



**DIAGNOSTIC REPORT – REAL
PROPERTY LAW AND REGISTRATION**



USAID | Iraq Economic Governance II

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
1. INTRODUCTION	4
2. ANALYSIS OF IRAQI REAL ESTATE LAW	8
INTRODUCTION	8
HISTORICAL SETTING OF IRAQI REAL ESTATE LAW.	8
IRAQI REAL PROPERTY LAWS.....	11
LACK OF A HOUSING COOPERATIVE LAW	21
CONCLUSION AND RECOMMENDATIONS.....	21
3. ANALYSIS OF IRAQI REAL ESTATE REGISTRATION.....	24
INTRODUCTION	24
ORGANIZATION OF THE REAL ESTATE REGISTRY – CENTRAL OFFICE	24
ORGANIZATION OF THE REAL ESTATE REGISTRY – REGIONAL OFFICES	25
REGISTRY OFFICE RECORDS	26
WORKLOAD IN THE REGISTRY	29
REGISTRATION PROCEDURES	30
INTERNATIONAL BEST PRACTICES IN LAND INFORMATION MANAGEMENT	31
REFORM ISSUES AND RECOMMENDATIONS	32
4. SURVEYS.....	37
SURVEY OF ATTITUDES TOWARD REAL PROPERTY LAW AND INSTITUTIONAL REFORM.	37
5. CONCLUSIONS.....	50
X. APPENDICES	57
APPENDIX A – REFERENCES	58
APPENDIX B – LIST OF REVOLUTIONARY COMMAND COUNCIL DECISIONS AFFECTING REAL ESTATE	59
APPENDIX C – REGISTRATION DEPARTMENT CENTRAL OFFICE ORGANIZATIONAL CHART	ERROR!
BOOKMARK NOT DEFINED.	
APPENDIX D – REGISTRATION DEPARTMENT REGIONAL OFFICE ORGANIZATIONAL CHART	ERROR!
BOOKMARK NOT DEFINED.	
APPENDIX E – REAL ESTATE REGISTRATION PROCESS FLOWCHART – PAGE 1 OF 3 .	ERROR! BOOKMARK NOT DEFINED.
APPENDIX E – REAL ESTATE REGISTRATION PROCESS FLOWCHART – PAGE 2 OF 3 .	ERROR! BOOKMARK NOT DEFINED.
APPENDIX E – REAL ESTATE REGISTRATION PROCESS FLOWCHART – PAGE 3 OF 3 .	ERROR! BOOKMARK NOT DEFINED.

EXECUTIVE SUMMARY

The following is an executive summary of the issues, findings, and recommendations of the Phase I Property Rights Diagnostic Assessment.

Issue I. Land Registry Operations and Procedures.

1. The land Registry should automate its processes. The land registry needs to automate its processes for several reasons, the most important of which is to improve the accuracy of its records. Up to 30% of all privately owned property registrations are suspect because of a combination of fraud and destruction. Major improvements from automation are:
 - a. Protection from identity theft. There have been cases of sales of the same property to multiple persons by the same owner and falsification of ownership records. This is very easy with common names, even with identification papers. A computerized system could provide for biometric methods for unique identification.
 - b. Automatic backup of records. The destruction of records during the aftermath of the war pointed out the fragile nature of relying exclusively on paper records.
 - c. Provide more complete statistics. The Land Registry is the source of valuable information for the governance of the country. It can and should provide more information about the types and amounts of property and the types of instruments (sales and security) recorded.
2. The Land Registry should implement a GIS. A GIS system could not only improve the operation of the Land Registry, it could be utilized by a wide variety of agencies to store and analyze attribute data such as utility, crime, agricultural and social data.
3. The Land Registry should improve Operations. The Director General had commissioned a study of its operations before the war, but the report has been destroyed in the aftermath of the war. To improve its operations, the Director General should reconstitute this group and redo the study.
4. Conduct an audit of lost records. There is a mechanism for the Land Registry to correct erroneous records where ownership is disputed. That mechanism or something similar could be used to deal with the issue of lost or destroyed records.
5. Unify registration of tasarruf land. The government originally owned all land and issued usufruct rights, called tasarruf rights, to use the land but maintained the underlying ownership in the government. There have been two attempts to regularize these titles. Both have created more confusion and the government should regularize the tasarruf titles. This will be a very long term project because of the large amount of tasarruf property.

Issue II. Property rights, especially related to housing and mortgages.

1. Amend the laws on real estate rental. The law establishes a leasehold interest for the tenant whenever a property is sold by judicial sale (foreclosure). This gives the tenant (defaulting mortgagor) a tenancy for up to five years at a legally prescribed rent of 5% of the value of the property per year. Without the ability to exercise ownership rights, mortgage foreclosure sales do not attract buyers and the banks are forced to become property managers. The result is that there are effectively no mortgages issued for single family homes.



Introduction

2. Provide for enforcement of real estate contracts. Repeal the resolution that prohibits contract parties from suing for specific performance. In inflating times, sellers have withdrawn from contracts in order to sell to another buyer at a higher price. Penalties are limited of demonstrated damages. Inability to enforce contracts is very disruptive to a market
3. Amend the condominium law Number 61 of 2003. The condominium law has a number of weaknesses that cause confusion over the ownership rights relating to individual units. For condominiums to be a successful housing alternative for the long term, it must be a reliable and understandable system.
4. Institute a housing cooperative law. There is currently no provision for cooperatively-owned real estate, and no provisions for how to register such a regime. Housing cooperatives have been used in several parts of the world to provide equity ownership opportunities to those with little or no credit history or whose credit history is poor.

Issue III Improve the real estate market

1. Reform the law of brokerage. The brokerage law is so weak that brokers generally have little knowledge and the ethics provisions are nonexistent. This is partially due to the fee structure set by law. The presence of well-educated professional brokers would improve the functioning of the real estate market, which is a high priority.
2. Recommend forming a commission to develop an inventory of state-owned land, and determine which should be put in private hands. The state owns an estimated 80% to 90% of all land in Iraq, at least some of which could be more productive in private hands.
3. Recommend forming a working group to recommend further improvements to Iraqi real estate market laws. This group would be made up of attorneys, Land Registry officials, brokers, surveyors, appraisers, bankers and others interested in improving Iraq's real estate laws. This would give reform efforts a constituency that would enhance the likelihood of successful passage.



1 INTRODUCTION



1. INTRODUCTION

This report is prepared pursuant to the Iraq Economic Recovery, Reform and Sustained Growth Project funded by the United States Agency for International Development (USAID) under Contract Number 267-C-00-04-00405-00. The contract calls for work in seven sectors – tax, fiscal and customs reform; monetary and central bank reform; financial sector reform; commercial law and institutional reform; utility and regulatory reform; social sector reform and general policy implementation. The activities leading to the generation of this report fall under the commercial law and institutional reform sector of the project.

The work plan prepared to guide project work for the contracting period ending 31 January 2005 calls for two major activities under the heading of real property law reform. The first is to conduct an assessment of the major laws and procedures pertaining to real estate law and property rights, and make recommendations for change. The second activity was to conduct a similar diagnostic for the Real Estate Registry, a department of the Iraqi Ministry of Justice having responsibility for registration of interests in real property. The institutional capacity of that organization is to be assessed and recommendations for improvements made. This report presents the results of those two activities.

Real estate is, in many countries, the single largest asset.¹ While Iraq does have significant reserves of hydrocarbons, its real estate assets are nevertheless substantial and represent a potential source of wealth for the country, not only as sites for economic activity but also as a source of collateral for much-needed investment. While this report was prepared under the commercial law and institutional reform sector of the Iraq Economic Governance II Project, any discussion of real estate law and registration will impact at least three of the seven sectors identified in the opening paragraph – commercial law, financial sector reform and tax and fiscal reform. Commercial law will obviously be impacted because real property law is a subset of the country's commercial laws. Efficient and transparent real estate conveyancing and registration procedures contribute to the development of the financial sector by enabling real estate to be used as collateral for loans. This not only facilitates home ownership but also provides security for commercial and industrial development. Real property is also the basis of at least three taxes in Iraq. Proper documentation and valuation of real estate are critical for proper administration of those taxes, and a stable source of tax revenue will contribute to the fiscal well-being of Iraq. While development practice over the last decade has evolved from “getting prices right” to “getting institutions right,” it is crucial for a well-functioning economy that policy-makers also “get the real estate market right” because the real estate market underpins such a large portion of any country's economy. This is evidenced by an increasing number of requests from developing and transition countries for land policy advice from bilateral donors and international financial institutions (Deininger 2003).

Following international practice, diagnostic assessments of aspects of commercial law generally incorporate two components. One is a thorough review of the major laws affecting the substantive area under consideration. In this case, laws affecting real estate are the subject of analysis. The second component of the diagnostic review are surveys of practitioners in the field. In an analysis of real estate laws and institutions, the interviews would include members of the real estate law community, including judges, attorneys and legal scholars; real estate practitioners, including brokers, leasing agents and developers; and real estate lending professionals. Interviews should also be conducted with public sector officials and employees having responsibility for real estate registration and land management.

This diagnostic attempted to follow that methodology. Iraqi laws reviewed for this diagnostic included the following:

 ¹ de Soto (2000) estimates that real estate comprises 50% of the wealth of advanced countries and as much as 75% of the wealth of developing countries.

Introduction

- Civil Code, Law Number 40 of 1951. The Civil Code sets forth the basic rules of law with respect to contracts, obligations, real estate and mortgages;
- the Real Estate Registration Law, Number 43 of 1971. This law governs the registration of rights to real estate in Iraq;
- Law Number 3 of 1960, Law Granting Ownership of Governmental Lands and Buildings;
- Law Number 53 of 1976, State Land Strategies Consolidation;
- Resolution Number 1198 of 1977 (dealing with remedies for breach of sales contracts);
- Law Number 87 of 1979, Law of Renting of Real Estate;
- Law Number 58 of 1987, the Law of Brokers; and
- Law Number 61 of 2003, the Law of Regulation of Property of Floors and Apartments in Buildings.

The explanation and analysis of these laws is preceded by an examination of the historical precedents for Iraqi real property law. This study of the history of Iraqi law is in keeping with international practice in conducting reviews of this type (Deininger 2003) and is necessary for the understanding of many of the issues facing Iraqi property law reform today.

With respect to the interviews with practitioners, several actions were taken. First, a number of unstructured interviews were held with senior officials in the Real Estate Registry, including the Director General of the Registry, the head of the Legal and Audit Section of the Registry and the head of at least one local office. Second, interviews were conducted with a legal scholar who is also a former judge and several practicing real estate attorneys to elicit their views as to the state of real estate law and registration in Iraq today. Third, a limited number of real estate lawyers (and one real estate banker) were interviewed using three different structured survey instruments.

The reason for using three different survey instruments is that each measures a somewhat different aspect of real estate law or registration. One instrument was the Land and Real Estate Assessment (LARA), prepared on behalf of the World Bank. The purpose of LARA is to ascertain the state of a country's land and real estate markets prior to the design of interventions so that those interventions may address the real needs in the recipient country's real estate market. LARA contains questions about the tenure structure, barriers to ownership, real estate finance, land use regulation and other issues. If conducted properly, respondents will be drawn from across the entire country and from a variety of different land-related professions, including law, banking, brokerage, planning and tax administration.

The second survey instrument considered for this diagnostic was the real estate section of the Commercial Law and Institutional Reform (CLIR) diagnostic survey designed on behalf of USAID. The CLIR diagnostic instrument covers ten areas of commercial law – bankruptcy, collateral, company, competition, contract, foreign direct investment, real estate, international trade, financial crimes and commercial dispute resolution. Like LARA, CLIR is a diagnostic tool to be used prior to the design of interventions. CLIR uses a standard template across all ten areas of commercial law, asking questions about the legal structure, the nature of implementing institutions, the nature of supporting institutions and the degree to which there is a demand for market reform and actors able to supply that reform. The CLIR instrument has been successfully used in Eastern Europe, Indonesia and Latin America. One major difference between the LARA instrument and the CLIR instrument is the latter's focus on institutional support for property law reform.

A third instrument was designed expressly for this diagnostic. It was designed to identify specific problems in Iraqi real estate law and registration. Design of this survey instrument was based on interviews conducted with a number of Iraqi real estate practitioners. Some of those practitioners suggested that parts of Iraq's legal



Introduction

framework for real estate operated satisfactorily, while other laws caused significant problems in practice. This third survey was designed specifically to shed light on the nature of this problem.

This report purpose of this report is three-fold. The first purpose is to describe the current state of Iraqi property law and registration procedures. The description is prepared for those in the diplomatic and donor communities who need this information in order to understand this component of Iraqi commercial law and related institutions.

The second purpose of this report is to establish a baseline with respect to the degree to which Iraq's laws are in harmony with market principles. Beginning in 1968, Iraq embarked on a socialist course, implementing state control and planning of the economy. Nineteen years later, however, steps were taken to undo some of the state controls. After years of socialist control, war, embargos and sanctions, the economy must be rebuilt. This diagnostic will indicate the areas of real estate law and practice to which attention must first be paid in the economic rebuilding of Iraq.

The third purpose of this report is to make recommendations for the improvement of Iraq's real estate laws and registration procedures. There are a number of specific recommendations for the improvement of Iraqi real property law and registration practices.

The report contains four parts following this introduction. In Section 2, Iraqi law related to real estate and is identified, described and evaluated. In Section 3, the Real Estate Registry is described and evaluated. Section 4 presents the results of the surveys. Section 5 contains the recommendations and conclusions.



2 ANALYSIS OF IRAQI REAL ESTATE LAW



2. ANALYSIS OF IRAQI REAL ESTATE LAW

Introduction

Iraq's legal system, like Iraq itself, is influenced by laws and jurisprudential concepts from a multitude of time periods and legal systems. Islamic, Ottoman, French and Egyptian laws or jurisprudence have all impacted Iraqi law over the years. In addition to those laws, Iraq's property law is also influenced to some extent by customary tenure relations in the tribal areas, and to some extent by Indian influences from the period of the British mandate when Indian administrators were employed in Iraq (Library of Congress 1988, Al-Hindawi 2004). Awareness of these influences helps an understanding of the legal system in Iraq today.

Iraq is a civil law country and, from the second Ba'ath Party coup in 1968 until the Second Gulf War, has been a socialist country. Socialism was enshrined in the constitution adopted in 1970.² Yet many important laws which yet remain in force, most notably Iraq's Civil Code, were enacted during the monarchy prior to Iraq's socialist period. This somewhat contradictory legal framework was overlaid with legal requirements imposed on Iraq during the occupation following the second Gulf War in 2003. The most important of these legal requirements is the Law of Administration for the State of Iraq for the Transitional Period (herein "TAL"), promulgated on 8 March 2004. The TAL serves as the basic governing law for the interim period, although it appears that to a large extent many provisions of existing Iraqi law remain in effect (Bälz 2003). A new constitution is to be written following elections in January 2005. With that new constitution, perhaps greater clarity and stability will be seen in Iraqi law.

Historical Setting of Iraqi Real Estate Law.

It is well recognized in land policy and land reform circles that an inquiry into the real property law of a jurisdiction must begin with a thorough understanding of the history of that property law (Deiningner 2003). In order to understand current Iraqi property law, it is thus first necessary to understand Islamic concepts of land ownership, and then observe their development over time, especially as those legal concepts were molded by the Ottoman Empire. Early Islamic jurisprudence distinguished property based on the type of tax paid on the property. Land conquered by the Muslim invaders was subject to a tax known as *kharaaj*, as opposed to the *'ushr* tax paid on Muslim lands in Arabia. Land subject to the *kharaaj* tax became known as *kharaaji* land. *Kharaaji* land was state-owned. Virtually all the land in what is now the territory of Iraq was *kharaaji* land, which is one reason why state-owned land remains so important in Iraq (Al-Anbari, 2005). Later, the Ottomans introduced a somewhat different classification system. One type of land was privately owned land (*mulk*), the second type was *waqf* land (land donated for charitable purposes) and the third type was land owned by the state (*miri*). The Shari'ah enunciated legal principles governing the first two types of land, but was largely silent as to state-owned land (Ziadeh 1979).³

Other authors describe the Ottoman land classification system in slightly different ways. Warriner (1975: 66-67), for instance, identifies five types of Islamic lands:⁴

² A new constitution was prepared for adoption in 1990 but was never ratified.

³ Over time, as the caliphate developed, state-owned lands came under the control of the caliph, and were ultimately assigned to the office that handled the finances of the caliphate (Al-Dafaay 2005). In the Ottoman period, the sultan replaced the caliph and assumed the powers of the caliph, including ownership of all state property. The practice of titling state lands in the name of the treasury continued (Islamoglu 2000). This practice continued in modern times, as the Ministry of Finance purportedly holds title to most state properties in Iraq today (BearingPoint, Inc. 2004).

⁴ Ziadeh (1979) indicates that the Ottoman Land Code of 1858 divided Ottoman lands into these five types. It is not clear whether Warriner was referring to the types recognized by the 1858 Land Code or whether the 1858 Land Code simply



Appendices

- *Mulk* land is held in absolute ownership and is governed by Shari‘ah law, not secular law. In early Muslim history, *mulk* lands were generally urban lands and houses.
- *Miri* land is state-owned land in that the *raqaba* is held by the state but the *tasarruf*⁵ may be granted to an individual. Grants of *miri* land are usually inheritable and often alienable (Warriner 1975: 147).
- *Waqf* land is land donated for a sacred purpose. A *waqf* may in some ways be considered a trust, with the corpus of the trust titled in the name of the beneficiary but the income remaining in the settlor.
- *Matruka* land is not common; it is generally publicly used land, such as for threshing facilities.
- *Mawat* land is vacant, unused land, sometimes referred to as “dead” land.⁶

Under Shari‘ah law, primary concern was not with ownership per se but was rather with the amount and type of revenue the land would generate. Muslim land owners paid one kind of tax; non-Muslims made other kinds of payments, which could be either tribute, rent or tax. The significance of these distinctions is that the *raqaba* of the non-Muslim lands was held by the state, while the non-Muslim occupants held only the *tasarruf* (Ziadeh 1979, Warriner 1975), although it was possible for Muslims to hold only the *tasarruf* as well (Al-Anbari, 2005).

