



USAID Iraq Local Governance Program

## Land Registration and Property Rights in Iraq

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**Prepared by:**

RTI International  
P.O. Box 12194

3040 Cornwallis Road  
Research Triangle Park, NC 27709-2194



**Prepared for:**



Jennifer Link  
Cognizant Technical Officer  
USAID Baghdad

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## **Abbreviations**

CPA	Coalition Provisional Authority
DS-25	Document Sample 25
FIG	International Federation of Surveyors (Federation Internationale des Geometres)
GIS	geographic information system
ID	Identification
IR	intermediate result
MMPW	Ministry of Municipality and Public Works
LGP	Local Governance Program
QOL	Quality of Life Survey
RCC	Revolutionary Command Council
RERD	Real Estate Registration Departments
U.S./US	United States
USAID	United States Agency for International Development

## **Iraqi/Arabic Terms**

<i>Al Takharuj</i>	A transfer of one's share of an inheritance to any of the other inheritors.
<i>Amanat</i>	Baghdad Mayoralty
<i>Ameriya lands</i>	lands owned by the state
<i>bayt</i>	family
<i>dunam</i>	measurement unit equal to 1000 m <sup>2</sup>
<i>nahiya</i>	subdistrict
<i>qada'</i>	district
<i>owlk</i>	measurement unit

## **Executive Summary**

The purpose of this report is to examine the background and current status of land registration in Iraq with a view to making recommendations for change that would encourage local empowerment and economic development.

Land registration and property rights in Iraq have deep historical foundations reaching back to the Hammurabic period. However, the current land registration system owes more to the 400-year Ottoman occupation of Iraq and the subsequent interval under the British mandate. Under these regimes, land policy was self-serving and designed to maintain and reinforce the existing political power. This was done through the allocation of land to influential individuals who supported the incumbent regime. This policy led to large accumulations of land and an agricultural economy based on poor peasants who had limited rights of tenure. During the early Ba'athist period, under a socialist ideology, large-scale land reform was implemented in the rural tribal areas. Under this reform, limitations on the size of holdings were enacted in law, and collective ownership of property and means of agricultural production were made possible. The results of that land reform remain in place. In the latter Ba'athist period, government land was allocated to supporters of the regime, while Kurds and ethnic Iranians were deprived of property for which they held title.

Historically, land administration during the Ottoman period, known as the TAPU (title deed) system, included a land register and an issuance of title deeds. Land was classified into several categories, including a category that provided individual property rights. Individual property rights were maintained throughout the Ba'athist period, but additional categories of group ownership were authorized. By 1974, the old TAPU system was replaced by the Real Estate Registration Law, which created an improved title issuance system and established Real Estate Registration Departments (RERDs) throughout the country. This report describes this system, which remains in effect. Since the 2nd Persian Gulf War and the breakdown of authority, bogus title deeds to land have increased.

This report considers the land registration process, the buy–sell process, and the process for obtaining approval for property improvement. The processes are lengthy but apparently effective. The process of obtaining a mortgage on a property was investigated by visiting major banks and the RERD offices. Questions added to the Local Governance Program's (LGP) Quality of Life 3 (QOL 3) survey ascertained the ownership status of the participant's dwelling and determined whether the land was registered and if the resident had a title document. The survey asked whether they had ever obtained a mortgage by using their property as collateral.

Our research found that 96 percent of owners said their property is registered, with a slightly lower percentage reporting that they had the RERD title deed. This high percentage indicates that the system is effective, more or less on the same scale as the Food Ration Card system. Based on the QOL 3 results, fewer than 3 percent of respondents had mortgages.

The World Bank estimates a shortage of 1 to 1.5 million housing units in Iraq. The lack of housing finance clearly has had an impact on this shortage. The availability of property titles and the ability of Iraq to provide much of its own building materials, suggests an opportunity to develop the land registration and the housing finance systems to initiate a recovery in this market segment. This report provides illustrative, comparative economic data indicating the importance of the residential housing sector in the domestic economy. The comparative information suggests that developing the housing market (mortgage and secondary-mortgage markets) might have a profound positive effect on the Iraq economy.

