

## LAND RIGHTS IN CRISIS: FINDINGS AND LESSONS FROM IRAQ

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### Abstract

*The land administration is considered a key element for achieving economic growth and has a direct impact with respect to land tenure and end-user's rights on the overall development of a society. This Paper was carried out in Iraq, and was motivated considerably by the current insecurity situation; it represents an attempt to evaluate the essential features of the land administration in relation to the end-user's rights. Its objective is to understand the changing aspects of Land conceptions, user's rights, key elements and their restrictions in history and recent Iraqi. This paper focused on the Iraqi rural and urban reforms implemented over previous periods, including the granting of title to land, legislation on joint titling, and other changes in the Iraqi land law; and exploring what was happening as a result of the emergence of an unstable and the insecurity situations in Iraq following the fall of regime in 2003. From the extensive literature review in the Iraqi case study, the main outlines of the land administration and legal framework were presented, and the paper ended with a summary of the key factors and useful assessing to help the Iraqi land authorities in urban and rural development..*

**Keywords:** Land rights, End-user's rights, Iraqi land, Land administrations

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### 1. Introduction

Located in the Middle East between the Euphrates and Tigris Rivers, Iraq became the centre of the ancient empires as the Mesopotamia land. As an Islamic country, Iraqi Land Tenure Administration (LTA) is ruled and managed according to a set of permit forms controlled by the specific religious authorities.

Therefore, a comprehensive reviewing of the theoretical aspects of the LTA in Iraq is needed; historically the Islamic rules of ownership and inheritance continue to regulate a large part of the land tenure system within the region. The Iraqi current land tenure systems are increasingly fighting an important issue as the urbanisation and number of users grows and age-old problems in relation to the Iraqi traditional conceptions in order to develop an effective LTA. However, the

Iraqi independent country was under the Ottoman Empire boarded upon modern reforms under the influence of the Nationalism and Socialism ideologies after the independence. Administratively, land tenure systems in Iraq have codified by the Ottoman administration within a set of regulations that were derived essentially from the Islamic Shari'a (law of Islam) of ownership and inheritance as tenure religious aspects, and there also exist customary and tribal conceptions/ guidelines accepted by the majority of the Iraqi land users. Throughout the country, Iraq is facing an overwhelming amount of conflicted situation and lack of administrative roles in land and property policies. Providing secure, safe, and affordable tenure is a top Problem for the Iraqi land authorities. Due to the tension and lack of personal security in Iraq, this

problem is increased sharply within the national crisis. The most recent sectarian violence and ethnic tension in the Iraqi post-war state have resulted in a large insecurity situation with increased unstable establishments. The succeeding conflict has deepened conditions within the nation and further increased state supervision. It is clear that the rapid rate at which Iraq's Land tenure Crisis is being established exceeds the rate in which Iraq's Land Authorities (ILAs) are forming their policies and monitoring them in the ground. At these changes, land use, planning, and zoning policies had all been centrally and tightly controlled by the government. Today, after more than one decade, there is continued political and religious tension, unstable political governance with rooted bureaucratic corruption, semi-civil war and constant terrorist attacks. Moreover, the Iraqi refugee crisis still presents a national humanity problem. During these periods, Iraq faced a housing shortage that required the utilization of a high percentage of land, provision of housing units, development of utility networks and urban services, and access to employment. Unfortunately, these conflicts left the country isolated from the international community and financially and socially exhausted; due to these unstable conditions the Iraqi's future is unknown.