The Ottomans continued the practice of maintaining the *raqaba* in the state and using the land to generate revenues to support the fiscal needs of the empire. One statement that captures the general attitude toward landholding and revenue generation in the Ottoman period is as follows:

The history of landholding in the Ottoman Empire, or in Islamic countries in general, can be summarized as a constant struggle between the state and the individual for control of agricultural lands which constituted the principal source of wealth for capital formation or state finances. The state’s concern to maintain its control of agricultural lands was primarily determined by its absolute dependence on agrarian production for its finances and for the maintenance of its mounted (*sipahi*) forces (İnalçık 1991).

The *sipahi* were the Ottoman cavalry; they were paid through grants of units of land (*timar*) from which they were permitted to keep part of the revenue. A *timar* was not an estate or interest in land; rather, it was the right to the revenues generated by that land and paid in the form of taxes or rents (İnalçık 1991). Over time, this practice developed into full-scale tax farming, whereby individuals paid the sultan for the right to collect revenues from a certain number of properties over time, often for the life of the tax farmer (Islamoglu 2000).

The 1850s saw changes in legal relationships in the Ottoman Empire. Islamoglu (2000) argues these legal changes came about because the Ottoman state gradually moved from a distributive-accommodative relationship with its subjects, as evidenced by tax farming, to a more centralized, formalized relationship in which it sought to exert more control over the revenue stream and diminish some of the power of the old tax farming elites. Ziadeh (1979) looks instead at the relationships between European powers and the Ottoman

adopted existing Islamic classifications. Note also that Islamoglu (2000) describes the tenure structure created by the 1858 Land Code in a slightly different way than either Warriner or Ziadeh.

⁵ *Raqaba* is absolute ownership, equivalent to the fee simple; *tasarruf* is the right of use (Ziadeh 1979). Both Ziadeh (1979) and Iraqi lawyers associated with this project have indicated *tasarruf* also includes the right of disposition, in addition to the right of use. Article 1169 of the Civil Code also states that the right of *tasarruf* may be alienated. Warriner (1975) does not mention the right of disposition.

⁶ The introduction to the English translation of the Iraqi Civil Code quotes a passage from the Ottoman Civil Code explaining *mawat* land as follows: “Is that which is not owned by any person nor is it pasture-land nor an area from which the villagers or townspeople obtain their fire(wood) [sic.] and it is the land which is furthest from the outermost house of a village, where the echo of a loud voiced man cannot be heard when he shouts from the outermost house lying at the periphery of that village or town.”

Appendices

empire and indicates a growing insistence by the Europeans that the Ottoman Empire modernize its economic structure. Whatever the reason, by the 1850s socio-economic changes led the Ottoman Empire to adopt a number of new legal codes, including the Ottoman Land Code of 1858.

Before describing the Land Code of 1858 and its impact on Iraq's property laws, it may be helpful to note some of the general conditions in Iraq during the Ottoman Empire. During most of the Ottoman period, the various tribes in Iraq were more powerful than urban dwellers (Library of Congress 1988). One result of this situation was a land tenure structure built primarily around tribal customary tenure. While in theory tribal lands were *miri* lands owned by the state, and the tribal occupants had no more rights than tenants-at-will, the lands were in fact organized in tribal *dirahs*, including all land over which the tribes exercised occupation – cultivated lands as well as waste lands or, in the southern part of Iraq, marsh lands. The land was considered community-owned and tribes people were cultivators of that land, neither landowners nor sharecroppers nor serfs. The land was not registered, and even when registration was imposed under the Land Code of 1858, at least in the south of Iraq registration was resisted and was not enforced (Warriner 1975).

The Ottoman Land Code of 1858 had at least two main objectives. One was to eliminate the tax farmers and the military fiefs of the *timar* system, thus allowing the state to exert greater control over the land and the revenues associated with it. The second goal was to increase individual ownership of property (Ziadeh 1979, Islamoglu 2000, Jorgens 2000). One device in the law used to reach these goals was compulsory registration of ownership interests. Interests so registered were called *tapu* titles from the name of the new registration office created under the Land Code. A *tapu* title was simply a grant of the *tasarruf*, registered in the *tapu* office.⁷

While one stated goal of the Land Code of 1858 was to create individual property rights, issuance of *tapu* titles merely perpetuated the state's *raqaba* interest (Jorgens 2000). Not only did the state retain the absolute ownership in *miri* lands, but the status of tribal farmers dramatically declined as registration of *tapu* titles proceeded. As noted above, most lands in Iraq were not registered in Ottoman times. The registration provisions of the 1858 Land Code alarmed many of the small tribal farmers who were to benefit from registering title to plots of land. Fearing either increased taxes or conscription, these small farmers registered their parcels in the name of tribal sheiks, land speculators or relatives unfit for military service. Yet after the titles were so registered, the farmers continued to work the land as before, thus creating a significant disparity between the state of the record title and actual use and possession of the land (Ziadeh 1979, Library of Congress 1988). Over time, tribal sheiks consolidated their hold over the land and became "rent-seeking landlords," thus rendering the formerly independent tribal cultivators "impoverished sharecroppers" (Library of Congress 1988: "The Ottoman Period"). Warriner (1975: 133) described the effects of this change in tenure relations in these terms: "It is the land system which is responsible for the great inequality of incomes, the lack of an expanding international market, the low-wage influx into the slums, and the lack of an agricultural policy. Without land reform, oil money can do little to raise the standard of living." Presumably there has been some change in the situation since Warriner wrote those words in 1975, but her statement does show the seriousness of the situation and the ramifications of this early change in the tenure structure.

Following the end of the Ottoman Empire after World War I, governance of Iraq was awarded to Great Britain under the League of Nations Covenant. The mandate became effective in 1920. Twelve years later, in 1932, Iraq became independent. During the mandate, the British continued the land reforms that began with the Ottoman Land Code of 1858.⁸ (Library of Congress 1988).

⁷ It should be noted that the Land Code of 1858 did not affect *waqf* or *mulk* lands. Those two types of lands were governed by *Shari'a* law.

⁸ Implementation of the Land Code of 1858 in Iraq did not begin until 1869 under Midhat Pasha (Library of Congress 1988).



Appendices

Just prior to the establishment of the monarchy in 1932, the *Lazmah* Law No. 51 of 1931 was enacted. *Lazmah* tenure was the customary tribal tenure by which the tribes collectively owned their land. This law formalized *lazmah* tenure by permitting individuals who had possessed and worked the *tasarruf* in a parcel of land for a period of at least fifteen years to register a *lazmah* title.⁹ The *lazmah* title was identical to a *tapu* title, except that the holder of *lazmah* title could not convey it without approval from the registry. This approval was required to ensure *lazmah* properties were not alienated out of the tribe. However, according to Warriner (1975), this result did not obtain, and rights of tribal land owners were trampled as established landowners used the *lazmah* law to increase their holdings. Other writers suggested the dispossession of small farmers, begun under implementation of the Land Code of 1858, continued at a greater rate under the *Lazmah* Law.

This extensive recitation of the history of Iraqi property law is necessary because, as will be seen below, questions concerning *tapu* and *lazmah* tenure still arise in Iraqi property law practice today. Even though the *Lazmah* Law was repealed in 1959, properties still have *lazmah* titles and are burdened by the restrictions on alienation that title imposes.¹⁰ Furthermore, as will be discussed below, regulations of the Revolutionary Command Council have also added to the confusion over *lazmah* titles. Thus, concepts of title that arose in Iraq one hundred years ago or more still affect real estate transactions today.

Iraqi Real Property Laws

Iraq is a civil law country. Because of that, the basic laws governing real estate are readily identifiable. The two primary laws governing real estate are the Civil Code, Law Number 40 of 1951, and the Real Estate Registration Law, Number 43 of 1971. These laws provide the basic framework for real estate law in Iraq.

In addition to these laws, a number of other laws and decisions, most of them the work of the Revolutionary Command Council, the highest law-making body of the previous regime, have been enacted. These laws must be interpreted and applied along with the Civil Code and Registration Law when dealing with specific real estate problems. Among those laws are the following:

- Law Number 3 of 1960, Law Granting Ownership of Governmental Lands and Buildings;
- Law Number 53 of 1976, State Land Strategies Consolidation;
- Resolution Number 1198 of 1977 (dealing with remedies for breach of a sales contract);
- Law Number 87 of 1979, Law of Renting of Real Estate;
- Law Number 58 of 1987, the Law of Brokers; and
- Law Number 61 of 2003, the Law of Regulation of Property of Floors and Apartments in Buildings.

In addition to these laws, regulations issued by relevant bodies, such as the Ministry of Justice, and instructions issued by ministerial departments, such as the Real Estate Registry also must be considered when attempting to determine the law in particular areas of real estate law.

In some cases, the laws enacted by the Revolutionary Command Council conflict with basic provisions contained in either the Civil Code or the Registration Law. These conflicts often make interpretation and

⁹ Iraq's customary tenure in tribal areas was much the same as existed in other parts of the world, in that individuals did not necessarily own individual plots, but did have the right to work plots of tribal land by virtue of their membership in the tribe (Dawson 2003).

¹⁰ Article 17 of the Real Estate Registration Law, No. 34 of 1971, expressly recognizes *lazmah* tenure.

application of the law difficult, if not impossible. This situation is probably the greatest challenge facing Iraqi real estate lawyers today.¹¹

Brief descriptions of the major real estate laws will be presented in the following sections.

The Iraqi Civil Code

Iraq's Civil Code, Law Number 40 of 1951, was the result of many years of work. Commencing shortly after Iraqi independence in 1932, commissions studied existing Iraqi law for the purpose of developing a comprehensive civil code. Work on the code was not completed until after World War II, and the code was not enacted until 1951. Thus, the Iraqi Civil Code in use today is the only civil code Iraq has had since independence in 1932. It must be emphasized that the Civil Code represents a blend of Islamic jurisprudence and western legal principles. The influences of both Shari'ah and Ottoman property law, as described above, are seen in the various provisions of the Civil Code relating to real property. Many of the Civil Code's real property provisions simply codify a number of the principles discussed in the preceding section.

The Civil Code has five primary divisions. The first part, called "Preliminary Part" in the English translation, discusses basic principles such as the interpretation and application of the Civil Code. The second part of the Civil Code, entitled Book 1, presents the general theory of obligations and sets forth the law of obligations. Book 2 covers contracts and sales. In this section of the Code the general law of sales is presented, as well as specific provisions for various kinds of contracts. The law of lease contracts (subsequently repealed) is presented in Book 2. Book 3 discusses primary rights in rem, while Book 4 presents the law of mortgages and privileged rights.

The Preliminary Part contains important provisions with respect to property rights. Following material related to natural and juridical persons, the Preliminary Part defines property, both tangible and intangible, and gives basic rules about public property. Most importantly for a discussion of property rights, the Preliminary Part defines the tenure structure in Iraq. The interests in land that may be owned in Iraq are set forth in Article 68 of the Civil Code, as follows:

¹¹ Appendix B contains a list of Revolutionary Command Council decisions affecting real estate and real estate registration. There may be other Revolutionary Command Council decisions not appearing on this list.



Appendices

Right	Definition
Ownership	● Full ownership rights in real property.
<i>Tasarruf</i>	● As noted above, <i>tasarruf</i> is the right of use and disposition of land, but is not absolute ownership. The absolute ownership remains in the state.
<i>'aqr</i>	● This interest in land is created when a previous owner abandons the land and a new rightholder takes subject to the affirmative obligation to use the land, by cultivation, constructing a building or by engaging in some other productive activity. A share of the revenue from the activity is to be paid to the state. This interest was abolished by Decision Number 17 of 1980.
<i>Musataha</i>	● This is an alienable, inheritable right to own the surface of the land for a fixed term. During the term, the owner of the <i>musataha</i> right must develop the land according to the terms of the grant. At the conclusion of the term, the improved property reverts to the grantor of the <i>musataha</i> right.
<i>Irtifaq</i>	● <i>Irtifaq</i> is a servitude or easement.
<i>Waqf</i> ¹²	● As defined above, the grant of property for religious or charitable purposes, with the income of the property either remaining in the grantor of the property or being used by the beneficiary of the grant.
Long-term Lease	● This is the standard right to a long-term lease, much the same as is found in most countries today.

Table 1

In addition to these rights, Article 68 defines three secondary rights in rem. Those three rights are the right of authentic mortgages, the right of possessory mortgages and privileged rights. An authentic mortgage is a typical mortgage, registered in the applicable local office of the Real Estate Registry and evidenced by an appropriate contract between the mortgagor and the mortgagee. A possessory mortgage is one in which the mortgagee or a trustee holds (possesses) the mortgaged property for the period of the mortgage. Privileged rights give a creditor priority over other creditors in the property of the debtor.

The main provisions in the Civil Code dealing with real property are found in Books 3 and 4. Book 3 concerns primary rights in rem; Book 4 concerns accessory rights in rem, meaning mortgages and security interests in movable property. Each book is organized in a logical and orderly way, indicating the various rights in real property and specifying how they are created, maintained, restricted and terminated.

Of the seven interests in real property listed in Table 1, Book 3 of the Civil Code provides guidance as to four of them. As noted earlier, waqf is not technically an interest in land, in any event, is governed by Shari'ah law. Leases were governed by applicable articles in Book 2 of the Civil Code prior to their repeal. Leases are now



¹² Ziad (1979) says *waqf* is not an interest in land per se.

Appendices

regulated by a separate law on leasing, which will be discussed below. The right of ownership is mentioned specifically only briefly at the beginning of Book 3, in conjunction with the establishment of the right of absolute ownership. The other four interests, namely *tasarruf*, *'akr*, *musataha* and *irtifaq* are discussed in Book 3 of the Civil Code.

In addition, Book 3 contains provisions necessary for establishing a comprehensive property rights regime. For instance, the provisions of Book 3 describing the acquisition of property would be familiar to any person who has taken the property law class in a western law school. Articles of the Code deal with possession of wild animals during hunting and fishing, as well as possession and ownership of grass, firewood and water in their natural condition. Moving from those elementary concepts, the Code enunciates rules of acquiring ownership through death (both by inheritance and by will) and among living persons, whether through accession, contract, pre-emption or adverse possession. There is extensive provision for joint tenancy, including creation of the right and specific provisions for various kinds of joint ownership, among them joint ownership of property (as a tenancy in common and not as a joint tenancy with right of survivorship), and the ownership, use and maintenance of property used in common, such as party walls, upper and lower floors in houses and private roads used by more than one party. The rules seem designed to balance the interests of the parties and prevent one side from taking advantage of the other.

Article 1050 requires “fair” compensation to be paid if property is taken. However, this provision of the Code has been affected by actions of the Revolutionary Command Council. Several attorneys interviewed during the preparation of this report have commented that under laws promulgated by the Revolutionary Command Council, fair compensation was not paid, and the state arbitrarily took the property it wanted in contravention of the Code. This again shows the Civil Code establishes enduring legal principles to which apparently most Iraqis subscribe, but its efficacy has been undercut by continuous contrary actions of the Revolutionary Command Council.

A significant part of Book 3 of the Code deals with *tasarruf* rights, the second right identified on Table 1. As noted in the section on the historical background of Iraqi property law, *tasarruf* rights were a common form of tenure in Ottoman times. This property right was continued in Iraq after it became independent. Because these rights are so widespread throughout Iraq, the extensive rules governing these lands were codified.

In most respects, *tasarruf* rights are treated very similar to rights of absolute ownership. A *tasarruf* is the right to use/farm the property and in western law would be considered a usufruct. *Tasarruf* rights may be conveyed, leased or encumbered. They are part of a person’s estate and are subject to attachment by creditors. Compensation must also be paid for the taking of *tasarruf* rights. *Tasarruf* rights may not, however, be bequeathed, nor may they constitute a *waqf*, or religious donation. *Tasarruf* rights are also subject to “ancient” (Article 1174) rights of grazing, irrigation and servitude which may burden the land. *Tasarruf* lands are also subject to the general rules governing joint ownership, except insofar as those provisions would derogate the rules of *tasarruf*.

Given the length of time over which *tasarruf* rights have been in existence, the provisions governing this right are correspondingly detailed and complex. Specific rules of inheritance exist for this right, as well as rules governing prescription,¹³ both to acquire the *tasarruf* right and to lose the *tasarruf* right. The Civil Code properly includes these rules to govern the administration of such an essential right in Iraqi property law.

The right of *'aqr* is mentioned only briefly in Article 1242 of the Civil Code. These long-term lease rights were abolished in 1980.



¹³ Prescription does not run as against rights properly registered in the Real Estate Registry (Al-Dafaay 2005)

Appendices

The fourth property right established by the Civil Code is the right of *musataha*. This right is a right to use the surface of the land. The grantee of the right must develop the land during the term of the grant. The term of the grant may not be longer than fifty years. The grantee may alienate or bequeath the right, and it is heritable. At the conclusion of the grant, the improvements revert to the grantor of the right.

The fifth right specified in the Civil Code is the right of *irtifaq*. *Irtifaq* is simply a servitude. Mentioned in the Code are servitudes for access, drainage and watercourses, with allowances for other kinds of servitudes as required. Servitudes may be created by express contract, inheritance or bequest. Servitudes may also be assigned. While servitudes by prescription are not mentioned expressly, the provisions of the Civil Code governing acquisition of title by possession (Articles 1145 – 1168) may govern the creation of servitudes. Other rules governing servitudes expressed in the Civil Code follow basic rules of fairness and practicality as between the owners of the dominant and servient tenements.