The land administration system, while distributed widely throughout Iraq, remains a centralized system. Land registration is administered locally, but the benefits of this registration are not realized at the local level. Citizen oversight on local land-use issues is limited, and land registration does not raise local revenue through property taxation. Given the current land registration system, it is possible that devolution could enable local revenue generation and citizen oversight of land use.

Land use entitling decisions that have devolved to local authorities can effectively stimulate the housing market. At the national level, the land registration system can be upgraded to include a national cadastral system incorporating a geographic information system (GIS) and possible archival function for title deeds. The national system can be fed by local-authority, land administration departments. The decision to permit local authorities to collect a local property tax awaits constitutional authority.

## **Real Estate and Land Registration in Iraq**

### **Introduction**

This report informs the LGP intermediate results (IRs) 4.1.2 and 4.1.3: Subnational government that has a fundamental political and economic role in a sovereign Iraq. The report provides baseline information on the status of land registration in Iraq that supports the LGP's strategic vision for policy analysis and policy advice. It provides recommendations for land registration and titling that will lead to an enhancement of subnational government administrative and management capability. Such enhancements construct the foundation for the use of real property for development collateral and as a source of revenue generation locally through property taxation. The specific IRs addressed by this report follow:

- 4.1.2.4: Partnership Mechanisms Established among Local Government, Private Sector, and Civic Groups to Promote Local and Regional Economic Development.
- 4.1.3.2: A Policy in Place that Enables Subnational Governments to Access and Utilize National and Local Revenues and Promote Economic Development.
- 4.1.3.3 Political and Financial Alliances Established among Subnational Entities to Improve Service Delivery, Share Capital Assets, and Contribute to National Policy Making.

LGP staff are to study, research, and recommend provincial economic-development opportunities including, but not limited to, the evaluation of public-private partnerships; the development of a favorable local business climate, including the elimination (or liberalization) of specific bureaucratic requirements; the need for and use of economic data; and the strategies for local revenue generation and/or cost reduction. The work plan called for obtaining a specific understanding of (1) economic analysis and forecasting among local government officials in key areas of responsibility (taxation, regulatory agencies, investment offices, partnership offices, etc.) and (2) business planners and investment decision makers. This report falls under the rubric of local economic development and support for policy advice and analysis.

### **Historical Background of Land Registration in Iraq**

Land registration in Iraq has deep roots. Evidence of the sale of private properties was noted as early as 2700 BC from the city-states of Ur and Uruk. Different classes of property were noted in written tablets of the Sumerian period. Under Hammurabi (1792–1750 BC), land classification expanded and is referred to in the Hammurabic code.<sup>1</sup> Thus, land registration has occurred in Iraq for millennia, and Iraq could well be the origin of the concept of land as private property.

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<sup>1</sup> John P. Powelson (1988), *The Story of Land: A History of Land Tenure and Agrarian Reform*, The Lincoln Institute of Land Policy, 26 Towbridge Street, Cambridge, MA 02138 is the reference for Ur, Uruk, and the Hammurabic period. An example of the Hammurabic code: "If a man has bestowed a field, a plantation, or a house on his heir who finds favor in his sight [and] has drawn up a sealed tablet for him, after the father goes to [his] fate, when the brothers divide [the estate]. He shall take the gift that the father has given him, and apart from it they shall take proportionate shares from the property of the paternal estate." References to Ur, Uruk, and Sumeria in Powelson are from Diakonoff, I. M., 1974, "Slaves, Helots, and Serfs in Early Antiquity," *Acta Antiqua Academiae Scientiarum Hungaricae*.

### **Land Ownership in Iraq Under the Ottoman Occupation**

The Ottoman occupation of Iraq, which began in 1534, altered the concept of land ownership to one that all land belongs to the state. The state does not have to prove this ownership with any document, including title deeds.<sup>2</sup> This is, in effect, the default position for land ownership—no land is without ownership. Communities (collective ownership), individuals, and corporate bodies may own land, but this ownership must be proven through registered title deeds. During the Ottoman period, most of the lands were owned by such groups of people as the Rawa and Aana in the northwest of Iraq. At that time, land reform was established by dividing the lands into three types:

1. Privately held land
2. *Ameriya* lands (owned by the state)
3. Endowed lands<sup>3</sup>

Accordingly, large areas, cities, and complete villages were registered as one plot of land on one title deed. This was the standard for a long period of time. The people of one community were considered the legal owners/partners of the city, town, or village with a single title deed.