## 2. Literature Review

The concept and practices of the 'land tenure' are varied elements. As a result of specific historical, political, cultural and religious influences, the tenure term has been varying widely between countries and even cities. In general, there is a common diversity of the land tenure existing theoretical explanation, applications and systems worldwide, and not surprisingly, the local influences can be distinguished. [1] (p87) defined the land tenure as an individual right and responsibility with respect to the land "...the way in which the

rights, restrictions and responsibilities that people have with respect to land are held". While [2] and then [3] have emphasized it as an integral element that deals with economic, political, social and even environmental issues. Other definitions adopting the same perspective include those of [4] (p12), that observed the term "land tenure" to convey the multiple legislation elements involved in the rules regulating access to land and its use and management by different groups and individuals. Therefore, in a brief word; the term of the land tenure can be defined as the various relationships that land users' right establish in order to access and manage land. In this context, the [4] (p5) also defines this relationship as "*the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land*". It has suggested that 'Tenure' is a matter of awareness; it can be held under various forms in order to secure the users' rights [1]; [5]. Also, a useful summary of the land tenure is provided by [6] that observed that it as an issue of varying elements created to manage land right within the registry titles within the institutional authorities. In practical terms, land tenure is the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land [5]. According to [6] Formal tenure systems can be identified within national institutions. Consequently, this formal system can work as a protection to tenure rights against the multiple ownership claims regarding the land, and thus the official agreement forms should be approved between the community and the person receiving the rights. The land tenure is variable and linked with urban land crises. [6] (pp:279–290), for example, stated; "*the secure land tenure also recognizes one's legal residency status in urban areas and it is a key characteristic of slum. Slum dwellers don't have legal title to the land and thus are usually marginalized and ignored by*

*the local governments.*”, and thus, as protection against arbitrary forced eviction. According to previous definitions; [6] & [7] captured this picture and emphasis that the irregular/informal tenure system is the form of tenure in which occupants of land /homes have no formal right to do so, in which planning was unauthorized, in which there was no official consent to build, or some combination of all of these issues. In other words, the tenure as the individuals and group rights is protected by the state institution policy against the multiple claims from others. More specifically, though it is a site of struggle ideologies, it is well known that the some religious form of property rights framework conceives of its religious view as a sacred trust to the land tenure with adequate promotion of individual ownership. For example, [7] (p6) emphasised that *“it argues that an engagement with Islamic dimensions of land may potentially support land rights initiatives in Muslim societies and has implications for programmes relating to land administration, land registration, urban planning and environmental sustainability”*. That was echoed also by [8] and [9] that the Tenure under the religious arrangements can be realized in various ways and forms of collective ownership. For instance, the Islamic land arrangements showed wide ranges of land classifications , it reflects of Islamic flexibility guardianship in this framework arrangements such as ‘*Molk*’ (as a private full ownership), ‘*Miri*’ (as state’s lands), ‘*Waqf*’: (as endowment lands), and ‘*Metruke*’: (as Common lands), and ‘*Musha*’ (as Communal land), and other forms of collective ownership that were based on the doctrine of custom of the Islamic, [8]; [9]; [10]. Therefore, there is a brief that land tenure should be presented as a set of legal relationships that enable the land users, as individuals or groups, to use and benefit from the land resources with respect to land regulations, and that in such a context, there is the promise of

achieving this human beneficial right officially under defined rules and managements with which the end users’ rights are saved.

## 2.1 Iraq's land tenure crisis

It has seen that the land authorities were struggling in addressing LTA needs for effective managing and monitoring the end-users’ rights. The Iraqi situation is not different, as it is a Muslim majority population and a Middle Eastern country, and effective administration of land tenure are not fully grasped. A brief outline of Iraq's legal roots of land tenure is required for any complete discussion of LTA. It was determined in chapter 3 that the LTA to be effective, Key institutional & regulatory framework must operate suitable role in meeting the LTA effectively, evaluation of the Success indicators, comprehensible factors affecting the Success, and bring end-user’s satisfaction. These basic criteria will be used as cornerstone to attempt to assess the Iraqi recent situations and to evaluate the Iraqi level of development in the LTA aspects.

Throughout the country, Iraq is facing an overwhelming amount of conflicted situation and lack of administrative roles in land and property policies. Due to an administrative corruption and consecutive wars, over 3 million Iraqis are currently displaced and over 110,000 displaced families and 700,000 displaced people in Baghdad alone [12]. Meanwhile, rural families have migrated in large numbers to the urban areas for working or due to the security crisis. According to [13]; the migration within and into the Al-Nassiriya city alone, which has a population of 2 million, has furthered the crisis.