The sixth right is *waqf*. *Waqf*, as defined by Ziadeh (1979: 103), is “Property held in perpetuity with the income devoted for the upkeep of a charity including the support of a family.” *Wafq* is not governed by the Civil Code, but is regulated in accordance with Shari‘ah law. Rules governing *waqf* are extremely complex, but because it is a property interest,¹⁴ no property law reform can ignore *waqf*. A full examination of the rules governing *waqf* is beyond the scope of this introductory analysis.

The final property interest defined in Article 68 of the Civil Code is the long term lease. The rules governing leases are not found in Book 3 with the other rights in rem, but are found in Book 2 with the description of contracts. Specifically, rules governing leases are found in Title 2, which governs contracts relating to the use of a thing. In this case, the “thing” is real property. The provisions of the Civil Code dealing with leases cover virtually all issues that should be addressed in drafting a commercial or residential lease – the capacity of the parties; offer and acceptance; the term, payment of rent; lessor’s obligations, such as delivery of the premises and providing maintenance; the lessee’s obligations, such as maintenance, timely payment of rent and delivery of the leased premises upon expiration of the lease term. The Civil Code also deals with issues of assignment, subleasing and termination of the lease, as well as providing specific rules for particular kinds of leases such as agricultural, sharecropping and horticultural leases. Real property lawyers interviewed for this report indicated that these Civil Code provisions worked reasonably well.

However, in 1973, the Revolutionary Command Council passed Law Number 67, which repealed these provisions of the Civil Code. In 1979, the 1973 law was repealed and Law Number 87, the Law of Leases, was enacted. This law is analyzed in a separate section below.

As noted throughout this discussion, there appear to be no serious problems with the Civil Code itself. Most of the problems raised by real estate attorneys concern the effect of Revolutionary Command Council actions on the law as stated in the Civil Code. It appears that reform of real estate law in Iraq must begin with identifying those Revolutionary Command Council actions which should be repealed or amended. Identification of affirmative changes in the remaining laws, including the Civil Code, can then be identified.

The Real Estate Registration Law

The Real Estate Registration Law, Number 43 of 1971, was issued on 14 March 1971 by the Revolutionary Command Council. It provides a comprehensive framework for the registration of rights to real estate in Iraq and replaced the Ottoman system of *tapu* registration which had been in effect since the introduction of the Ottoman Land Code in Iraq in 1869. The Real Estate Registry is placed administratively within the Ministry of Justice, an arrangement which is not uncommon in countries using a system of title registration. The



¹⁴ But see footnote 11, above, noting that Ziadeh (1979) does not consider *waqf* a property interest per se.

organization and operation of the Registry is discussed more fully in the following section of this report. This section will simply provide a brief overview of the law itself.

The Real Estate Registration Law comprises three primary sections, plus a final part. The introductory section provides basic definitions used throughout the law, and establishes the basic functions of the Registry. Of particular importance is its definition of certain kinds of state property. The law specifically recognizes *miri* lands and both *tapu* and *lazmah* tenure. The importance of these tenure classifications today will be discussed below with respect to Law Number 53 of 1976.

Following the introductory section of the law is the section dealing with registration records and procedures. All the forms, documents and record books to be used in the registration process are meticulously described in this section of the law. Special rules are also included in this section for registering property belonging to Arabs from the Gulf states and to other foreigners.

The third section of the law provides rules for various kinds of transactions and special cases, such as dividing interests in real property, easements, wills, long-term leases, *waqf*, and correcting matters of title on the record. The law makes it clear that these transactions must be registered in the Registry in order to be effective.

The final provisions of the law give the Director General of the Registry the authority to form a consultative committee of senior employees in the Registry to provide advice on various matter that may come before the Registry. In addition, the Director General is empowered to issue regulations governing the operation of the Registry and its local offices.

As noted earlier in the report, virtually all attorneys interviewed for purposes of this report indicated general satisfaction with the Registration Law. Dissatisfaction was expressed regarding laws issued by the Revolutionary Command Council that conflict with the Registration Law. Some dissatisfaction was also expressed with the frequency of instructions, which at time seem to be contradictory. A great deal of dissatisfaction was expressed with respect to registration procedures, which are described by practicing attorneys as overly complex and time-consuming. These matters will be discussed in the next section of the report dealing with real estate registration.

Law Number 3 of 1960, Law of Granting Ownership of Governmental Lands and Buildings

This law sets forth the rules by which state land may be conveyed to foreign governments, communities or charities. Governates and state banks may also receive properties under this law. If the properties are not used for the purposes for which they were granted, or if the properties remain unused for five years, or if the amount of land granted is in excess of what is needed for the permitted use, the property (or the excess over what is needed for the use) can be taken back by the state.

The most important question raised by this law is why the state owns land and buildings in such quantities that it has sufficient excess to distribute to so many entities for so many varied purposes. It would seem appropriate for a review to be made of all state-owned properties in Iraq to determine which properties could be profitably returned to the private sector. Doing so (assuming appropriate compensation is paid to the state for those properties) should give the Iraqi government additional funds to pay claims against it (for previously confiscated properties, for example) and should subsequently generate additional tax revenue from the economic activities that could be conducted on these properties.



Law Number 53 of 1976, Consolidation of State Land Categories

Much emphasis in this report has been placed on historical concepts of land – *tapu* and *lazmah* tenures, *miri* land, and so forth. Those concepts are very much alive in Iraqi land law today, and attempts to reform that tenure structure have perhaps only further confused land titles.

As was noted above, *tapu* titles were issued following the registration introduced by the Ottoman Land Code of 1858. These titles enabled more of Iraq's farmers to own their land. The same was true with the introduction of *lazmah* titles, whereby tribal land was to be given to individuals with restrictions on the right of disposition to keep the lands within the tribes. Both of these interests were *tasarruf* interests only, because they were only granted on *miri* lands, the absolute ownership of which (*raqaba*) was held by the state.

In 1976, an attempt was made to regularize these titles. That effort took the form of Law Number 53 of 1976. Law Number 53 is an extremely confusing law, which apparently has done little to regularize titles. Simply put, Law Number 53 essentially divided plots owned in either *tapu* or *lazmah* tenure in two parts, according to formulae in the law, and gave one part to the current owner and the other part to the state. The owner could freely alienate, mortgage, devise or otherwise dispose of the piece received under this law. Presumably the owner could also work both parts of the land as if this division had not been made, but this appears to be a de facto practice, rather than a right given expressly by this law.

In practice, however, nothing changed, because the state still held the *raqaba* interest, with merely the *tasarruf* in the owner, with the added complication that the state at least on paper (but perhaps not in fact) took back a portion of each owner's parcel.

In an undated memorandum, the Director General of the Real Estate Registry advocated abolition of *tapu* and *lazmah* tenures and their replacement. The Director General suggested two options. One option was to abolish *tapu* and *lazmah* tenures and compensate the owners for their losses. The second alternative was to allow owners of the *tasarruf* on these lands to purchase the state's *raqaba* interest, so long as they maintained the land in agricultural use. Unfortunately, the Director General's recommendations have not been acted upon. While it is premature for this Project to recommend a specific solution because of the complicated nature of this problem, project advisors do agree with the Director General that the state of agricultural land titles is confusing at best, and a remedy should be found that will simplify titling while preserving Iraq's valuable agricultural land resources.

Resolution Number 1198 of 1977

The purpose of this resolution is to provide for remedies in the event of a breach of certain contracts for the sale of real property. The Civil Code originally governed actions for damages for breach of contract. Article 1127 of the Civil Code provides as follows:

The undertaking to convey the title of an immovable property is confined to an obligation for damages if either party has breached its undertaking regardless of whether or not damages have been stipulated in the undertaking.

This provision of the Civil Code was repealed by Resolution 1198 of 1977; that resolution was itself amended by Resolution 1426 of 1983. These two resolutions together change Article 1127 by setting a limit on the amount of damages that may be recovered upon breach of a sales contract. This limit is set at the difference between the value of the property at the time of the contract and the value at the time of the breach. If the buyer lived in the property or constructed buildings on the property, without opposition from the seller, then the measure of damages is increased by the value of the buildings on the property.



Appendices

Conversations with attorneys indicate problems with this provision. Apparently in times of rapidly escalating prices, sellers breach contracts in order to resell the properties to other buyers who will pay a higher price. The damage cap does not penalize sellers sufficiently to discourage or prevent their behavior in breaching sales contracts. Because the remedy is limited to damages, buyers are prevented from seeking specific performance of their contracts and thus they have no opportunity to obtain properties for which they contracted. This situation calls for significant reform of Iraq's law of remedies and damages, at least with respect to real estate contracts.

Law Number 87 of 1979, The Law of Real Estate Renting

The Law of Real Estate Renting must be analyzed in conjunction with Law Number 162 of 1959, as amended, the Law of Real Estate Rental Tax. The two must be analyzed together because they constitute a comprehensive scheme to govern the real estate rental market and the taxation of real estate rents. These laws are administered by the Ministry of Finance through the Real Estate Rental Tax Department of the Tax Commission.

The underlying principle behind these two laws is the rent charged for real estate, such as a residence, should be a percentage of the value of the property, and that the value of the property should be set by government officials. Both laws provide for "estimation" of rental properties by government valuers in the Real Estate Rental Tax Department, and the Real Estate Renting Law sets the maximum percentage of value which may be charged as rent for the properties. As can be seen, these laws prevent the real estate rental market from functioning on market principles. Even if the valuation of the properties approximates market values (which it might, depending on the degree to which market prices drive the valuation of the properties), setting the rents at a fixed percentage of the estimated value does not permit the market to determine rents. Thus, the leasing of residential real estate takes place largely outside the market.

The Real Estate Renting Law further affects the market for leased property by specifically prohibiting, in Article 27, the leasing of residential property by one who owns property which may be inhabited. Furthermore, Article 20 provides that it is illegal to keep a property vacant for more than 90 days; if the owner keeps the property vacant for more than 90 days, the Real Estate Rental Tax Department may rent it according to the terms of the Real Estate Renting Law. Under Article 15, the judicial sale (foreclosure) of a residential property creates a leasehold estate for the tenant (defaulting owner) who may rent for at least five years at the low rents discussed above.

The Law of Real Estate Renting thus creates a state-controlled residential real estate market. Property is not allowed to remain vacant; persons owning residential properties may not rent from another; rents are set in the statute and property values, the basis of the rents, are set by government employees. It should be pointed out that government housing is not subject to the Law of Real Estate Renting; the law, by its own terms, does not apply to government-provided housing for government employees, nor does it apply to properties rented by the Minister of Finance, nor does it apply to properties rented to non-Iraqi individuals or legal entities. Major revisions, if not outright repeal and re-enactment, will be needed in order to free the rental market from this seemingly excessive bureaucratic control.

Law Number 58 of 1987, The Law of Brokerage

Law Number 58 of 1987 regulates the activities of brokers in Iraq. The law covers four types of brokerage activities: real estate, vehicles, agricultural and industrial products and public auctions. The law requires brokers to be licensed. The licenses are to be issued by chambers of commerce, which are local non-governmental organizations (NGOs). Licenses are valid for one year. Minimal standards for licensing are set



forth in the law, including a requirement of Iraqi citizenship in order to be a broker. The rules further provide that no individual may engage in more than one type of brokerage activity. Brokerage fees are set according to a two-step scale, and may not exceed the sum of 1,500 Iraqi dinars. The law implies that one broker may handle a transaction alone (in other words, assist both buyer and seller), and that, barring an agreement to the contrary, the parties to the transaction must split the fee equally. Brokers must keep copies of the papers associated with the transactions in which they engage, and failure to keep those records may result in a jail term not to exceed three years. The law may be supplemented by regulations issued by the Minister of Commerce.

Informal conversations with Iraqi real estate attorneys indicate a general dissatisfaction with the real estate brokerage profession. Comments indicate that the brokers are generally uneducated, untrained and unprofessional. Rather than being an important factor in the Iraqi real estate market, they appear to add little value to real estate transactions.

This suggests that there is significant opportunity to strengthen the Iraqi real estate profession by improving the training and licensing requirements for real estate brokers. A number of suggestions may be made to strengthen Law Number 58 of 1987, as follows:

- Add substantive knowledge requirements to the existing general requirements for a broker's license. At present, the only requirements are Iraqi citizenship, a primary school education, no criminal record and a general reputation for honesty. There are no requirements that the applicant know anything about economics, real estate, the real estate market, construction or property valuation. Omission of substantive knowledge of real estate is a glaring defect in the law and should be remedied as soon as possible.
- There are no ethics rules or standards mentioned in the law. This may be due to a weak or non-existent association of brokers in Iraq. Consideration should be given to the creation of a self-regulating body of brokers to draft professional standards for brokers in Iraq. The body should also have the power to enforce those standards. In addition, a portion of the licensing fee (or a portion of the fee to join the professional association of brokers) should have a fund, created and maintained by required payments from brokers, from which person aggrieved by actions of brokers may be compensated.
- The brokerage fee cap should be eliminated. Brokers should be free to compete for business by offering lower fees, or to charge higher fees for additional services.
- Provision should be made for both brokers and sales persons. This will provide a means for lesser-qualified persons to enter the field and gain experience as sales persons, allowing them to progress to broker status later in their careers if they choose to do so.
- Licensing should be moved from NGOs to an official government body, such as the Ministry of Commerce.

There is no question that a properly functioning real estate market can assist in the overall development of Iraq's economy. Real estate brokers can play an important role in both the developing and functioning of that market. Improving both the law on brokerage and creating well-functioning and well-governed associations of brokers can do much to allow brokers to assist in real estate market development.

Law Number 61 of 2003, The Law for Regulating the Ownership of Apartments and Floors in Buildings

Law Number 61 of 2003 is Iraq's condominium law. It regulates the ownership of common areas of buildings and governs the relationship among common owners. The word "floor" is defined in the law as an independent real estate unit. The word "apartment" is also defined as a real estate unit independent from the "floor." This is somewhat confusing.



Appendices

As in a typical condominium statute, this law provides for the creation of a unit owners' association (called an "assembly" in the English translation), permits a building in condominium ownership to be registered in the Real Estate Registry, and regulates relations among the owners of the common elements of the building by prohibiting any owner to take any action that would adversely affect other common owners. Law Number 61 of 2003 does appear to address many of the issues covered in a typical condominium statute.

There are, however, a number of deficiencies in Law Number 61 that should be addressed. First, the statute is overly simplistic. It may adequately cover situations in which owners of units in a building informally wish to cooperate in the management and operation of the building in which they all own units. However, the statute does not address the affirmative creation of large-scale condominium development. The statute is especially weak with respect to disclosure of the costs to be incurred by unit owners in the operation of the condominium. Nor does the statute provide detailed information on the organization and operation of the "assembly." Given the shortage of housing in Iraq, and the potential importance of large-scale condominium construction to relieve at least a portion of that shortage, it would seem imperative to bring the condominium statute in line with modern statutes of this type in order to facilitate the construction of condominiums as a partial solution to Iraq's housing shortage.

Secondly, the law does not appear to adequately provide for the registration of the condominium, as such, in the Real Estate Registry. While Article 2 of the law does provide that "The building can be separated into floors or apartments and registering it with the name of its owners according to the law," this does not appear to require the condominium to be registered as such in the Registry. Given that there is currently no affirmative right of public access to real estate records in Iraq, this may not be a major problem. However, as demand for public access to real estate data grows, and as access to real estate records becomes more important for economic development purposes, the capability to access data on condominiums through the name of the condominium will become more important. Requiring the entry of the name of the condominium in the Registry would help to bring Iraq's condominium statute into harmony with international practice.

A third area of concern is the description of the units and the allocation of common areas to those units. In a typical condominium statute, creation of the condominium is effected by the filing of a declaration in the real estate registry (or its equivalent). The declaration must contain, among other things, descriptions of each of the units. For example, Section 2-105 (a) (5) of the Uniform Condominium Act provides that the declaration must include "a description of the boundaries of each unit created by the declaration, including unit's identifying number." Furthermore, Section 2-105 (a) (11) requires that the common areas assigned to each unit be allocated specifically in the declaration. This is crucial, not just to define each unit owner's interest in the real estate, but also to define each unit owner's share of the votes in the management of the condominium, because each unit owner's vote is proportional to the owner's allocation of common elements. Law Number 61 of 2003 neither requires a description of the units, nor does it require specification of the allocation of common elements to each owner. These deficiencies could give rise to disputes among owners as to where individual owner's interests end and commonly owned elements of the condominium begin. Furthermore, Law Number 61 of 2003 does not allocate the common elements in a fixed way, but, in Article 4, bases them on the values of the respective units. This makes each owner's share of the common areas variable, because the relative values of the units will change over time. By fixing the common area shares in the declaration, based on the areas of the respective units, the shares are known and certain, and permit each owner to know with precision the rights associated with that unit in the condominium.

The concerns described above lead to a fourth weakness in Law 61 of 2003, a weakness displayed in other Iraqi laws. That weakness is an overly strong reliance on the statute to govern relationships among the parties, rather than have the parties define those relationships through documents they create themselves. For example, Article 12 sets forth the fees to be assessed against each unit owner to support the activities of the association. It would seem appropriate to put the burden on the creator of the condominium, or the assembly in an on-going condominium, to determine themselves the budget of the condominium, and then to assess the unit owners in



proportion to their shares of the common elements their respective portions of the fees. Rather than looking to the statute for guidance in such matters, it would be preferable for the parties to govern themselves, provided that each unit owner had equal access to all relevant data regarding the operation and expenses of the condominium.