At the end of the Ottoman occupation, perceptions of land ownership changed because the idea of the family (*bayt*) as the essential element in Iraqi society gained favor. The end of the occupation ushered in an era of anarchy, as governmental authority and the control that the social and tribal groups enjoyed faded. It was during this time in Iraq that feudalism emerged. Lack of state or local controls allowed large, powerful families to seize enormous plots of land—using any means to enlarge their land holdings. Through their influence over a weakened government authority, families were able to register large plots of land under their name. As the Ottoman government grew weaker, it was unable to pay its high-ranking officials. It found an alternative by registering plots of lands in these officials' names and giving them the legal title deeds. These types of land allocations were registered as privately held land outside the TAPU system and therefore were held in perpetuity. Bayt Aaljameel Zada held large plots of land in Dhi Qar where the district of Qal'at Saleh was registered under the family name. Other families dominated Diyala. In Al Basrah, lands were registered in the name of Bayt Al Abdulwahed (in the name of Mehmood Pasha Alabdulwahed). Throughout the Middle Euphrates area, large families became, in effect, feudal lords holding large areas of land populated with peasant farmers.<sup>4</sup>

The state encouraged this transfer of ownership from large communal tribal holdings to the smaller family units to satisfy its requirement of rewarding top civil servants and to weaken the influence of the tribal groups. Under civil law, the owner was entitled to buy, sell, rent, and mortgage privately held land. In practice, most of these lands were held in adverse possession by the Iraqi tribes, and the Ottoman government did not prevent this. In addition, large areas of the *Ameriya* lands were allocated to powerful officials and individuals. Forgery was another issue; it found its way to the TAPU registry. On the registry, any name could be deleted and replaced by a new name. Moreover, documentation was poor and inefficient, thus making it vulnerable to fraud and graft. The

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<sup>2</sup> It was implemented by Dawood and Midhat Pasha, the Walies of Baghdad, in 1858.

<sup>3</sup> There are two additional specialized categories not included here.

<sup>4</sup> Bayt Hanasheikh, Bayt Alkhedeiry, Bayt Sayhood, Bayt Alameer, Bayt Alyaseen, Bayt Alurbee and Bayt Aljewwe are examples of the dominant families that exploited the situation to gain control of more land in the Middle Euphrates area. In the Baghdad area, Bayt Dragh, Bayt Albeyya', and Bayt Etefa were family names associated with large land holdings.

Ottoman government tried to remedy this situation by issuing a new law<sup>5</sup> to verify the identity and registration of real estate, but World War I intervened before it was implemented.

Another factor affecting land ownership was the opening of the Suez Canal, which introduced commercial ships to the Tigris and Euphrates rivers and transformed the focus of Iraqi agriculture from domestic production to export. Grain exports increased from 140,000 pounds (1867–1871 AD) to eight million pounds (1912–1913). Over the same period, land under cultivation increased from 10,000 to one million acres. Under this expansion, restrictions on land, contracts of tenancy, and occupation rights became of great importance. In the tribal areas, where “a tribal-occupied plot of land is the property of the whole tribal community,” these new practices were acute sources of disagreement.<sup>6</sup> The increased pressure for land and promises of individual wealth from agriculture were a powerful influence of change in traditional society.

### ***Land Rights During the British Mandate***

A year after the British occupation of Iraq in 1917, the commanding general announced in his Declaration No. 15 (given December 18, 1918) that the people who have title deeds for their possessions of *Ameriya* lands are considered to be tenants for these lands. Institutions were to be established to examine those title deeds. At the same time, the British authority distributed lands to some tribal leaders and feudalists<sup>7</sup> who had supported the British occupation.

Under the mandate, the British government realized the importance of clear real estate registration and issued Declaration No. 24 (1920). Under this declaration, two directorates for real estate registration were established in Diyala and Babil<sup>8</sup> governorates. After the Iraqi uprising of 1920 had broken out, they soon stopped their mission.