The Insufficient housing is a problem throughout Iraq, presently, there is a shortfall of up to three million dwellings in Iraq, Due to compounded previous wars, The Iraq's Land tenure Crisis was further exacerbated by the American coalition’s war on Iraq in 2003 [14]. With the fall of

the Baath's regime, due to the poor political legacy of the previous regime, there had been a large proliferation of conflicted administrations with increased violence and displacement waves throughout Iraq. In general, the Iraq's Land tenure Crisis has been influenced since the start of the 2003 conflict.

This situation can be especially characterized by the 2003 war, the subsequent internal conflict that followed, and general urban migrations. Due to these three triggers, millions of Iraqi had been forced to leave their possessions and to migrate internally or to the refugee camps in the neighbored countries, or in most events into illegally inhabiting public government lands. Meanwhile, due to declined livelihoods situations, large fluxes of people from the countryside and rural areas were migrated to the urban areas in hopes of better incomes.

On a larger scale, according to [10]; [11], Iraq is currently three million units deficient of the current housing demand. Furthermore, report daily problems with sewage, and 24% of Iraqi households are not connected to a sewerage system at all, and thirty-four percent of Iraqi households have raw sewage in the Iraqi streets and around their houses due to the sporadic waste collection [15]. The State of Iraqi Cities Report (2006/2007,p177) found that 79% of Iraqi households have access to treated water supply, half of all urban households in Iraq experience problems with water at least once a week [14]. Moreover, Electricity supplying is also cited as a large problem in all Iraqi cities, as the public electricity supply is usually only for an intermittent amount of hours per day, particularly during the extremely hot summer when electrical systems are overloaded with high energy consumption.

With eroded trust in the Iraqi authorities, the ILAs claim that they have written strategy to address the land tenure crisis in Iraq. The Iraqi Ministry of Planning, and the Ministry of Housing and Constructure, for example, have even

offered free plots of lands in their national strategies [12]. However, these strategies have not implemented large-scale solutions to address the recent crisis yet. This is likely a result of security concerns, which is a primary priority for the Iraqi authorities of land policies in general. In practice, the general influence has resulted from a series of disastrous wars. In addition, a long period of a highly centralized system of governance, that has further exacerbated the decline. All that have contributed to the deterioration of Iraq's Housing and Constructure stock a lack of maintenance and infrastructure.

Recently, after the ISIS's terrorist attacks between 2014 and 2016, Iraq's Land Authorities (ILAs) are in a more challenging position now than they ever have been in responding to issues of displacements and Migration and to their administrative roles.

Also, the Iraq's government has only met 15% of its social housing needs and also there is a substantial unmet demand for housing [14]. Recently, the chaos of looting and destruction of public records has also increased [15].

Following the regime changes in Iraq, Iraq's government turned from the feudal to the socialistic and then to nationalistic policies [16]; [17] [18]. At these changes, land use, planning, and zoning policies had all been centrally and tightly controlled by the government. During these periods, Iraq faced a housing shortage that required the utilization of a high percentage of land, provision of housing units, development of utility networks and urban services, and access to employment [19]. The contentious Violence, insecurity, and chaos grabbing complex problems, and the deficiency of awareness about peoples' rights and misunderstanding about how / what legal documentations that they should have, it can lead to grave consequences such as the forced eviction. Insufficient land/ housing law, management, informal squatters, livelihoods deprivation, and inadequate system are all consequences

related to the weakness of legal and ineffective institutional frameworks, the weak and slow implementation of land policies, legal regulations, and law enforcement have contributed immensely to unfair rights and actual tenure insecurity in Iraq

### 3. Research Methods

The research method section covers elaborations about the background reviewing to the Iraqi case- geographical, historical, political, social, religious, and population, and discuss the Iraqi's key institutional & regulatory framework, and introducing the administrative authorities of land and giving a brief details of its hierarchy and responsibilities in this respect. Accordingly, this paper explores the historical development the LTA in Iraqi within four different periods of time starting from the ottoman period to the present time by focusing on the main phases and changes during the implementation of the Iraqi national development. The discussion progresses to deal with the Iraqi current crisis in order to assess the role of Iraqi Land Authorities (ILAs) focusing on their efficiency under the influence of the recent situations.