Lack of a Housing Cooperative Law

Housing cooperatives are widely used in developed and developing countries to provide equity ownership opportunities for those who do not qualify for conventional mortgages. In a housing cooperative, the entire project is under the ownership of the cooperative corporation. That corporation typically acquires funding through a mortgage backed by a housing fund, private foundation or other charitable agency. The units in the project are issued shares in the corporation. An individual purchasing a unit in a cooperative actually purchases the shares of the corporation that entitle him/her to occupy a specific unit. Since the entire project is already funded with a mortgage, the corporation is able to sell the shares on the basis of payments that meet the mortgage payment. In effect, the cooperative corporation has created an umbrella mortgage and the individuals do not have to deal with the bank. As long as they make their payments the shares belong to them. This is attractive in providing equity ownership to those whose income or credit history make them poor candidates for conventional mortgages. There is at least one company who has expressed interest in housing cooperatives in Iraq. A housing cooperative law should be proposed as soon as possible.

Conclusion and Recommendations

This brief review of major real estate laws in Iraq indicates that Iraq has a relatively workable basic framework for real estate law in the Civil Code and the Real Estate Registration Law. The Civil Code was enacted during the period of the monarchy and reflects a blend of Islamic and western legal concepts seemingly reasonably well-suited to Iraq as an Islamic country once part of the Ottoman Empire and now attempting to define itself in both the Islamic and western worlds. Other real estate laws, however, added by the socialist Revolutionary Command Council, added significant layers of government interference to the real estate market and excessively regulate many aspects of that market. As Iraq prepares to begin a new phase in its national history, reform of its real estate laws should be a matter of significant priority.

Reforming Iraq's real estate laws will be no easy task, nor will it be something that can be done quickly. As this brief review has shown, real estate leasing, regulation of the real estate profession and condominium or common interest ownership issues need significant attention. Remedies for breach of real estate contracts also need study and reform, as does the matter of compensation for public takings of private property. Some of these issues have political overtones. Any reform of real estate law must include representatives from all segments of the Iraqi real estate bar and Iraqi society.

As a first step, the Ministry of Justice (or other appropriate body) should appoint a working group consisting of members of Iraq's real estate bar, Real Estate Registry officials, judges specializing in real estate cases and others interested in the development of the real estate market such as real estate brokers, representatives of the Real Estate Bank and perhaps representatives from the Housing Ministry and the construction industry. Representatives should represent all major divisions of Iraqi society in order to insure each group has a voice in the drafting of these laws. The working group should first come to a consensus as to the goals Iraq's real estate law should achieve. Once a general consensus were reached on broad goals, the working group should then be divided into various committees to handle specific technical issues such as residential leasing, mortgage financing, brokerage, agricultural real estate, etc. The committees should not only review existing law, but should also analyze how those laws work in practice and how they should work to achieve the goals Iraqi real estate law should achieve. The committees will be responsible for ultimately drafting specific recommendations for changes in Iraqi real estate law. Before submission to Iraq's legislative body, they should be reviewed and revised for consistency in both language and purpose. There appears to be a significant



Appendices

number of highly qualified attorneys and other interested parties in Iraq who should be able to perform this most important work. Appointment of the working group should be one of the first actions of the new government.



**3 LEGAL AND INSTITUTIONAL
ANALYSIS – IRAQI REAL ESTATE
REGISTRATION**



3. ANALYSIS OF IRAQI REAL ESTATE REGISTRATION

Introduction

Registration of rights in real estate in Iraq began with the reforms of Midhat Pasha in 1869 (Library of Congress 1988). Registration continued through the period of the British Mandate. In 1935, shortly after Iraq's independence, Law Number 59 of 1935, The Law of Origins of Registration of Real Property in Tapu was passed, continuing the practice of Real Estate Registration. Currently the Real Estate Registry is a part of the Ministry of Justice.¹⁵

Organization of the Real Estate Registry – Central Office

The Real Estate Registration Office comprises a central office and regional offices throughout the country. Sub-offices report to the regional offices. There are approximately 1,500 persons working in various Registry Offices throughout the country. Of that number, approximately 138 work in the Central Office in Baghdad and approximately 476 work in the local offices in Baghdad. Between twenty and twenty-seven percent of the Registry's total staff are attorneys. The organizational structure of the central office of the registry is depicted in Appendix C. The organizational structure of the regional offices is depicted in Appendix D.

As can be seen in Appendix C, the head of the Real Estate Registration Office is the Director General. The Director General has one assistant Director General. Below those two positions are six offices, each headed by a Director. The six offices are further divided into specialized offices. Each of these six specialized offices will be described in turn.

Legal/Audit Department. The substantive work of the Registry is conducted through this Department by its control of registration operations in the branch offices. The word "audit" in its title refers not to financial matters, but to the audit of the procedures and rules to be followed in the registration of properties in Iraq. Six offices carry out the work of this Department.

The *Registries Office* maintains a second copy of all registration records generated throughout Iraq. Currently these records are maintained in paper format. About thirty percent of the duplicate records have been destroyed in wars and looting during recent years. The *Statistics and Follow-up Office* receives statistical reports monthly from the branch offices and compiles the offices monthly and annual statistical reports.

Four separate offices in the Legal/Audit Department handle legal matters affecting the Registry. The *Claims Office* defends the Registry against lawsuits brought against the Registry. The *Objections Office* investigates those transactions that were not registered due to problems arising in the registration process. The *Studying Office* processes requests and questions arising from government offices outside the Registry. The *Search/Inquiry Office* conducts internal investigations into allegations that the Registry's employees failed to follow the correct procedures in processing registration transactions.

Administration Department. This department is responsible for all personnel and other non-financial administrative matters in the Registry. As its name implies, the *Human Resources Office* manages personnel matters. The *Administrative Services Office* handles routine administrative affairs for the office. The *Archive Office* maintains copies of all incoming and outgoing correspondence.

Financial Affairs Department. As its name implies, the Financial Affairs Department coordinates all financial matters in the registry. Four offices are within this Department. The *Salaries Office* insures that employees are paid. The *Expenses Office* handles accounts payable. The *Storage Office* maintains and disburses the supplies



¹⁵ Time and other resource constraints prevented an analysis of the laws establishing the Real Estate Registry in Iraq.

Appendices

and forms used in the Financial Affairs Department. The *Balance Office* prepares the annual financial statements of the Department.

Technical Affairs Department. The Technical Affairs Department oversees the maps, drawings and plats used by the Registry. The *Drawings and Maps Department* maintains all the maps the Registry receives from other government sources, such as the cadastral maps from the Ministry of Agriculture. The *Technical Studies Office* studies mapping-related questions raised by the Registry's own employees or by those outside the Registry. The *Technical Audit Office* functions much the same as the Search/Inquiry Office in the Legal/Audit Department; it investigates claims that the Registry's employees failed to follow correct procedures with respect to mapping issues.

Calculation Auditing Department. This branch handles all financial audits pertaining to the Registry. The work of this department is divided among the three offices: the *Financial Inspection Office*, the *Follow-up Office* and the *Financial Auditing Office*.

Computer Department. The Computer Department is responsible for all technical activities in the Registry, including installing and maintaining all computer and technical services needed by the Registry. Because the Registry intends to implement a new computer system to support registration in twelve offices in Baghdad, the Computer Branch should add eighty computer specialists by the end of 2005.

In addition to its work with computerization, the Computer Department supervises the *Microfilm Office*. This office is responsible for microfilming all property records held in all Registry Offices throughout Iraq. Microfilming of records began approximately thirty years ago, and is roughly sixty percent complete. However, microfilming has not been uniform across the country, with some offices having most records microfilmed, while other offices have few or no records microfilmed. In the chaos following the war in March and April 2003, the microfilm reader was destroyed by persons who invaded the Registry offices, and currently microfilming efforts have stopped. Destruction of records following the Gulf War and the most recent conflict has also hampered efforts to preserve all records by microfilming.

Organization of the Real Estate Registry – Regional Offices

Geography

The Real Estate Registry maintains twenty-eight primary offices throughout Iraq. Of those twenty-eight offices, twelve are in Baghdad. Of the remaining sixteen offices, all but one (Fallujah) have satellite offices in outlying areas. The Karbala and Muthanna offices only have one satellite office each; the Dyala and Salah ad Deen offices have six and seven satellite offices, respectively. Other primary offices have between two and five offices each. There are a total of 85 offices in the Land Registry.

Internal Organization

The same functions are performed in each regional office, but the internal structure of the offices may vary because in smaller offices multiple functions are combined into a single department. In a fully-staffed office, the departments are as follows:

The Intake Department. The Intake Department has two functions. First, personnel in this department enter transactions into the daily record book. This is a listing of all filings in the Registry each day. The second function of the Intake Department is to keep record of all correspondence coming into and going from the



Appendices

Registry. This department usually has one employee. It is sometimes combined with the typewriting department.

The Registration Department. The basic work of the Registration Office is done in this department. These employees (up to four) process all the transactions presented for registration. Personnel in this department also audit the transactions to ensure the proper registration procedures have been followed.

The Papers Department. This department assigns sequence numbers to real estate parcels not having such numbers, indexes all papers and documents and places the official registration documents in the proper registry folders. There are usually one or two people in this department. It may be combined with the Registration Department.

The Record Book Department. Two people usually are employed in this department. Their primary responsibilities are to maintain all the record books, including all the record books from Ottoman times. The two people in this office also answer requests for information from property owners and make copies of the documents owners need. They also prepare documentation regarding cases not permitted to be registered and process liens on property.

The Technical Department. The Technical Department handles all the maps and cartographic work of the local registry office. Parcel maps as well as individual plots of land are prepared in this office. Technical Department staff conduct observations of properties if there is no Observation Department in the local office.

Observation Department. Personnel in the Observation Department make the views required when property is sold. These views are conducted to ascertain the value of the properties and to ensure compliance with the documents in the Registry Office's files. This department is sometimes combined with the Technical Department.

The Auction Department. The Auction Department handles all real estate sales ordered by the court. This includes seizing the property to be sold, keeping records, notifying the proper persons and conducting the sale. There is usually only one person in this office.

The Financial Department. The Financial Department keeps all the financial records of the office, pays all the bills, including employee salaries and handles the administrative functions of the office. In addition, the Financial Department provides a treasury function, receiving and processing all funds received by the Registry Office. There are typically three or four people in this department.

The Typing Department. One person handles the typing needs of the local registry office. This department is often combined with the Intake Department.

Registry Office Records

Tabular

The tabular records in the local registration offices have been generated over many years, under a number of different laws governing the registration process. Perhaps the oldest records in the system are the registers implemented under the Ottoman Land Code of 1858. While the Registration Law does not necessarily give these records legal significance (Al-Dafaay 2005), they nevertheless are kept because they contain valuable information on the history of land transactions. Another set of records maintained in the local registry offices are registers established under (now repealed) Law Number 29 of 1938. These records cover agricultural lands and do have the same legal status as the current registration records (Al-Dafaay 2005). Apparently the first



Appendices

registration law of independent Iraq was Law Number 59 of 1935, the Law of Origins of Registration of Real Estate Property in *Tapu*. This law established a registration system based on the system used in England and Wales at the time, due to the influence of the British during the Mandate.¹⁶ It is this system that is used primarily¹⁷ throughout Iraq today. The primary non-map records used in this system are as follows:

Type of Record	Description of Book
The “Basic Book”	●An index book containing entries regarding conveyances, gifts, <i>waqf</i> properties
The “Registration Records” Book	●An index book containing entries (1) regarding mortgages (held by private and state banks), (2) mortgages held by “state company” banks (Real Estate Bank, Industrial Bank, Agricultural Bank), (3) documents affecting title filed by the court and other government offices, and (4) guarantees offered by individuals to support others who receive government benefits
The “Personal Book”	●An index to persons and legal entities owning property interests
Folders	●Individual files on each property, indexed by property number, containing the legal documents affecting title to that property

Table 2

In practice, the Personal Book is not maintained in all registration offices. It is used to some extent in some offices but not in others.

In 1982, a new system was introduced in some offices in Baghdad. This system is called the “Documentation System” and is based on French registration practices. The Documentation System uses the following records:

¹⁶ This was confirmed by Jonathan Llewellyn, a British registration expert, during a visit to the Al-Rusafa I Registration Office in June 2004.

¹⁷ A new system was introduced in some offices in Baghdad in 1982; that system will be described below.



Appendices

Type of Record	Description of Book
The “Daily Book”	●An index book containing an entry for each transaction filed in the registration for each day
The “Basic Book”	●An index book that contains entries, taken from the Daily Book, for conveyances, gifts, <i>waqf</i> properties and mortgages held by private banks
The “Registration Records” Book	●An index book containing entries regarding documents affecting title filed by the court and other government offices
The “Guaranty Book”	●An index book containing entries regarding guarantees offered by individuals to support others who receive government benefits
The “Mortgage Book”	●An index book containing entries regarding guarantees offered by individuals to support others who receive government benefits
Folders	●Individual files on each property, indexed by property number, containing the legal documents affecting title to that property (technically the original legal documents are not to be kept but in practice they are maintained in the folders nonetheless)

Table 3

The Documentation System was not fully implemented because of the resources required for the Iran-Iraq war, followed by the effects of the first Gulf War and subsequent sanctions. As the system was used in the few offices in Baghdad in which it was installed, Registry officials learned it required a very well-trained staff who could work with a high degree of accuracy. Registry officials, realizing this, have delayed implementing the system throughout Iraq until the workforce in the Registry can be properly trained (Al-Dafaay 2005).

Graphic

Maps in the local registry offices obviously reflect the type of land in the areas serviced by the respective registry offices. Maps of properties in built-up areas have different sources than maps of agricultural areas. There are six different kinds of maps used in the local registry offices, as follows:

Sketch maps, Municipalities Maps and Maps of Position. These are primarily maps of subdivisions in urban areas, although they may cover more rural areas as well. For Baghdad, these maps are initially prepared by the Amanat Design Section. For all other areas outside of Baghdad, the maps are initially sketched by the Ministry of Municipalities and Public Works, with the actual map prepared by the design sections of the baladias. These maps are at scales of 1:500 to 1: 20,000, depending on the area, and do not establish legal boundaries. They show preliminary parcel boundaries, streets and public facilities. They are not updated. The originals are kept in the municipal offices, with copies in the local registry offices.

Original Maps and Land Maps. From the three types of maps described above, personnel in the Technical Departments of the local registry offices prepare “Original Maps” and “Land Maps” which definitively show



Appendices

the legal boundaries of the parcels in the subdivisions. These maps show parcel boundaries and streets, and are prepared at scales of 1:100 to 1:20,000, depending on the type of area being mapped. The originals of these maps are kept in the local registry offices. They are not updated; if changes need to be made in the maps, new maps are prepared in place of the outdated maps.

Cadastral Maps. These maps are for rural areas and were formerly prepared by the Settlement Committee for Land; now they are prepared by the Land Acquisition Committee of the Ministry of Agriculture. These maps do establish the legal boundaries of the properties. Their scale is same as the Original and Land Maps, 1:100 to 1: 20,000. The Cadastral Maps show parcel boundaries, streets, public buildings, schools, and the dimensions and areas of the parcels. These maps are not updated; new maps are prepared when changes are made to the map features. The original maps are kept in the local registry offices.

Currently all mapping in the Real Estate Registry is done by hand. With the support of UN-Habitat, some Registry staff have been trained in geographic information system technology and more computer specialists are to be hired in the coming months. However, it will likely be years before all map preparation in the Registry is automated.

Workload in the Registry

The Real Estate Registry classifies its transactions into three categories: legal, technical and other. Legal transactions are those directly concerned with the transfer of title such as documents pertaining to conveyances, gifts of real property or donations of *waqf* property. Technical transactions are those related to the views of properties for taxation purposes, as well as mapping transactions such as boundary correction or parcel splits. Other transactions consist of information requests by owners of properties, allocating government lands to state employees, appropriation of properties for state purposes and auctions of properties held as security for debt.

Due to the looting that took place in May 2003 following the war, many of the Real Estate Registry’s records were lost. This includes statistical records. The records remaining intact indicate at least a portion of the transactions for the years 1999, 2001 and 2003. Those statistics are shown in Table 4.

	Legal	Technical	Other	Total
1999	180,985	122,152	3,010,623	3,313,760
2001	305,721	100,184	1,261,765	1,261,765
2003	104,711	97,502	No Data	202,213

Table 4

Officials in the Real Estate Registry indicated in recent conversations that the number of transactions are increasing. Statistics for only one quarter of 2004 were available at time of writing, so it is not possible to compare the numbers of filings over time since the war. However, the statistics for the third quarter of 2004 show a significant number of transactions, as shown in Table 5. It must be noted, however, that these figures do not include statistics from any office in the Kurdish regions or Salah Ad Din Governorate, nor do they include statistics from any office in Al Anbar Province except Fallujah. None of those offices reported their workload to the central office of the Registry.

	Legal	Technical	Other	Total
Quarter 3, 2004	81,550	63,599	1,723,303	1,868,452

Table 5



Appendices

Of the total number of transactions in the third quarter of 2004, 1,074,671, or 57.5 percent, took place in Baghdad. The next highest number of transactions took place in Karbala, with 166,954, or 8.9% of all transactions in the 3rd quarter. No other governorate reported more than 100,000 transactions in the third quarter 2004.

Registration Procedures

The procedures followed in the registration of real estate conveyances are depicted on the flowchart attached as Appendix E.¹⁸ As can be seen, the procedures are somewhat complex, involving as they do the offices of several different agencies or government bodies, including the local registry office, the local tax commission office and the office of the municipality in which the real estate is located.

The process may described in abbreviated form¹⁹ as follows: In a typical conveyance, the seller and buyer appear in the local registration office having jurisdiction over the property to be conveyed. If a Form 25 showing the current owner has not been prepared beforehand, registry personnel prepare that form. The seller and buyer provide the registry personnel with their names and other information needed for the Form 59, the official document that effects the conveyance. If the transaction takes place in one of the offices using the Documentation System, the transaction is entered in the Daily Book; otherwise the transaction is entered into the Basic Book. The title is then audited and within seven days the seller is given a list by the Registry explaining the problems with title the seller will need to correct before the transaction may be completed.

