

Border Center for Support and Consulting (BSC)

Founded in 2013

<https://www.bsc-eg.org>

BSC (Hodoud) is an Egyptian non-profit human rights organization working on the rights of Nubians as indigenous people within Egypt through the legal and community framework, and focuses its efforts to enable Nubians entitlement as indigenous people within Egypt to enjoy the international rights package established in national laws and international obligations, through advocacy programs and raising the capacity and legal assistance through which we submit and propose legislative amendments and the issuance of studies and periodicals corresponding to the international obligations of Egypt.

A. Where is Nubia?

1. The geographical region located on the banks of the Nile from the first waterfall south of Egypt and extends to the sixth waterfall in Sudan, the Nubians settled in this region since thousands of years in the form of a group of one ethnic origin joined by one language and distinctive culture richness, which contributed to shaping their habits and the form of their community.
2. **The beginning of the Nubian problem in modern times:**
3. In 1841, after the Ottoman caliphate¹ issued the decree demarcating the southern border of Egypt, this was followed by the decision of the Minister of Interior to amend the borders of Egypt and Sudan on the basis of the bilateral agreement between Egypt and the British occupation on January 19, 1899, which involved the separation of ten Nubian villages of the Halfa Center in Nubia province, villages south of the latitude 22, to enter the borders of Sudan. The area inside the Egyptian border extended from the village of Adhandan in the south to the waterfall in the north, and the name of the province of Nubia, which was known as the Border Directorate, was changed to Aswan. Thus, the administrative boundaries established by British colonialism separated between the Nubians; however, communication continued despite the existence of the illusion borders until Egypt was formally separated from Sudan in 1951 and since then the Nubians have become Egyptian citizens and Sudanese citizens.

B. Egyptian dams and the drowning of Nubian lands:

4. The idea of Egyptian dams on Nubian lands began in 1898 when Khedive Abbas Helmi II issued a decision to start building the Aswan reservoir in the first waterfall area of the Nile, which took four years to build. Nile River was diverted through it in 1902 and the start of storage of flood water behind it without warning or alert, which led to the drowning of 10 Nubian villages without reference to compensation of Nubians from the government or the concerned authorities.
5. In 1912, the matter was repeated and as a result of the announcement of the raising of the Aswan reservoir (the 1st raise) 8 more villages from the Nubian villages drowned without reference to compensation for the Nubians who were affected, and their villages drowned. In 1933 and the effect of the announcement of the second ramp of the Aswan

¹ (Gideon Bigger) Middle Eastern studies, vol. 14, No. 3 (Oct 1978) pp 323-325

reservoir, a new village group was expropriated, forcing some Nubian villages to migrate to areas north of Nubia (Edfu, Thomas and Afia) which are located hundreds of kilometers away from their homeland.

C. Forced displacement of Nubians and their resettlement in inappropriate areas:

6. In 1963 and upon the announcement by late President Gamal Abdel Nasser of the construction of the High Dam, 39 Nubian villages south of the High Dam were relocated to the Kom Ombu Plateau area north of the High Dam. Despite government promises to compensate affected people, which was agreed upon before² their displacement, and settling them in a mountainous area characterized by soil filled with groundwater, which leads to a number of annual operations to replace and renovate the houses which were collapsing on their heads, and amid promises and concessions by the Egyptian governments to return them and resettle them in their old areas after settlement of the dam water in the dam lake; at the same time successive Egyptian governments tried to change the demographic structure of the southern dam area, whether by establishing development projects or offering them for internal and external investment or seizing them as military zones.

7. Number of Nubians in Egypt:

8. The number of Nubians in Egypt is estimated in unofficial statistics at 3.5 to 4 million people, 20% of whom live in the Aswan area (Nubia) and the rest are between the governorates of Cairo, Alexandria, Suez Canal cities and outside Egypt. Despite the signing of the International Covenant on Economic Rights Social and cultural rights and civil and political rights, the government does not recognize the concept of indigenous peoples. This is evidenced by the Egyptian periodic reports on ratified or universal periodic human rights treaties, where they are described as "ethnic groups" and also in responding to complaints, Egypt categorically denies the existence of ethnic minorities or indigenous populations and insists on describing them as ethnic groups within a unified national fabric.