Thereafter, the Iraqi government began to play a role in this process. The TAPU department attempted to apply the Ottoman land law, issuing an Arabic translation of the law in the annex of the *Iraqi Gazette* (No. 727) dated January 28, 1929.<sup>9</sup> Soon after, the government decided to examine the whole land policy before applying the law. With this in mind, Sir Arnest Dawsen, the British advisor of lands, was summoned. He submitted a report in January 1931 that incorporated his suggestions for reform. According to this report, the Iraqi government issued the Land Rights Conciliation Law No. 50 (1932), which was then replaced by Law No. 29 (1938). It also issued *Alezma*<sup>10</sup> Law No. 51 in 1932, which was later replaced by the amended law of *Alezma* rights in *Ameriya* lands No. 153, year 1959.

A new type of land right was created with the Land Rights Reconciliation Law of 1932. This was achieved through *Alezma* rights (adverse possession) to *Ameriya* lands. Now there were three types

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<sup>5</sup> on (5/2/1331) AH

<sup>6</sup> Farook Sleglet and Peter Sleglet. “Changes in Land-Ownership and Social Structure in Middle and Southern Iraq for the period 1858–1870.” *International Middle East Journal* No. 15, 1983, pp. 491–505.

<sup>7</sup> Used in Iraq in reference to large land holders who sustained scores of tenant farmers in dire conditions.

<sup>8</sup> in Sadat Al-Hindiya near Hillah.

<sup>9</sup> The Ottomans were in Iraq for 400 years until the British Occupation, and many of the laws and regulations were in Turkish.

<sup>10</sup> *Alezma* is an old Ottoman system established about 1890 by Midhat Pasha, the Wali of Baghdad. It is based on the idea of reclamation of a plot of land, which is a public estate, by cultivating it. The person who undertakes the cultivation gets the benefit of the harvest. Over time, and if this person continues to improve this land, he can apply to the government to possess this land after paying one-third its price. The land then comes under private ownership. If the land is categorized as arable land or an orchard, then he has no right to use or sell it as a residential land. This is a form of homesteading or adverse possession. This law is no longer enforced.

of rights to *Ameriya* lands: TAPU authorization/allocation of *Ameriya* land to selected individuals, rights gained through *Alezma*, and pure *Ameriya* lands (or public land).

### ***Land Rights in an Independent Iraq***

The newly independent Iraq inherited primarily the legacy of the Ottoman occupation. The British had made some attempts to improve the administration of the law, but had done little to improve the adverse distribution of land. Feudalism continued unchecked, benefiting the wealthy landowners, who paid little or no attention to the poorer peasant classes. Political development at the time was characterized by the emergence of Arab nationalism and socialism. The opposition to the status quo came from the Ba'athists and the communists who opposed the excesses of monarchy and vested interests of the wealthy landowners. Peasants suffered poor conditions, as they were generally illiterate, prone to disease, and lived in squalor. This was a natural theme for the reformers. Opposition to the parliamentary monarchy culminated in the 1958 revolution (July Revolution). Promises were made for social reform, development, and economic prosperity. In line with socialist ideology, the July Revolution sought to transform the economy from rudimentary free enterprise into collectivism. This was the era of the 5-Year National Development Plans that sought social justice for all. It was believed that the source of the peasant's misery was the land tenure system.<sup>11</sup> The system enabled a large number of landlords to "hold lands that they secured from the state on easy terms and forced a large number of peasants to work for remuneration so small that it left them barely on a subsistence level."<sup>12</sup> State intervention did not improve matters for the peasants, and disparities of income became even more acute. After the July Revolution, there was demand to abolish the feudal system and reform agriculture. Support for this was strong, and an Agrarian Reform Law was issued on December 30, 1958. The law empowered the government to take away lands from the large landowners. By 1970, some 10 million *dunams* (1 *dunam* = 1000 m<sup>2</sup>) of land had been dispossessed from the large land holders and some 8 million *dunams* distributed to more than 400,000 families.<sup>13</sup>

Before the Agrarian Reform Law, the private sector (represented by relatively few landowners) controlled 80 percent of the land. The law reduced the large land holdings and expanded small- and medium-sized holdings. But the law also created a complex situation in the countryside. As a kind of compensation, the feudalists were granted the right to select the land that they could hold and to subdivide it into smaller units for their family members. Thus, much of the better land was retained by the influential families. Land ownership ranged from 40-2000 *dunams*. Lands exceeding the high limit were taken over by the state with fair compensation. The law also considered the distribution of the lands transferred to farmers so that each farmer would possess private land ownership. The smallest plot of land was 30 to 60 *dunams*.

