celle-ci encourage très bien l'investissement libanais vu le fait que le procès de sélection du partenaire privé suit le principe de transparence, de liberté de participation des candidats compétents, l'égalité de traitement ainsi que la nécessaire publicité pour la pluralité des projets compétents pour prendre part au contrat de partenariat. Tout cela est bien considéré comme un encouragement d'établir une société au Liban ou d'un projet en partenariat avec le secteur public vu la politique suivie au Liban en la matière d'encourager tout d'abord ceux - parmi le secteur privé - voulant concourir pour prendre part au contrat de partenariat et ensuite

le processus de sélection prend en compte la transparence et l'intégrité tout en respectant les instructions en la matière.

Il est important de noter aussi que la loi en question accorde des privilèges encourageant l'investissement au Liban par le biais des coentreprises qui est le fait que la société devant être établie - nommée société du projet - est exemptée de la condition de nationalité d'après l'article 9 de la loi. Le président du conseil d'administration ou bien le directeur général non libanais est à son tour exempté de l'obligation d'avoir un permis de travail.

L'article 10 de la loi exige l'existence de quelques provisions devant apparaître dans le contrat de partenariat et qui incluent plusieurs privilèges pour le partenaire privé.

Pour conclure, il faut admettre que cette loi encourage très bien l'investissement libanais en mentionnant plusieurs garanties et privilèges facilitant le partenariat entre les deux secteurs public et privé sous l'égide de la crise économique actuelle du Liban.



## القانون رقم 48 لسنة 2017 بخصوص المشاركة بين القطاعين العام والخاص

في حال قبول الاقتراح، يتم تأليف لجنة للمشروع من قبل المجلس وتستعين بدورها بأشخاص ذوي خبرات معينة للقيام بدراسة جدوى شاملة حول المشروع من كافة جوانبه الاقتصادية والاستثمارية وترفع تقريرا بذلك للمجلس الذي يحيل ملف المشروع إلى مجلس الوزراء فور موافقته على المشروع أو إلى رئيس المجلس البلدي إذا كان ذا طابع بلدي.

وبالنظر إلى نصوص هذا القانون، نجده جاء محفزا بشدة للاستثمار اللبناني حيث تخضع إجراءات اختيار الشريك الخاص لمبادئ الشفافية وحرية الاشتراك للمرشحين المتنافسين والمساواة في معاملتهم ويجب كذلك أن تسبقها العلنية الكافية لتوفير تعدد العروض المتنافسة على الفوز بعقد الشراكة وهو ما يعتبر تحفيزا شديدا لتأسيس شركة في لبنان أو مشروع بالمشاركة مع القطاع العام حيث يتم أولا تشجيع الراغبين من القطاع الخاص جميعا في التنافس على عقد الشراكة ومن بعد ذلك تتم إجراءات اختيار الشريك الخاص بمنتهى الشفافية والنزاهة بعد التنويه على التعليمات اللازمة واشتراطات حجم المشروع.

هنالك أيضا بعض الامتيازات التي يمنحها القانون لتحفيز الاستثمار في لبنان عن طريق المشاركة مع القطاع العام وهي أن الشركة الواجب تأسيسها والمسماة شركة المشروع تكون معفاة بنص المادة 9 من هذا القانون من شرط الجنسية ويعفى رئيس مجلس الإدارة أو المدير العام غير اللبناني من ضرورة الحصول على إجازة عمل. ولا تخضع شركة المشروع لمراقبة ديوان المحاسبة أيضا.

وتلزم المادة 10 من أحكام هذا القانون ببعض البنود الواجب توافرها في عقد الشراكة والتي تتضمن امتيازات عدة للشريك الخاص.

إذا، يمكن اعتبار هذا القانون كمحفز رئيسي للاستثمار بنصه على كافة الضمانات والحوافز التي تسهل مشاركة القطاع العام مع القطاع الخاص في ظل الأزمة الاقتصادية الراهنة التي تعاني منها لبنان.

كان عام 2017 شاهداً على صدور أحد أهم القوانين في مجال الاستثمار اللبناني وهو قانون تنظيم الشراكة بين القطاعين العام والخاص.

في الواقع، جاء هذا القانون منظماً وضابطاً لكافة الجوانب المتعلقة بالشراكة بين القطاعين العام والخاص فيما يتعلق بالمشاريع المشتركة التي تقوم بها الدولة والمؤسسات العامة وسائر أشخاص الحق العام في لبنان باستثناء البلديات أو اتحاد البلديات التي يجوز لها إخضاع المشاريع المشتركة التابعة لها لأحكام هذا القانون. يشمل هذا القانون كذلك المشاريع المشتركة المنصوص عليها في القوانين المنظمة لقطاعات الاتصالات والكهرباء والطيران المدني.

في هذا الصدد، يجب علينا الإشارة إلى ما جاء بنصوص هذا القانون فيما يتعلق بإجراءات تأسيس شركة في لبنان في ضوء أحكام هذا القانون.

يتعين أولاً أن يبدي المجلس الأعلى للخصخصة والشراكة اللبناني موافقته على السير في المشروع المشترك ومن ثم تمارس الهيئة المنظمة للقطاع مهامها فيما يخص إصدار الترخيص من خلال المشاركة في لجنة المشروع.

يقع في اختصاص الهيئة المنظمة تعديل أسعار الخدمات في العقد وفرض الغرامات وتعليق وتعديل وتجديد وإلغاء وسحب التراخيص.

يتولى رئيس المجلس الأعلى للخصخصة والشراكة أو الوزير المختص اقتراح المشاريع المشتركة على أن يتولى هذه المهمة رئيس المجلس البلدي أو رئيس مجلس الاتحاد بالنسبة للمشاريع المشتركة ذات الطابع البلدي وذلك قبل أن تقوم الأمانة العامة للمجلس بإعداد دراسة وافية للمشروع المشترك المقترح وأن تقدم تقريراً للمجلس عن المشروع وعن مدى إمكانية تنفيذه عن طريق عقد شراكة ومدى اهتمام القطاع الخاص بتمويله والاستثمار فيه ليقوم المجلس بإصدار قراره سواء بقبول أو رفض الاقتراح.

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