D. The legislative framework for the right of the Nubians as indigenous people to their resettlement and development of their original areas:

9. After the adoption of the Constitution of 2014, which decided the right of the Nubians as indigenous residents of the area south of the High Dam and their resettlement and development of their original areas as well as compensation for what they suffered during the past 100 years, the text of Article 236, therefore, states that "The state is working on the development and implementation of projects that return the population of Nubia to their original lands and its development within 10 years as stipulated by the law". The legal effect of the adoption of the constitutional means the following: First: the constitutional article came in the explicit recognition by the Egyptian state that the Nubians are the indigenous people of the South of the High Dam, the first confession which came in line with the definition of the Convention No. 107 of 1957 for indigenous peoples, which was ratified by Egypt in 1957 and which is in line with the United Nations Declaration of

² <http://cutt.us/XKlwo>

Indigenous Peoples issued in 2007; Second: the article explicitly stated that the right of Nubians in the land is a collective right and not an individual right of compensation, indicating the invalidity of any subsequent actions that address the matter as one of individual right or tries to encroach thereon.

10. After the adoption of the Constitution, there were many developments and events in the file of resettlement of the Nubians to their original home. At the end of 2014, the Ministry of Justice initiated a community discussion between the State and the Nubians on how to implement Article 236 on the resettlement and reconstruction of Nubia³. The debate continued for about six months and ended with an endless draft to be submitted to the Council of Ministers for its presentation to parliament. But the draft disappeared within the corridors of the Council of Ministers and the minister responsible said that the draft law failed because there are sovereign authorities who refuse Nubian ownership of their old lands⁴. In subsequent dates were issued many of the decisions revoked their right to resettlement and in violation of the constitutional text, including Republican Decree No. 444 of 2014 And resolution 355 of 2016.
11. All the decisions were characterized by focusing on two main axes, the first is the development of the South Valley and the second is the protection of the southern borders of Egypt. Despite the existence of a constitutional text that requires the state to resettle the Nubians to their ancient lands, the state ignored it completely when planning the old Nubia area.
12. In April 2018, the Egyptian Parliament discussed the activation of the first item of the text of article 236 of the Egyptian Constitution with the establishment of the Upper Egypt Development Authority, completely ignoring the second item concerning the return of the Nubians to their homeland and the development of their regions. Later decree 157/2018⁵ authorized the formation of the development authority light of statements amidst statements by the then Egyptian Parliament speaker that the article on the resettlement of the Nubians in their original areas is an article drafted by the devil and that he was personally one of the opponents for it to be included in the Constitution⁶, leaving no room for doubt regarding the reluctance of the Egyptian regime to recognize the right of Nubians to return to their original areas according to the Egyptian Constitution.

Right of return, resettlement and participatory development

A. Law on the Establishment of the Supreme Commission for the Resettlement, Reconstruction and Development of the original Nubia State (an unfulfilled promise):

13. Following the adoption of the 2014 Constitution, the Minister of Transitional Justice and the Affairs of the Council of Representatives formed a committee under the name of "Development of Nubia and Aswan", which is concerned with the implementation of Article 236 of the Constitution. The Committee defined the Nubia people as displaced

³ <https://www.youm7.com/story/2014/10/28/%D9%86%D9%86%D8%B4%D8%B1-%D9%86%D8%B5>

⁴ <https://www.youm7.com/story/2014/10/28/%D9%86%D9%86%D8%B4%D8%B1-%D9%86%D8%B5>

⁵ <http://www.cc.gov.eg/Images/L/385777.pdf>

⁶ <https://www.alaraby.co.uk/society/2018/5/13/>

persons due to the Aswan reservoir in 1902, 1912 and 1933, The Committee announced the readiness of the draft law for the establishment of the High Commission for the Development and Reconstruction of the Old Nubia, to be submitted to Parliament for approval. However, the draft was never submitted. In a report published by a local news website, Mada Masr, it stated that representatives of sovereign bodies expressed their rejection of the draft for reasons of national security⁷. Since then no further development happened, resulting in loss of confidence by Nubians in the current authority, which did not provide them with adequate reasons for the refusal and the 4 years' delay in issuing the law.