The next step is to go to the applicable *baladia* or *amanat* office to do two things. First, municipal officials must view the property to insure that it conforms to as-built drawings on file in the municipality. If the property is nonconforming, the seller must pay a penalty and new as-built drawings must be prepared. Next, a check must be made regarding unpaid fees for municipal improvements or charges. Any outstanding fees must be paid. Once the appropriate fees, if any, have been paid, Form 59 is then stamped by municipal officials.

The seller then must go to the local tax commission office. Checks are made for the applicability of three taxes – the Vacant Land Tax, the Real Estate Rental Tax and the Real Estate Transfer Tax. If either of the first two of these taxes are due and owing, they must be paid at this point. If Real Estate Transfer Tax is due, a committee must be formed to view the property. The property is then viewed and valued. A detection report is prepared showing the value of the property. If the seller disagrees with the value stated in the report, an appeal may be filed but the decision of the board to which appeal is taken is final. The local tax commission then processes the detection report, verifies that the seller has paid either the Vacant Land Tax or the Real Estate Rental Tax, as appropriate, and then computes the transfer tax bill, which must be paid at that point. The transfer is registered in the local tax commission office, the Form 59 is properly stamped and the file is returned to the local real estate registration office.

In the local registration office, any encumbrances are cleared, registration fees are paid and a temporary certificate of title is issued to the buyer. The transaction is then audited for compliance with laws and regulations, and once compliance has been ascertained, a final Form 59 is issued and placed in the file for that property.

While the foregoing procedure seems straightforward, attorneys with whom these procedures have been discussed have indicated significant dissatisfaction with the process. One opinion expressed was that instructions are issued at frequent intervals, causing confusion as rules are changed. Less frequent rule changes was one request often expressed as attorneys were interviewed regarding the registration process.

¹⁸ Only conveyances are shown on this flowchart. Other types of transactions, such as mortgages or other restrictions on property are not shown on the flowchart.

¹⁹ For full details, consult the flowchart in Appendix E.

Appendices

Of more importance to those interviewed are the cumbersome and time-consuming procedures that must be followed. At least three different offices must be visited for each transaction. These offices are often in different locations, necessitating travel between the offices, and in many cases the offices must be visited more than one time in order to complete a transaction. A residential real estate transaction takes about one full week to complete, and a commercial or industrial transaction takes up to three weeks. These delays are often frustrating and expensive, costing citizens money and time and leaving them with unpleasant feelings toward the registration process. By far, the most common complaint heard was against the registration process itself.

Another weakness in the Land Registry is the lack of a computerized Geographic Information System. Iraq is a large country with very diverse locational characteristics. The mapping that occurs in Land Registry offices is hand drawn. There is no automated mapping in place. The Land Registry could certainly benefit from the existence of a GIS system. Even more importantly, other agencies could benefit from the ability to store and analyze attribute data in spatial form. Public safety, utility, military and planning agencies would all benefit from this technology which should be implemented in the Land Registry where cadastral data currently resides.

International Best Practices in Land Information Management

In spite of the uncertain political and budgetary situation in Iraq, the Real Estate Registry is in the process of implementing an automation plan for its local registry offices in Baghdad. Senior officials in the Registry have realized that automation is necessary if the Registry is to more efficiently meet its obligations to the people of Iraq.

While automation is important in land information management today, there are other important factors or principles that guide international best practices in this crucial field. Perhaps the most important factor is institutional restructuring. For many years, governments and businesses in all parts of the world created separate departments that managed their own information and, more importantly, did not share that information with other departments. This had two results: (1) other members of the larger organization were denied access to data they needed to more efficiently or effectively do their jobs, and (2) duplicate datasets were often created and maintained at significant cost to the organization. There is a worldwide realization, in government, business and the institutional or non-profit sector that this old way of doing business simply does not work in today's information-dependent environment. Institutional barriers must be removed so that information may be shared freely across institutional boundaries. Instead of jealously guarding their information resources, departments and ministries must learn to share data in order to facilitate the mission of the larger organization. Automation alone will not modernize offices. Institutional change is at least, if not more, important than automation.

Facilitating the breakdown of institutional walls is the use of spatial data. Many different organizations, including national, regional and local governments, as well as businesses and utilities, have found that the great integrator across formerly isolated departments is spatial data. It is estimated that as much as eighty percent of the data used in local governments is tied to a geographic location. This percentage would likely be even higher in an organization such as the Real Estate Registry or the departments of the Ministry of Finance administering property-related taxes such as the real estate transfer tax, the vacant land tax or the real estate rental tax. As the Real Estate Registry develops its geographic information system and its capability to use that tool, ways should be found to integrate both the communities and the local tax commission offices into the GIS so that all organizations needing geographic data may have access to it.

Internet technologies represent a third best practice trend which, when coupled with workflow management software, allow users to actively participate in business processes from their homes and offices. While Iraq may be some years away from developing web-based registration services allowing citizens to file conveyancing documents on-line, use of the internet in such a manner should be kept in mind constantly as the computer systems to support the Registry are being developed so that systems developed today may be efficiently



Appendices

upgraded into the web-based business model. For the present, attention should be focused on developing systems and procedures that would permit creation of “one-stop shops” in which all registration-related transactions could be processed. Creation of these offices, in which citizens could file papers to effect transfer of title; pay all taxes, including the vacant land tax, the real estate rental tax and the real estate transfer tax; review the status of their building and use permits; and clear encumbrances from their titles would be a significant improvement in the conveyancing process and would address most of the concerns attorneys and other real estate professionals have voiced with respect to the real estate registration process.

Moving in this direction will require sharing of data among agencies and ultimately making real estate records open to the public. This will be a major change in Iraqi law and practice. Yet if real estate is to play the important role it can play as a facilitator of economic growth and development, land information must be freely available for those with a need for this data have access to it. As Peter Dale and John McLaughlin, two of the most well-known and well-respected writers on land administration have stated:

All developed societies are moving into the information age with technology that allows easy and open access to data and information, and appropriate mechanisms for recovering the cost of the collection, processing, and distribution. Land related information is an especially valuable commodity in its own right that can be exploited in many different ways, such as through the direct sale of information products and services, or be adding value to service delivery and public decision-making processes. (Dale and McLaughlin 1999: 8)

The Real Estate Registry can certainly take the lead in developing land information-based products and services for other Iraqi government bodies as well as private sector parties such as land developers, banks, planning consultants and environmental specialists. By integrating cadastral data with data held by other agencies, robust datasets may be created to enable better management and utilization of Iraq’s land resources.

Reform Issues and Recommendations

Long-Term Proposals

There are three kinds of issues facing the Real Estate Registry. One is institutional; one is procedural and one is technical. Each will be discussed in turn.

There are two primary institutional issues facing the Registry. By far the most important is the issue of control. Put simply, not all real estate registration offices report to the central office or follow its requirements. According to the Director General, there has been little or no contact with any of the local registration offices in the Kurdish regions since the first Gulf War. There is simply little or no information in the central office of the Registry as to what is taking place with respect to registration of real property in those areas.

In addition, there are also difficulties with offices in other areas of Iraq, as noted above in the section on Workload in the Registry. Statistical reports have not been received from any office in Salah Ad Din Governorate, nor have statistics been received from any offices in Al Anbar Governorate, except Fallujah.

The first priority for the Real Estate Registry, therefore, should be to obtain appropriate control over all its offices. This will be no small task and must be accomplished in concert with the government elected on 30 January. Establishing this institutional control over all local offices of the Registry will be one small but important step in knitting all governorates of Iraq into one unified, effectively functioning country. Thus, the first recommendation, fundamental to all the others, is that the Registry, working with the Iraqi government, establish effective control over all of its offices throughout the Iraq. This will be especially important as the Registry moves forward with automation and improvements in procedures.



Appendices

The second institutional issue facing the registry is funding. Currently the operations of the Registry are funded from central government budgets. Likewise, all revenues received by the Registry flow through the Registry to the central government. As a fee for its services, the Land Registry receives a 1% stamp fee and a 2% Registration fee. It would seem appropriate to permit the Registry to become a self-funding office through its registration fees. Revenues received by the Registry in excess of its operating costs and a necessary reserve fund for capital expenditures and emergencies could be remitted to the central government. Therefore, the Registry should carefully prepare its budgets, both operating and capital, so that it knows what its projected expenses will be, as well as the volume of revenues required to fund those expenses. The capital budget should include the cost of automating the offices and the cost of acquiring new facilities for Registry offices. The cost to implement the automation plan referred to below should also be included in the capital budget. The Registry will thus be able to determine the extent to which it will be able to return revenues to the central government. As a self-funded agency, the Registry would be in a position to modernize and improve its operations so it can support the needs of an expanding land market as Iraq's economy recovers from the effects of the war and its aftermath. Thus, the second recommendation is that the Registry work closely with the Ministry of Justice and the central government to become self-funding.

With respect to procedural issues, as noted above, virtually all real estate lawyers interviewed for this report indicated dissatisfaction with current registration procedures. The procedures appear to these attorneys to be overly complex, overly time-consuming and overly burdensome. The Registry recognizes many of these problems. Before the invasion it commissioned a study of operations in the local offices and made a number of significant recommendations for change. Unfortunately, however, copies of the report were destroyed in the aftermath of the war and so those recommendations are not available. As the number of transactions in the various local offices increases, however, and as new technology is brought into the local offices procedures will need to change if the Registry is to keep pace with demand for its services. We recommend the Registry reconstitute the group who conducted the original study and commission that team to redo the study. As part of that effort, we further recommend closer involvement with practicing real estate attorneys to bring their knowledge, experience and perspective into the process. We further urge the Registry to engage representatives from the Tax Commission and the various *amanat* and *baladia* offices, given the involvement of those offices in the real estate registration process. A combined effort among all these offices should result in much more efficient registration procedures.

The second major procedural issue facing the Registry is identity theft. Current procedures do not prevent unscrupulous individuals from posing as persons they are not in order to fraudulently convey title to properties of other persons for their own gain. This is possible because of the ease with which false identification papers may be obtained in Iraq. In addition to this problem, the Director General of the Registry has described a similar problem with some real estate brokers. These brokers engage in a number of illegal activities, including selling the same piece of property to more than one buyer or obtaining title to properties themselves when they were to assist in the sale of those properties to other buyers. These problems may be resolved in part by the adoption of additional review and follow-up procedures in the registration process, as proposed by the Director General. The Registry is also considering the adoption of biometric identification technology in order to stop identity theft in real estate transactions. We support the recommendations of the Director General with respect to additional follow-up procedures to prevent fraud by brokers and the introduction of biometric identification devices. Adoption of these remedies will further the development of an efficient real estate market.

The Registry has suffered, as has much of Iraq, from the effects of war and sanctions over the past twenty years. Few, if any, funds have been expended to modernize the local offices of the Registry. Registry records, both tabular and graphic, are still in paper format and are subject to destruction in the event of fire or other catastrophe. Indeed, a substantial portion of the duplicate records held in Baghdad were destroyed in the looting which followed the most recent war. There is thus an urgent need to modernize and upgrade the local registration offices with a state of the art computerized registration system, with secure, offsite backup of copies of all records. Recognizing this need, the Registry has issued a tender for a computer system for several offices



Appendices

in and near Baghdad. This proposed system represents the beginning of full-scale automation of the Registry. In addition, Registry personnel have begun training in geographic information system (GIS) technology through programs provided by United Nations Habitat. The Registry should continue this automation process in all of its offices throughout Iraq. An automation plan should be developed and funding sources identified so the plan can be implemented in a reasonable time frame.

Two additional requirements must be in place to support this modernized registration system. One is training of staff. Nearly all of the existing staff of the Registry, both in the central office and in the local offices, lack keyboarding skills to allow them to use computers, whether for word processing, spreadsheet applications or to operate an automated registration system. While a number of computer specialists will be hired by the Registry to implement the new system, a significant portion of the existing staff should be trained so they may use the system for at least query purposes, if not for data entry. This will be a major undertaking if it is to be effective across Iraq.

The second requirement is new facilities. Many, if not all, of the Registry's offices are in rented facilities over which the Registry has little control. Because the Registry will need to upgrade its facilities with new wiring, cabling and HVAC systems in order to accommodate the new computer system, it would seem an appropriate time for the Registry to identify its need for secure, properly serviced and efficiently designed facilities which it owns and over which it has full control. As part of its capital budgeting process, the Registry should quantify its need for new office facilities for all of its offices. The capital budget should define a plan for acquiring and moving into those offices. We support the Registry's acquisition of its own facilities, and urge it to use the automation of its offices as a major reason for this step.

Short-Term Actions

The recommendations set forth above are primarily long-term solutions. They do not represent "quick fixes" that can be implemented immediately. In addition to those long-term solutions, the following short-term actions are suggested for consideration by senior Registry officials.

- Utilize the training resources available through the United States Agency for International Development (USAID). USAID-funded projects in Iraq have training budgets that may be utilized by the Real Estate Registry to train its employees in modern methods of land records management. The Registry should quickly identify a list of about twelve people who would most benefit from both study tours and classroom training. These names, and recommendations for particular types of training, should be presented to USAID personnel as soon as possible so as to begin the training in the very near term.
- Convene a small advisory group of real estate attorneys, representatives from the Baghdad amanat, a few of the baladia and appropriate personnel from the Tax Commission. This advisory group can begin to provide structured input as to areas for improvement, especially procedural improvement in the registration process.
- Immediately after the formation of the advisory group, redo the management study originally completed before the war in 2003.²⁰ That study made important recommendations supported strongly by Registry personnel. The study should include input from the advisory group created above and may also draw on resources available through USAID and its implementing partners.
- At least until after completion of the management study, freeze the rule-making process to allow stability in procedures, at least in the short term.



²⁰ This was suggested as a long-term goal but work could begin on this almost immediately, so it is repeated here.

Appendices

- Place greater emphasis on, and provide resources for, better collection, analysis and dissemination of statistics on the operation of the Registry and its local offices. The Real Estate Registry must tell its story – the work it accomplishes, the results it achieves and the problems it faces. By telling its story, the Registry should be able to attract greater support for modernization from the donor community.
- Conduct an audit of the records of the Registry and its local offices so it can determine the extent to which records were destroyed in the war and in the period of looting and destruction following the war. A plan should be prepared and implemented to replace missing records from duplicates available in other offices. This will facilitate transactions in the real estate market and support the work of the Iraqi Property Claims Commission.
- Conduct a facilities audit to determine infrastructure needs for office automation – additional power supplies, wiring, secure rooms for computer equipment, HVAC, etc. so as resources become available, the Registry will know what must be done to prepare for automation. The priorities for automation should be set so the most important needs will be met first. Donors should then be approached for assistance in procuring the most urgently needed equipment. Acquiring this equipment will significantly improve office operations and the flow of transactions through the local offices.

Taking these steps now will generate short-term improvements in the registration process and prepare the way for the longer-term reforms.



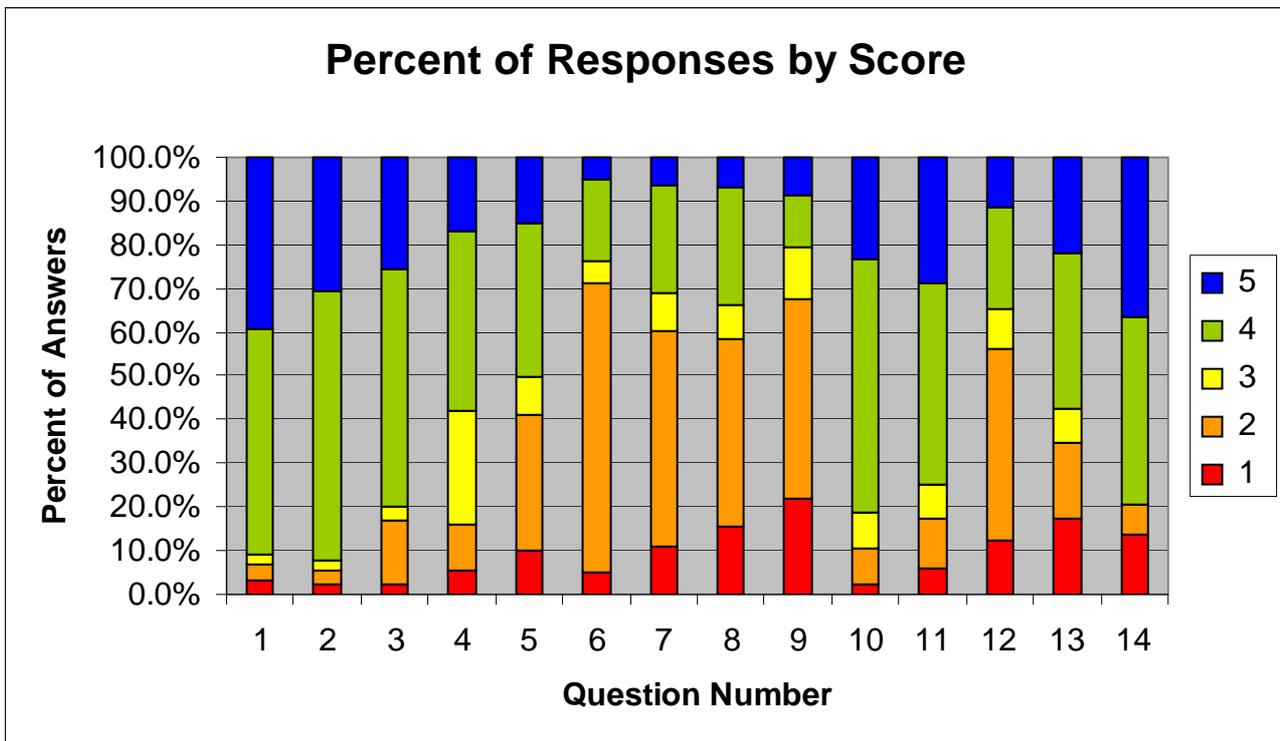
Appendices

4 SURVEYS



Graphical Results of Survey

In the graph below, the responses to each of the fourteen questions are shown as cumulative percentages. Scores can be 1,2,3,4, or 5. The number of occurrences of each score is calculated as a percentage of the total responses for each question. The percentages for each score for a question are added on top of each other. The total of the percentages for all five scores totals 100 percent of the total scores for each question. For question # 1, response “1” was 3.4% of all responses. Response “2” was also 3.4% of total responses. Response “3” was only 2.2% of the total responses. Response “4” was 51.7% of the total responses and response 5 was 39.3% of the total responses. The total of responses “1” through “5” was 100%.