### 4. Discussion and Conclusion

The discussion and conclusion section draws attention to the key findings of the study, interpreted recommendations and ultimate concluding remarks as well as the knowledge contribution of LTA in Iraq. Findings reviewed in this paper that evaluation of lands key elements and constraints in Iraq could indeed be a valuable community factors:

- The Iraqi land tenure is controlled by dual system formed from Islamic religious and local society/tribal forms, and the modern system of state that are broadening what is accepted as proof for land claims.

- All forms of tenure: public, private, communal, indigenous, and customary are Governed by customary laws and divided into types of private and collective purposes in accordance of land end-users rights.

- The Constitution Law on managing land affairs authorized the state to govern and protect directly the public and private right in accordance with the law.

- In Iraq, administrative failure to develop accepted principles governing refugee's problems rights has folded the problem. This tendency is aggravated by land scarcity, the State's weak capacity, land restructuring programmes, and fast growth of urbanization;

- Wars and post-war spheres folded Refugees crisis and led to increased tenure insecurity for widows and orphans, who suffer more incidences of property grabbing'

- As long as the conflict in the persists, it is not likely that the government will address tenure issues; the complex land transactions and monitoring of formal land registration are influenced.

- In most cases, there were avoidances of a set of multiple unresolved interests over the land rights, including rights of women, and with indigenous and minority rights;

- Communities are influenced by the traditional system, rigid and old laws and regulations, and the complexity of property bureaucratic procedures;

- The inequity view of local conceptions in regarding the women and vulnerable groups is still triggering the discrimination rights.

- Insecurity of tenure can potentially hinder the successful engagement of land tenure and property rights in LTA implementation.

As a result of weakness of governments, most people in the rural or semi-nomadic areas transfer land by oral agreements as informal deeds.

- One of the greatest needs is awareness raising about how the land administration system functions, most people in the rural or semi-nomadic areas often do not know their rights and registration procedures.

- It should be acknowledged that Islamic land laws (*Shari'a*) have a vital, dynamic existing with active, systematic evolution in a deep background in Islamic ownership's concepts.

- The Iraqi triangular relationship between Land, People and Policies impacts on users' rights are often severe when they occur on a societal scale or when not prepared for. This triangular relationship, therefore, is viewed as a complex set of community factors that governs end-users and their rights in land/property ownership in Iraq.

Therefore, these local lessons will help to underpin the exploration of the role of land authorities in achieving the LTA in Iraqi case.

#### 4.1 *Inquired actions:*

- Obtaining ownership has to be simply through Land institutions procedures within documented forms.
- Concerning on the quality and efficiency in land administration and strong employability skills in this system.
- Diversity of pathways which are available in Islamic rules that have developed a wide range of regulations in relation to ownership and inheritance rights.
- Linking between the Islamic heritage experiences of land rules and the international experience included adequate quality corporative forms.
- Changes to law and custom have strengthened women's claim to the right,

therefore to ensure women tenure security, it is important that they obtain titles in their own names.

- Developing the local data registration systems and providing high technical systems regarding the land tenure and users' rights.

- Registrars at land registries should be progressed and trained on modern approaches, and registration procedures should be specifically designed to enable fast and effective process.

- Specific strategies and mechanisms may therefore be needed to support the land inheritance rights of women/widows, including financial support, legislative reviews and land registration procedures.

- Refugees crisis is still influence on national systems; dispute resolution/mediation mechanisms can play a vital role in protecting displaced people rights.

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