B. Presidential Decree No. 444 of 2019 (the seizure of the land of the Nubians partly for investment and development and partly for transformation into military territory):

14. .While Nubians were waiting for the constitutional texts to become a reality in their lives regarding the right of return, compensation and participatory development, President Abdel Fattah Al-Sisi issued Presidential Decree No. 444, published in the Official Gazette on 29 November 2014, considering the territories of 16 border Nubian villages as military borders, where civilians cannot live or take advantage of. These villages are located from the village of Al-Alaki north to Adhandan in the south. The land, 110 km east of dam lake and 25 West of the Dam Lake, is considered a military border. Thus, undermining the right of return of Nubians to their home country, and displacing 16 out of 44 villages along with the villages of the waterfall⁸.
15. The government ignored the Nubians' anger and the Nubian rejection of the Republican decision and has moved ahead with plans to use more land adjacent to investment and development. Sisi issued resolutions 355 and 498 in 2016, which approved the confiscation of about 1100 thousand acres of land for projects contracted by the state, where the city of Forgendi (one of the Nubian regions) was included in the plan for the implementation of one and a half acres, and thus become 168 thousand acres. In response to this step, unprecedented demonstrations took place, and the project was strongly opposed at the time⁹.
16. The clear contradiction between the constitutional text in article 236, which requires the State to establish projects to restore the population of the Nubia to their areas of origin, and Presidential Decree No. 444 of the year 2014, lead to the resort to the Council of State, where the Hoddoud center as well as the Federation of Nubian Lawyers in 2015 filed two lawsuits to cancel the administrative decision No. 444. the administrative Court referred the case to the Board of Commissioners of the Council to prepare a report including recommendations to the court. It recommended the cancellation of resolution No. 444 and remove all its effects due to the breach of the Egyptian Constitution. But so far after more than 4 years no judgment has been issued by the Council of State¹⁰

⁷ Mada Masr, Right to Return of Nubians, Rana Mahmoud, 20 May 2018

⁸ Mada Masr, Decree 444, Fatma Imam Sqouri, 12 February 2015

⁹ Ibid.

¹⁰Mada Masr, Committee of Commissioners recommend cancellation of decree 444, 19 August 2017

C. Law for the establishment of the Upper Egypt Development Authority (alleged development without the Nubians):

17. On 5 June 2018, the Egyptian Parliament approved a draft law proposed by the Government to establish a public service body called the Upper Egypt Development Authority, pursuant to the first paragraph of Article 236, which is affiliated to the Prime Minister. It aims to develop a plan to accelerate the overall development of Upper Egypt, and development priority areas, as determined by the executive regulations to be issued by the Prime Minister after the promulgation of the law. To counter the hopes of the Nubians, after the Parliament had ignored the application of the second paragraph on the resettlement of Nubians in their old areas or their right to return to their land¹¹.
18. On 16 July 2018, President Abdel Fattah al-Sisi issued Law No. 157 of 2018 on the establishment of the Upper Egypt Development Authority, despite numerous criticisms of the law inside and outside parliament. The law was discussed in complete secrecy, according to MP Abd al-Sabour, in the absence of deputies of the province of Aswan, saying "we were surprised to discuss the plenary session of the report of the Local Administration Committee on the articles of the law last Sunday." The MP also considered the law unconstitutional, as it did not include any mention of the question of the return of Nubians to their areas of origin from which they were displaced, which is the basis for the rights of Nubia residents to resettle them on the banks of Lake Nasser. Nevertheless, the Government insists on introducing the law as an implementation of article 236 of the Constitution¹².
19. Instead of amending the law and responding to Nubian demands, the law was amended on February 4, 2019, with the addition of a representative of the Ministry of Interior to form the body. The state, by passing this law, affirmed its violation of the Egyptian constitution, as well as its discriminatory policy against the Nubians, which makes them more fearful for their rights that have been seized from them in the past, and on their future under a political system that does not care about their constitutional rights.
20. In May 2019 the Egyptian cabinet issued its acceptance about replace the rights of resettlement by individual compensations to just 2366 Person within more than 2,000,000 population who deserves to enforce on them the constitutional article 236 toward them. After the announcement which had been on 2017 by the Egyptian president Abdl-Fattah Al-Sisi, that we will compensate the Nubians people individually even though the constitutional article defined collective Nubian resettlement on their historical land.