Appendices

CLIR Survey.

A second survey of market participants used the Commercial Law and Institutional Reform survey. The portion of the survey related to real estate market reform was completed by market practitioners. This survey is focused on the market for private ownership of real estate and the operation of real estate markets. It analyzes the supply and demand for free markets in real estate and supporting institutions. The survey and results follow.

CLIR Survey Results

In the following survey results, the percent column represents the average percent of the maximum score for each question. A score of 100% would mean that every participant gave it the maximum score.

MARKET FOR REFORM: REAL PROPERTY		Percent
Market for Improved Laws		of
Demand for Improved Laws		Maximum Score
Government		
1	One or more high-level public officials publicly champion private ownership of land and other real property, and development of an active market in such property.	78%
Private Sector		
2	A significant proportion of the population, as evidenced by sample surveys: a. has expressed support for private ownership of non-agricultural real property, including transactions and mortgage; and b. has expressed support for private ownership of agricultural land, including transactions and mortgage.	75%
3	Financial institutions, real estate brokers, and construction firms actively lobby the government for laws to enable development and operation of a modern real property market.	69%
4	Professional associations: a. have specialized committees dedicated to real property issues; b. have established formal mechanisms with the policy apparatus for providing input and feedback on real property issues, and regularly do so; c. regularly suggest changes to existing laws and regulations, and provide commentary on draft laws and regulations; and d. conduct events for their members and the general public to promote understanding of the benefits of a market-based real property market.	73%
5	Trade and special interest groups: a. have specialized committees dedicated to real property issues; b. have established formal mechanisms with the policy apparatus for providing input and feedback on real property issues, and regularly do so; c. regularly suggest changes to existing laws and regulations, and provide commentary on draft laws and regulations; and d. conduct events for their members and the general public to promote understanding of the benefits of a market-based real property market.	40%
6	Universities offer courses on real property law that supports a market-oriented system.	40%
		40%
		39%
		37%
		37%
		37%
		33%
		33%
6	Universities offer courses on real property law that supports a market-oriented system.	82%
Supply of Improved Laws		
Government		
7	Government has created an environment generally supportive of a real property market, including:	

Appendices

	c. clearly stated policies in support of private control over possession, use, and transfer of real property; and	39%
	d. an actively pursued annual legislative agenda for reform and modernization of the real property legal regime.	35%
Supply of Improved Laws (continued)		
Government (continued)		
8	The government has the technical capacity to draft laws and regulations needed for a market-based real property system.	86%
9	The government provides for meaningful private sector participation in the legal reform process by:	
	a. making copies of laws, regulations, and related materials readily available to professionals and participants in the real property market; and	69%
	b. providing real property professionals (brokers, mortgage bankers, builders, etc.) with meaningful notice of and opportunity to comment on draft laws and implementing regulations affecting the real property market: (1) before they are submitted for legislative approval.	60%
10	Formal mechanisms for soliciting input from the real property professionals for formulating and amending real property law and policy:	
	a. have been established by the government;	36%
	b. are actively used by the government; and	36%
	c. according to the real property professionals, generally satisfy private sector demand for providing input.	72%
Private Sector		
11	The user groups and the professional community perceive the legal and regulatory environment with regard to private ownership and markets in real property to be:	
	a. stable, as demonstrated by an absence of drastic changes to relevant laws and regulations;	68%
	b. predictable, as evidenced by relative consistency in interpretation and enforcement of laws and regulations; and	69%
	c. transparent, in that fairness and equal treatment is generally accorded for end users in similar positions and circumstances.	57%
12	The user groups and the professional community perceive the legal and regulatory environment with regard to private ownership and markets in real property to be:	
	a. precise in that they can be generally read and understood by a user, and provide adequate indication of what is required;	59%
	b. complete in that they address the main needs of the market, and do not contain significant gaps; and	63%
	c. responsive to their needs as reflected in favorable policy measures.	61%
13	The user groups and the professional community generally feel that they have a meaningful role to play in developing the legal base for private ownership and the real property market.	67%
14	The user groups and the professional community generally feel that the government is meeting the basic needs for legal reform in the area of private ownership and the real property market.	61%
Market for Effective Implementing Institutions		
Demand for Effective Implementing Institutions		
Government		
15	One or more high-level public officials with responsibility for implementation of the law on registration of real property rights champion the cause of the real property registry providing efficient and effective services.	82%



Appendices

16	A formal mechanism exists for reviewing the performance and effectiveness of the real property registry on a regular basis (at least annually).	63%
17	One or more high-level public officials with responsibility for zoning and land use regulation champion the cause of carrying out needed land use and zoning regulatory activities in such a way as to serve the end users, and enable profitable private sector	68%
18	A formal mechanism exists for reviewing the performance and effectiveness of the zoning and land use regulatory authority on a regular basis (at least annually).	63%
Private Sector		
19	The user groups and the real property industry understand and agree with the service mandate of the real property registry.	68%
20	The user groups and the real property industry regularly use the real property registry.	66%
21	The user groups and the real property industry understand, and generally agree with, the mandate of the zoning and land use regulatory authority.	35%
22	The user groups and the real property industry regularly seek the needed approvals and carried out the measures required by the zoning and land use regulatory authority.	35%
Supply of Effective Implementing Institutions		
Government		
23	The real property registry actively utilizes:	
	a. an internal plan, reviewed annually, for improving services which it provides;	37%
	b. a system of accountability for its performance to the government agency responsible for its oversight, and to the general public; and	39%
	c. a mechanism for obtaining feedback from the private sector on the cost and quality of its services.	67%
24	The real property registry provides a written basis for all decisions made based upon existing, published laws and regulations.	60%
25	The zoning and land use regulatory authority actively utilizes:	
	a. an internal plan, reviewed annually, for improving services which it provides, and its regulatory methods;	30%
	b. a system of accountability for its performance to the government agency responsible for its oversight, and to the general public; and	34%
	c. a mechanism for obtaining feedback from the private sector on the cost and quality of its services, and of its overall performance in relation to private sector needs.	35%
Private Sector		
26	Users of the real property registry feel that the manner in which it provides its services is:	
	a. transparent;	27%
	b. not arbitrary;	30%
	c. non-discriminatory; and	34%
	d. reasonably priced.	34%
27	Users of the real property registry feel that they have adequate opportunities to provide feedback to the real property registry on its performance.	68%
28	The real property professional community consider the decisions made by the real property registry:	
	a. predictable under similar facts and circumstances;	36%
	b. reasonable and appropriate under existing law;	33%
	c. understandable; and	38%
	d. protective of legally valid rights and interests in real property.	38%
29	Market actors who interact with the zoning and land use regulatory authority feel that the manner in which it carries out its mandate is:	



Appendices

	a. transparent;	33%
	b. not arbitrary; and	33%
	c. non-discriminatory.	34%
30	Market participants and the real property professional community feel that they have adequate opportunities to provide feedback to the zoning and land use regulatory authority on its performance	38%
31	The real property professional community thinks that the decisions made by the zoning and land user regulatory authority:	
	a. are predictable under similar facts and circumstances;	42%
	b. are generally reasonable and appropriate under existing law;	35%
	c. are understandable; and	36%
	d. strike an appropriate balance between private rights to use land and social interests and needs.	72%
Market for Supporting Institutions		
Demand for Supporting Institutions		
32	Private sector supporting institutions provide services needed for an active market in real property in each of the following sectors:	
	a. professional associations;	75%
	b. specialized services; and	73%
	c. trade and special interest groups.	62%
33	Within each region (municipality, district, etc.) services are provided on a competitive basis by more than one:	
	a. real property broker;	73%
	b. mortgage lender;	59%
	c. real property appraiser;	36%
	d. notary; and	74%
	e. surveyor.	29%
Supply of Supporting Institutions		
34	The end users and the real property professional community considers the supporting institutions for each special task to be adequate in facilitating or supporting the framework law in terms of:	
	a. number of institutions; and	66%
	b. quality of institutions.	63%
TOTAL FOR MARKET FOR REFORM: REAL PROPERTY		<u>52%</u>



THE LAND AND REAL ESTATE ASSESSMENT

A third survey used to identify attitudes toward property and property rights regimes in Iraq is the Land and Real Estate Assessment (LARA) survey. This diagnostic tool was developed under a project with the World Bank and has been used in several countries. The survey covers three broad areas, with questions about specific topics within those three areas. The three sections are:

- 1 Rights, Information, Contracting, and Enforcement (RICE)
- 2 Finance and Risk Management
- 3 Real Estate Market Structure (Regulation, Fiscal Policy, and Industry Structure)

Since this survey instrument has been used in several countries, it was instructive to compare the results with known results from those countries.

(LARA) Survey Results

Strong yes =1 and strong no=5

DIAGNOSTIC QUESTIONS

1. Rights, Information, Contracting, and Enforcement (RICE)

1.1 Are property rights robust and comprehensive? Full Spectrum of Rights?

	1	2	3	4	5	No*	Avg. 2.0
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Indicator 1.1.1: **“Bundle of rights” checklist**, defined as a comprehensive list of rights to property that are recognized or not recognized by law.

Rights to Property	Yes	No	
The right to possess: Are there restrictions on the ability of the owner to control the property?			
The right to use: Does the owner have the right to undertake a range of uses that are broadly consistent with social norms?			
The right to manage: Does the owner have the right to admit all persons to the property, to permit others to use the property, and to set the limits of such permission?			
The right to income: Does the owner have the right to receive the income from the asset?			
The right to the capital: Can the owner sell, lease, bequeath, consume, or destroy the asset?			
The right to security: does the property interest of the owner run into perpetuity, assuming solvency and behavior consistent with accepted social norms? This provides protection from arbitrary appropriation. Is fair market compensation provided for in cases of eminent domain?			
Transmissibility: Does the property interest extend beyond the life of the current owner (can it be transmitted to a successor)?			
The absence of term: Does the ownership interest run into perpetuity rather than being truncated in time?			



Appendices

The prohibition of harmful use: Does the property interest specify the range of abilities to harm others?			
Liability to execution: Can the property interest be used to settle debts?			
The right to residuary character: Are property rules clear concerning what happens if ownership interests lapse? What rules exist to address this problem?			

1.1.2 Are there any legal barriers to ownership of any property by any individual, group or legal entity?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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1.1.3 Are owners of real property protected from *arbitrary takings* by government (including eviction without compensation)? YES=1 NO=0

Yes*	1	2	3	4	5	No.*	AVG 5.0
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1.2 Is the property rights regime dynamic?

1.2.1 Are there means to recognize customary property regimes?

Yes*	1	2	3	4	5	No.*	AVG 5.0
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1.2.2 To the degree that there are significant shifts from one form of tenure to another, are such shifts proceeding in a legal and transparent manner?

Yes*	1	2	3	4	5	No.*	AVG 5.0
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1.2.3 Are claims from squatters or homesteaders, and other adverse possessions, processed quickly and fairly?

Yes*	1	2	3	4	5	No.*	AVG 4.0
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1.2.4 Is ownership to all real estate assets assigned as of right?

Are there real estate assets for which legal ownership is unclear or in dispute? **NO=0**

Yes*	1	2	3	4	5	No.*	AVG 4.5
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1.3 Are "public goods" and public assets well defined and protected? YES =1 NO=0

1.3.1 Are there legal provisions and means to preserve historical buildings and monuments?

Yes*	1	2	3	4	5	No.*	AVG 1.5
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1.3.2 Are there legal provisions and means for conserving and maintaining sensitive natural lands and wilderness areas?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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1.3.3 Are there legal provisions and means for providing needed public space such as parks, public utilities right of way, and social services?

Yes*	1	2	3	4	5	No.*	AVG1.0
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1.3.4 Are public assets protected by coherent management structures and processes?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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1.3.5 Are public assets protected from invasion and degradation in quality?

Yes*	1	2	3	4	5	No.*	AVG 1.5
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Appendices

1.4 Are information systems concerning all property regimes adequate?

1.4.1 Are the laws and procedures affecting property rights and transactions well documented, indexed, and widely and openly available to the public?

Yes*	1	2	3	4	5	No.*	AVG 4.5
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1.4.2 Is the registration or recording of property rights comprehensive, accurate and up to date?

1.4.3 Is the cost and quality of information on real property commensurate with property values?

Yes*	1	2	3	4	5	No.*	AVG 4.0
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1.4.4 Is the information on real property publicly available? Is such information packaged for use by banks, developers, investors, etc.

1.5 Are property disputes processed quickly and fairly?

1.5.1 Are there formal/informal means for resolving disputes over rights quickly? How large is the amount of property in dispute?

Yes*	1	2	3	4	5	No.*	AVG 5
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1.5.2 Are there due process procedures to ensure that disputes are resolved equitably?

Yes*	1	2	3	4	5	No.*	AVG 3.5
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1.5.3 Is the judiciary viewed as objective and independent?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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1.6 Are rules and contracts enforced and transaction costs low?

1.6.1 Is there a need (by the owner) for private enforcement of property rights?

Yes*	1	2	3	4	5	No.*	AVG 4.5
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1.6.2 Are foreclosure and eviction rulings regularly enforced?

Yes*	1	2	3	4	5	No.*	AVG 2.5
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1.6.3 Are landlord-tenant contracts regularly enforced?

Yes*	1	2	3	4	5	No.*	AVG 2.5
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1.6.4 Are court decisions regularly enforced?

Yes*	1	2	3	4	5	No.*	AVG 2.5
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1.6.5 Are land use regulations regularly enforced?

Yes*	1	2	3	4	5	No.*	AVG 1.0
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1.6.6 Are transaction costs for carrying out real estate transactions low?

Yes*	1	2	3	4	5	No.*	AVG 4.0
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2. Finance and Risk Management

2.1 Is the macro-economic environment conducive to real estate finance?

2.1.1  the political and economic climate for real estate investment stable and predictable?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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Appendices

2.1.2 Is inflation high or volatile enough to discourage mortgage lending?

Yes*	1	2	3	4	5	No.*	AVG 2.0
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2.1.3 Are public debt and deficit spending impediments to encouragement of real estate investment?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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2.1.4 Are capital markets and the banking sector well developed?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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2.1.5 Are private savings well mobilized in real estate investments?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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2.2 Does the regulatory environment support the development of real-estate finance?

2.2.1 Are there restrictions on financial intermediaries allowed to engage in real estate financing?

Yes*	1	2	3	4	5	No.*	AVG 2.0
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2.2.2 Are there restrictions on interest rates, payback periods, and instruments that can be used in real estate financing?

Yes*	1	2	3	4	5	No.*	AVG 4.0
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2.2.3 Can all types of real property be used as collateral for loans?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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2.2.4 Is there any rationing or earmarking of credit for real estate development?

Yes*	1	2	3	4	5	No.*	AVG 2.0
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2.2.5 Are foreclosure and eviction procedures clear and efficient? Are extra-legal procedures accepted?

Yes*	1	2	3	4	5	No.*	AVG 1.0
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2.3 Is the market for real estate development and finance developed and efficient?

2.3.1 Are there adequate professional skills and standards in real estate finance?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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2.3.2 Are there effective means of reducing information asymmetry in credit history?

Yes*	1	2	3	4	5	No.*	AVG 5.0
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2.3.3 Are capital markets developed for mortgage securitization?

Yes*	1	2	3	4	5	No.*	AVG 2.5
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2.4 Is the real estate finance market open and equitable?

2.4.1 Is there any discrimination in credit markets against certain individuals or groups?

Yes*	1	2	3	4	5	No.*	AVG 4.0
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2.4.2 Does micro-finance assistance for the poor cover real estate related investments?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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2.4.3 Are there other formal finance mechanisms or informal finance sources that address the needs of the poor and other vulnerable groups?

Yes*	1	2	3	4	5	No.*	AVG 2.0
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2.4.4 Does formal housing finance reach lower and middle income households?

Yes*	1	2	3	4	5	No.*	AVG 1.0
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Appendices

2.5 Is the market in real estate finance stable and secure?

2.5.1 Is there adequate research and monitoring of the real estate sector including banking oversight, underwriting criteria, etc.?

Yes*	1	2	3	4	5	No.*	AVG 2.0
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2.5.2 Are booms and busts in real estate cycles monitored and moderated?

Yes*	1	2	3	4	5	No.*	AVG 2.0
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2.5.3 Are real properties adequately insured against natural disasters?

Yes*	1	2	3	4	5	No.*	AVG 5.0
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2.5.4 Are there any impediments to the development of insurance and risk-management instruments by the private sector?

Yes*	1	2	3	4	5	No.*	AVG 4.0
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2.5.5 What is the public risk exposure for the real estate sector?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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3. Real Estate Market Structure (Regulation, Fiscal Policy, and Industry Structure)

3.1 Are existing regulations and procedures effective in realizing policy goals?

3.1.1 Do land use regulations constitute a serious constraint to land supply and changing land use?

3.1.2 Are there significant restrictions on urban growth, changing land use, mixing land uses, land sub-division, and increasing density? (No responses)

Yes*	1	2	3	4	5	No.*	AVG 0.0
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3.1.3 Are there regulatory *price* restrictions on real estate inputs (e.g., labor, capital, land, materials), real estate services (e.g., brokers, surveyors, valuation experts, etc.), or real estate products (e.g., rent control)?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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3.1.4 Are there substantial delays in bureaucratic approval procedures for real estate development?

Yes*	1	2	3	4	5	No.*	AVG 3.5
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3.2 Is the market for exchanging real estate liberalized and competitive?

3.2.1 Are most real estate transactions conducted formally?

Yes*	1	2	3	4	5	No.*	AVG 3.5
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3.2.2 Are the transaction costs of formally transferring real property high?

Yes*	1	2	3	4	5	No.*	AVG 3.5
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3.3 Does fiscal policy in real estate markets enhance efficiency or equity?

3.3.1 Do real property taxes and related fees provide a substantial portion of public revenues (local, regional and central)?

Yes*	1	2	3	4	5	No.*	AVG 4.0
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3.3.2 Are the current taxes and fees the most effective (least deadweight loss) way of achieving the intended policy goals?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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3.3.3 Are there tax incentives (disincentives) to invest or trade in land and real estate?

Yes*	1	2	3	4	5	No.*	AVG 4.5
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Appendices

3.3.4 Is the real estate sector supported by public subsidies? Are these subsidies well targeted? How do they influence incentives or disincentives to invest in, trade, or consume real estate services?

Yes*	1	2	3	4	5	No.*	AVG 4.0
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3.3.5 Are negative externalities created by land and real estate development captured through betterment tax, impact fees, etc.?

Yes*	1	2	3	4	5	No.*	AVG 5.0
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3.4 Is industry structure conducive to competitive and equitable markets?

3.4.1 Are there adequately developed real estate brokerage services, surveyors, notaries, valuation experts, etc.? Are these services competitive? Are there performance standards and liability rules for these services?

Yes*	1	2	3	4	5	No.*	AVG 2.5
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3.4.2 Do prospective buyers or tenants of real estate have a range of tenure options to choose from?

Yes*	1	2	3	4	5	No.*	AVG 2.5
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3.4.3 Are there public or private entities with significant market power in land and real estate ownership or development?

Yes*	1	2	3	4	5	No.*	AVG 3.0
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3.4.4 Are there any impediments to supply of other key inputs for real estate development (e.g., building materials, construction, or finance)?

Yes*	1	2	3	4	5	No.*	AVG 1.5
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3.4.5 Is provision of infrastructure services to land in use adequate and well maintained?

Yes*	1	2	3	4	5	No.*	AVG 4.0
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3.4.6 Is private provision of infrastructure services common and legally recognized?

Yes*	1	2	3	4	5	No.*	AVG 4.5
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*Note that the “Yes”–“No” scales used above with numerals 1 through 5 represent degrees of intensity from one extreme to the opposite. For example, a “1” would indicate a finding close to a complete “Yes”; a “5” would indicate a finding close to a complete “No.” The “2,” “3,” and “4” should be used for findings that fall between the extremes. (The same scale has also been used with “Low”–“High” or “None”–“Long”; the numerals in between still represent findings between two extremes.)



**5 CONCLUSIONS
AND
RECOMMENDATIONS**



5. CONCLUSIONS

Some of the conclusions that result from the survey analysis are:

1. Legal Reform Diagnostic Survey Analysis:

The respondents tended to have clear opinions on the questions. For all questions, answer “3” “No Opinion” was the smallest response. The respondents expressed satisfaction with the basic civil law governing real estate ownership and real estate registration in Iraq.

1. In questions relating to the civil law, the first three questions generated the strongest depth of feeling (closest to 1 or 5) and the most consistent answers. The responses were quite strong, generally above four on a maximum score of 5. The standard deviation for these questions was less than 1, showing a high degree of consistency. Question 1 had the strongest response with thirty-six “5” responses. Question 2 had twenty-nine “5” responses.
2. The tenth and eleventh questions, also concerning civil law, also received fairly strong responses (mean 3.8-3.9) and very consistent responses (Standard Deviation 0.9 and 1.1). The conclusion is that there is strong and uniform satisfaction in the legal community with the civil code and the way it addresses real estate ownership rights.
3. The last question was the second strongest in terms of depth of feeling (i.e., closest to 1 or 5). While most respondents felt that the special resolutions of the Revolutionary Command Council have created difficulties with the Iraqi laws governing real estate, several people had opposite views about the effect of the RCC actions, leading to a lower overall score and increased dispersion (standard deviation).
4. The land-development-related questions, 6,7,and 8, had the strongest negative responses. They each had more than fifty answers in the “1” and “2” category. The land development process in Iraq is not highly regarded by these respondents.
5. The landlord-tenant question (number 9) received a strong negative vote. It appears that there is widespread dissatisfaction with that relationship.
6. The remaining questions had very few very (close to 5 or 1) answers. Reaction was indifferent and mixed. Not only was the response weak in terms of depth of feeling, the results were more scattered.



CLIR Diagnostic Survey Analysis

Market for Improved Laws:

A. Demand for Improved Laws. The participants believe:

1. That government officials champion the cause of private ownership (78%)
2. That the public has support for private property and the Universities offer courses on real property laws that support a market-oriented system. The professional associations and trade and special interest groups do not receive high marks, generally in the 30% 40% range.

B. Supply of Improved Laws. The participants believe:

3. That government officials have the technical capacity to draft laws, and that publication and notification are adequate (scores in the 60% to 70% range). Although there are few formal mechanisms for soliciting input, (30% to 40%) they feel that it satisfies the demand for input (72%) in question 10.
4. That the regulatory environment was generally positive (50% to 70%) about.

Market for Improved Implementing solutions.

A. Demand for Improved Implementing Solutions. The participants believe:

5. Strongly that government officials champion the cause of improved real property registry. (82%), but feel less strongly about the land regulatory agencies (68%). They also believe that formal performance reviews for the land registry and land regulatory agencies are adequate (63%).
6. Private sector views of the two agencies differ significantly. The Land Registry received scores of 66% and 68% on its service mandate and use of the Registry. The land use regulatory agencies receive a 35% rating.

B. Supply of Effective Implementing Solutions. The participants believe:

7. That the Land Registry has adequate feedback mechanisms and provides a written basis for its decisions (60% to 70%). Questions related to planning, performance accountability and feedback were all in the 30% to 40% range.
8. The private sector believes they have adequate feedback opportunities to the Land Registry and that the land regulatory bodies strike an appropriate balance between public interests and private needs. On all other questions the Land Registry and land use regulatory agencies receive low marks for their performance (27% to 42%).

Market for supporting Institutions.

Except for real estate appraisers (36%) and surveyors (29%) there was agreement (60-75%) that there was an active market for real estate services and that the number and quality of supporting institutions was good.



Appendices

LARA Survey

The results of the Land and Real Estate Analysis Survey are summarized below.

<u>Category</u>	<u>Score</u>
1.1 Are property rights robust and comprehensive?	3.33
1.2 Is the property rights regime dynamic?	4.63
1.3 Are “public goods” and public assets well defined and protected?	2.00
1.4 Are information systems concerning all property regimes adequate?	4.38
1.5. Are rules and contracts enforced and transaction costs low?	3.83
1.6. Are rules and contracts enforced and transaction costs low?	2.83
2.1 Is the macro-economic environment conducive to real estate finance?	2.80
2.2 Does the regulatory environment support the development of real estate finance?	2.40
2.3 Is the market for real estate development and finance developed and efficient?	3.63
2.4 Is the real estate finance market open and equitable?	2.50
2.5 Is the market in real estate finance stable and secure?	3.25
3.1 Are existing regulations and procedures effective in realizing policy goals?	3.17
3.2 Is the market for exchanging real estate liberalized and competitive?	3.45
3.3 Does fiscal policy in real estate markets enhance efficiency or equity?	4.10
3.4 Is industry structure conducive to competitive and equitable markets?	3.00
<u>Average for all categories.</u>	3.22

The average for all categories was slightly over 3, indicating a slightly negative overall view of the real estate market functioning in Iraq.

Positive Responses (top 20%). The most positive response was that “public goods” and public assets are well defined and protected. As Iraq was operating under a socialist form of government, this is to be expected. The finance market received the other strongly positive scores, and include 2.2 “Does the regulatory environment support the development of real estate finance?” and 2.4 “Is the real estate finance market open and equitable?”

Negative Responses (lowest 20%) The most strongly negative category was whether the property rights regime was dynamic. Again, in a socialist system we would not expect a dynamic property rights regime. Other strongly negative were in the areas of 1.4 “Are information systems concerning all property regimes adequate?”, and 3.3 “Does fiscal policy in real estate markets enhance efficiency or equity?”. These negative responses are also consistent with a socialist system.



Appendices

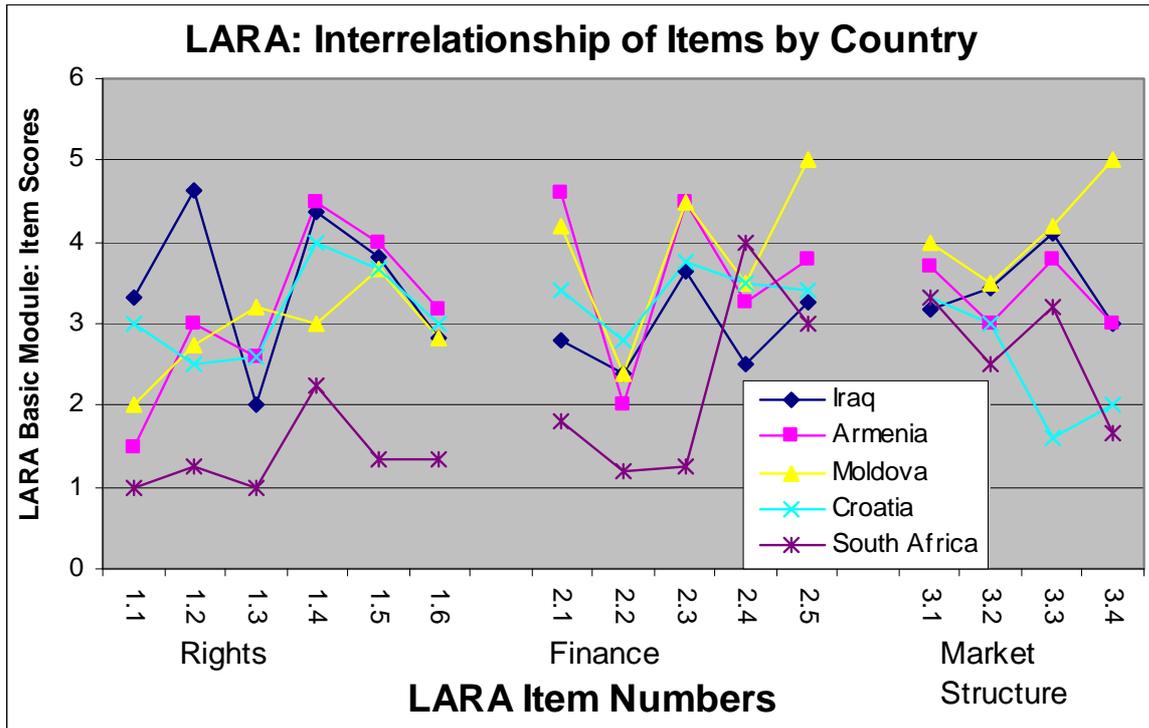
Land and Real Estate Assessment (LARA): BASIC MODULE Numerical Ratings by Country

Categories & Items	IRAQ			ARMENIA			MOLDOVA			CROATIA			SOUTH AFRICA		
(Each item is weighted as shown in second column)															
1. Rights, Information, Contracting and Enforcement	Score	Wt	=	Score	Wt	=	Score	Wt	=	Score	Wt	=	Score	Wt	=
1 1 Are property rights robust and comprehensive?	3.33	2	6.66	1.5	2	3	2	2	4	3	2	6	1	2	2
1 2 Is the property rights regime dynamic?	4.63	4	18.52	3	4	12	2.75	4	11	2.5	4	10	1.25	4	5
1 3 are "public goods" and public assets well defined and protected	2	5	10	2.6	5	13	3.2	5	16	2.6	5	13	1	5	5
1 4 Are information systems concerning all property regimes adequate?	4.38	4	17.52	4.5	4	18	3	4	12	4	4	16	2.25	4	9
1 5 Are property disputes processed quickly and fairly?	3.83	3	11.49	4	3	12	3.67	3	11.01	3.67	3	11.01	1.33	3	3.99
1 6 Are rules and contracts enforced and transaction costs low?	2.83	6	16.98	3.17	6	19.02	2.83	6	16.98	3	6	18	1.33	6	7.98
TOTAL SCORE FOR RIGHTS, INFORMATION, etc.	21		81.17	18.77		77.02	17.45		70.99	18.77		74.01	8.16		32.97
2. Finance and Risk Management															
2 1 Is the macro-economic environment conducive to real estate finance?	2.8	5	14	4.6	5	23	4.2	5	21	3.4	5	17	1.8	5	9
2 2 Does the regulatory environment support the development of real estate finance?	2.4	5	12	2	5	10	2.4	5	12	2.8	5	14	1.2	5	6
2 3 Is the market for real estate development and finance developed and efficient?	3.63	4	14.52	4.5	4	18	4.5	4	18	3.75	4	15	1.25	4	5
2 4 Is the real estate finance market open and equitable?	2.5	4	10	3.25	4	13	3.5	4	14	3.5	4	14	4	4	16
2 5 Is the market in real estate finance stable and secure?	3.25	5	16.25	3.8	5	19	5	5	25	3.4	5	17	3	5	15
TOTAL SCORE FOR FINANCE AND RISK MANAGEMENT	14.58		66.77	18.15		83	19.6		90	16.85		77	11.25		51
3. Real Estate Market Structure: Regulation, Fiscal Policy, and Industry Structure															
3 1 Are existing regulations and procedures effective in realizing policy goals?	3.17	3	9.51	3.7	3	11.1	4	3	12	3.33	3	9.99	3.33	3	9.99
3 2 Is the market for exchanging real estate liberalized and competitive?	3.45	2	6.9	3	2	6	3.5	2	7	3	2	6	2.5	2	5
3 3 Does fiscal policy in real estate markets enhance efficiency or equity?	4.1	5	20.5	3.8	5	19	4.2	5	21	1.6	5	8	3.2	5	16
3 4 Is industry structure conducive to competitive and equitable markets?	3	6	18	3	6	18	5	6	30	2	6	12	1.67	6	10.02
TOTAL SCORE FOR MARKET STRUCTURE:	13.72		54.91	13.5		54.1	16.7		70	9.93		35.99	10.7		41.01
Overall Index Number and Total Numerical Score	3.22		202.9	3.40		214.1	3.67		231	2.97		187	1.98		124.98
1. Category "Rights" index number	3.38			3.21			2.96			3.08			1.37		
2. Category "Finance" index number	2.90			3.61			3.91			3.35			2.22		
3. Category "Market Structure" index number	3.43			3.38			4.38			2.25			2.56		



LARA graphical comparison with other countries.

In the following analysis, Iraqi respondents' answers were compared with answers in three former communist countries and South Africa. The former communist countries give more of a peer evaluation, since all were based on socialist principles, as was the former regime. South Africa gives a perspective and benchmark for how a country with no socialist background fared in the survey.



Note that low numbers represent positive responses. In the area of rights, Iraq scored very similarly to the former communist countries in respect to rights with the last three answers. Since the former regime was formed on socialist principles, this is not surprising. However, in the first two questions concerning the full spectrum of rights and the dynamic nature of the property rights regime, the responses were negative. However, on the question of public goods, there was a very positive belief that these are well defined and protected.

In section 2, the macroeconomic situation in Iraq is apparently better than most of the other countries, and the regulatory system is perceived about the same as the former communist countries. Iraqi respondents were generally more positive with respect to how the real estate finance market functions than those in the former communist countries. The existence of real estate banks in Iraq may be the cause of a better perception of real estate finance, although a lack of capital at banks may have contributed to the two high scores in this category.

In section 3, the market structure was not perceived as well. All the answers were moderately to severely negative. The lack of a fiscal policy that supports a real estate market is especially perceived as a problem. Note that South Africa also fared poorly with regard to the fairness and equity of its financial markets (2.4) and real estate markets (3.3). This may result from the effects of Apartheid.



RECOMMENDATIONS:

Property Laws

1. That the special resolutions passed by the Revolutionary Command Council be reviewed and amended or repealed as appropriate. (Institutional Reform Survey). Specifically the following

2	Decision Number 1198 of 1977	Remedies for breach of real estate sales contracts
3	Decision Number 850 of 1979	Limitations on residential real estate design
4	Decision Number 581 of 1981	Transfer of border land surrounding Baghdad
5	Decision Number 529 of 1982	Registration of certain real estate in the name of the baladia (municipalities)
7	Decision Number 1187 of 1982	Another decision concerning border lands of Baghdad
22	Decision Number 235 of 2001	Amending certain laws regarding payment of registration fees in certain circumstances
23	Decision Number 2 of 2002	Seizure of certain properties and use of those properties for government employees
24	Decision Number 49 of 2002	Registration of properties of persons who have left Iraq
27	Decision Number 183 of 2002	Authorization of court actions for repossession of property under Law Number 138 of 1981
28	Decision Number 184 of 2002	Authorizes repossession of certain agricultural lands

2. That the process for land planning and development be reviewed by the appropriate agency and amended as needed. (Institutional Reform Survey and CLIR Survey)
3. That the landlord tenant relationship be reviewed. Specifically, that Article 5 of that law, which allows defaulting borrowers to become automatic tenants with court-appointed rents, be reviewed with the banking sector. (Institutional Reform Survey)
4. That private associations be reviewed and the possibility of stronger licensing laws be enacted. The body of the report indicated anecdotal evidence that the real estate brokerage industry in particular may be in need of more strict regulation, both internally and externally. (CLIR Survey)
5. That the information system for real estate markets be reviewed and revised as appropriate. (LARA Survey).