The violations and abuses against land Nubian defenders

21. In April 2018, the Arbitrary Detention Commission issued a report to monitor abuses against Nuba activists who were arbitrarily detained, accusing the Egyptian government of arbitrary arrest and violation of fair trial guarantees against arrested Nuba activists.
22. In January 2017 in the governorate of Aswan, a group of Nuba activists organized a peaceful protest, but security dispersed them and arrested 7 activists accused of

¹¹ Mada Masr, Decree 444, Fatma Imam Sqouri, 12 February 2015

¹² Ibid

demonstrating and gathering and objecting to an executive decision. While the army was preventing the Nubian march of return, many of the residents of the neighboring villages joined the march protesting the police dispersion. The army opened fire despite the peaceful nature of the march, resulting in the injury of three activists who were taken to hospital.¹³

23. . In 2017, a group of Nubian activists took part in a peaceful demonstration demanding the promulgation of the law establishing the Supreme Commission for the Resettlement, Reconstruction and Development of the Nubia. The security forces arbitrarily arrested 24 activists under the Emergency Law and held them in the Shallal military camp, where civilians should not be held. They remained there for 76 days. In October of the same year, while waiting for the verdict against the Nubian activists, security forces fired tear gas at a gathering of Nubia activists in front of the court house. Seven of them were arrested under the pretext of demonstrating and disrupting a public road. They, too were taken to Shallal army camp.

. Recommendations:

24. The Egyptian State must fulfill its constitutional obligation provided for in Article 236 by issuing an independent law establishing a national authority for the resettlement, reconstruction and development of the original Nuba State.
25. Amendment of Presidential Decree No. 444 of 2014 in respect of the areas falling within the scope of Article 236 of the Egyptian Constitution, as well as the repeal of the Presidential Decree Nos. 355 and 498 of 2016.
26. End the interference of Egyptian security in the affairs of Nubian institutions, associations and clubs, and the preservation of the right to freedom of association of the Nubians as indigenous residents.
27. Allow Nubians the right to move to their original areas and stop infringing upon their peaceful communities guaranteed by the Egyptian Constitution.
28. Re-open a transparent investigation and hold accountable those responsible for the death of Nubian activist Jamal Sorour.
29. Stop the Nubian trials against the backdrop of peaceful demonstrations and gatherings and expression of opinion.
30. Re-investigate the violations against the Nubian activists' claims of being tortured.
31. Abolish the work of the Emergency Supreme State Security Court because it constitutes a clear violation of the guarantees of a fair trial.
32. Suspend the holding of trials in places where the Ministry of Defense or the Ministry of the Interior constitute a clear threat to the independence of the trial.
33. Stop all media, security and government campaigns carrying hate speech against Nubian activists for defending international obligations and constitutional rights.

¹³ International group for minority rights, a banned justice, unfulfilled promises, Situation of minorities in Egypt since 2014, January 2018