Land Registry

1. That the Land Registry review its processes to determine where it can improve its perception as transparent and fair. (CLIR Survey).
2. That the Land Registry institute modern Land Registry computerization and GIS capability as soon as possible. (CLIR Survey)



Appendices

X APPENDICES



Appendices

X. APPENDICES

Appendix A – References

Appendix B – List of Revolutionary Command Council Decisions Affecting Real Estate

Appendix C – Registration Department Central Office Organizational Chart

Appendix D – Registration Department Regional Office Organizational Chart

Appendix E – Real Estate Registration Process Flowchart



Appendix A – References

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Appendices

Appendix B – List of Revolutionary Command Council Decisions Affecting Real Estate

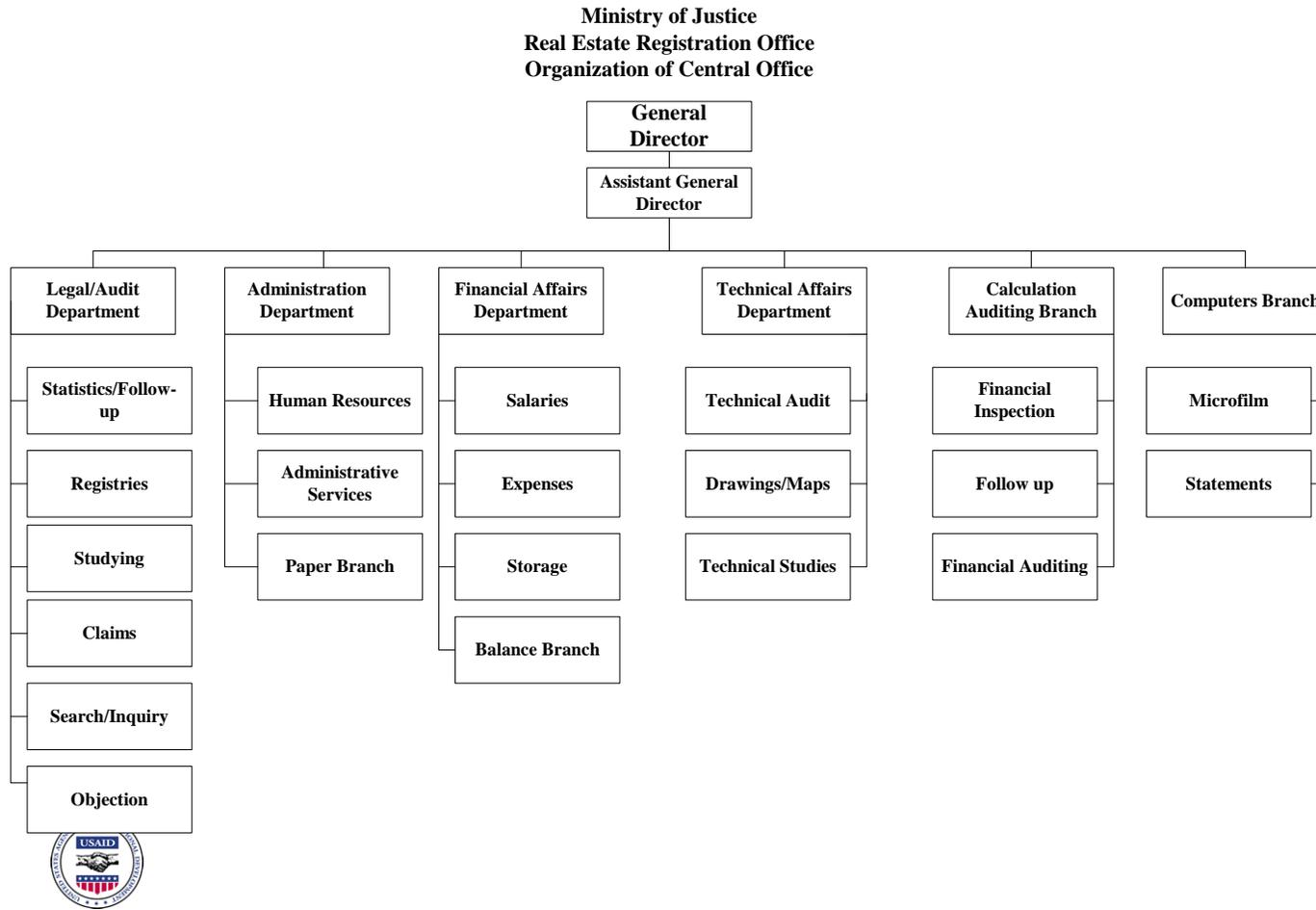
1	Decision Number 620 of 1973	Agricultural land borders
2	Decision Number 1198 of 1977	Remedies for breach of real estate sales contracts
3	Decision Number 850 of 1979	Limitations on residential real estate design
4	Decision Number 581 of 1981	Transfer of border land surrounding Baghdad
5	Decision Number 529 of 1982	Registration of certain real estate in the name of the baladia
6	Decision Number 1041 of 1982	Restrictions on rights of adult heirs in certain circumstances
7	Decision Number 1187 of 1982	Another decision concerning border lands of Baghdad
8	Decision Number 527 of 1985	Requirements for residential real estate affected by relocation of streets or highways
9	Decision Number 131 of 1987	Authorization of two ministries to provide housing for employees of those ministries
10	Decision Number 520 of 1987	Tax exemption for parents who own housing
11	Decision Number 522 of 1988	Exemption of certain lands from application of a previous Revolutionary Command Council Order
12	Decision Number 129 of 1989	Authorizing registration of certain properties sold by certain ministries
13	Decision Number 631 of 1989	Authorization for construction of tourist facilities in Kurdish lands
14	Decision Number 157 of 1994	Restrictions on ownership of real estate in Baghdad (repealed)
15	Decision Number 40 of 1997	Grant of lands to certain Palestinians
16	Decision Number 150 of 1997	Sales of certain state lands to farmers
17	Decision Number 165 of 1999	Sales of lands by those who leave Iraq
18	Decision Number 49 of 2000	Grant of state real estate to certain unmarried women
19	Decision Number 133 of 2001	Repealing certain Revolutionary Command Council Orders
20	Decision Number 156 of 2001	Penalties on those who encroach on state land
21	Decision Number 202 of 2001	Grant of rights and privileges to Palestinians
22	Decision Number 235 of 2001	Amending certain laws regarding payment of registration fees in certain circumstances
23	Decision Number 2 of 2002	Seizure of certain properties and use of those properties for government employees
24	Decision Number 49 of 2002	Registration of properties of persons who have left Iraq
25	Decision Number 181 of 2002	Designation of a court to hear cases under Law Number 53 of 1976
26	Decision Number 182 of 2002	Designation of a court to hear cases under Law Number 117 of 1970
27	Decision Number 183 of 2002	Authorization of court actions for repossession of property under Law Number 138 of 1981
28	Decision Number 184 of 2002	Authorizes repossession of certain agricultural lands





Appendices

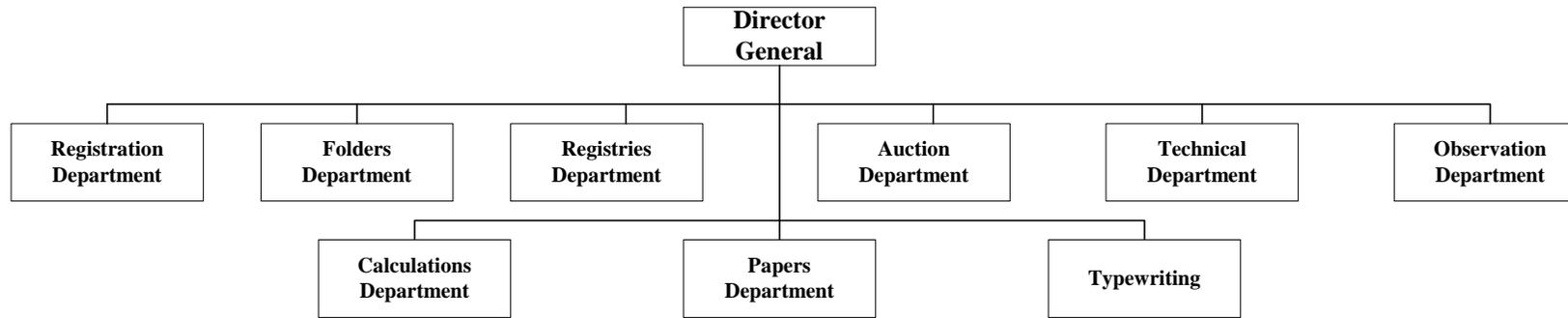
Appendix C – Registration Department Central Office Organizational Chart



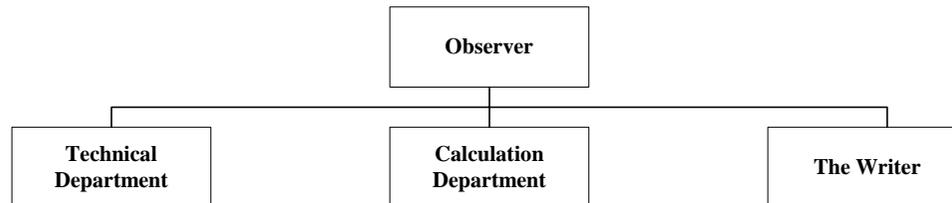
Appendices

Appendix D – Registration Department Regional Office Organizational Chart

Ministry of Justice
Real Estate Registration Office
Regional Office Organization



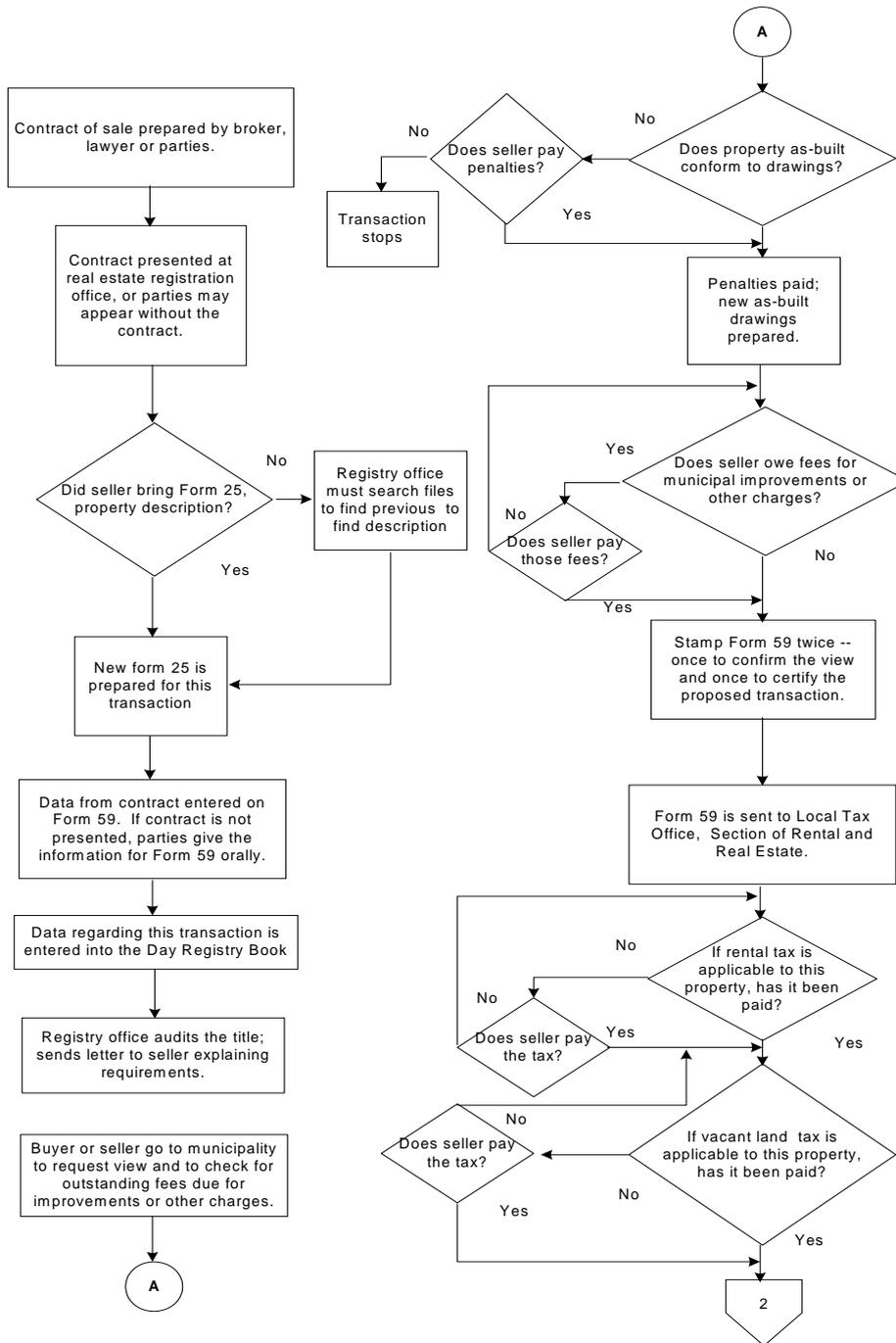
Ministry of Justice
Real Estate Registration Office
Regional Sub Office Organization



Appendices

Appendix E – Real Estate Registration Process Flowchart – Page 1 of 3

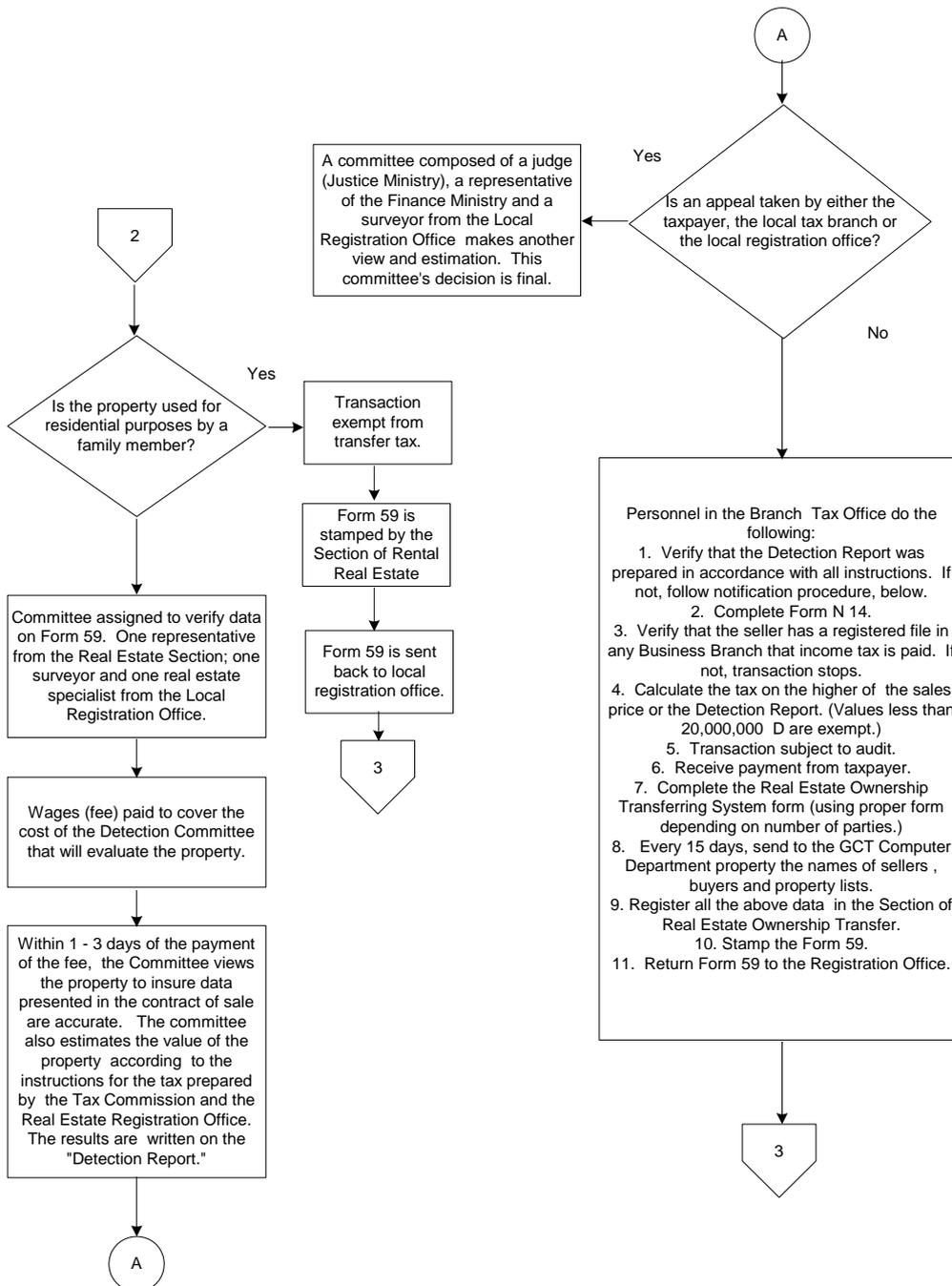
Procedure for Real Estate
 Registration - Page 1 of 3



Appendices

Appendix E – Real Estate Registration Process Flowchart – Page 2 of 3

Procedure for Real Estate
 Registration - Page 2 of 3



Appendix E – Real Estate Registration Process Flowchart – Page 3 of 3

Procedure for Real Estate Registration - Page 3 of 3