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<sup>11</sup> ... referred to as the feudal system. Majid Khadduri (1978), *Socialist Iraq: A Study in Iraqi Politics Since 1968*, The Middle East Institute, Washington, DC, page 117.

<sup>12</sup> Op.cit., page 117. "The landowners took the lion's share of the crops on the ground that they owned the land and provided the capital necessary for cultivation. Presumably the Old Regime embarked on large schemes of irrigation and flood control which were considered necessary to increase agricultural production and improve the methods of cultivation. ... the condition of peasantry hardly improved."

<sup>13</sup> In context, this occurred not long after Nasir in Egypt nationalized the Suez Canal. The Ba'ath Party went on to argue for nationalization of Iraq's oil. Nationalization of oil was a popular theme in the Arab world. Iraq began to nationalize its oil in 1961, and by 1975 had completed the nationalization and begun marketing its own oil. This was orchestrated by Saddam Hussein, who was Vice President of the Revolutionary Command Council at the time. Before the process of nationalization began, Hussein transferred Iraq assets from British to Swiss banks to avoid the possibility of assets being frozen. Pipelines were constructed in 1974-1976 to Turkey and to the South, providing a Mediterranean and a Gulf outlet. Op.cit., page 124-127.

In 1970, a new Agrarian Reform Law was issued that incorporated and abrogated the old reform law. Among the new articles, Number 38 stated that “Communal Reform Associations are to be established for the people who were granted plots of land according to Articles 18 and 19 of this new law, including farmers who have rented plots of lands from the Ministry of Agriculture. These plots of land should not exceed the high limits of lands distribution... Communal farms are to be established incorporating people who share work or work and machines and other tools on the basis of a communal possession for those machines and tools. They should work together and share the benefits equally.” Thus, communal farms were established more or less along Soviet lines.

During the Socialist period, cooperative and communal ownership was encouraged. Under Iraq Civil Law (Articles 1098–1105), cooperative unions could acquire property from the state under cooperative ownership. The typical purpose of this was to build housing for members of the cooperative unions.<sup>14</sup> The cooperative union was a legal entity (a legal “person”) and could accept independent financial liability. The Revolutionary Command Council (RCC) encouraged and obliged the cooperatives to build housing for their members. RCC resolution 1153 (1977) permitted the Iraqi Real Estate Bank to give loans to the private sector to help solve the housing problem. In 1978, the law of the Cooperative Housing Union was promulgated, establishing a department of cooperative housing in the Ministry of Housing and Reconstruction.

The basic TAPU system of registration remained until 1974 when it was replaced by the RERD. Nevertheless, the term “TAPU” remains in common use when referring to land registration. The Land Administration Department of the Ministry of Justice and the local RERD are the government organizations responsible for land registration and titling. The RERD records and validates real estate transactions and ensures that development of the land is in accordance with land use policy. It is the only legal body in Iraq for registering different types of real estate ownership and for ensuring compliance with land use and building construction standards.

## **How the Land Registration System Works**

From the Ottoman period until 1974, the ownership document was called the Permanent Title Deed. It was a hand-written copy of the original registration document of the property ownership held by the TAPU. In 1974, the Real Estate Registration Law was promulgated, replacing the old Ottoman Permanent Title Deed with a new Title Deed document. The title document held by the owner is also a hand-written copy of the original, official record-book document. It is the only proof of ownership. The RERD holds the original in its registry.

The Title Deed document incorporates the following information:

1. The complete name of the owner(s).
2. The category of the property—plot of land, residential, arable, commercial, or industrial.
3. The type of the property (three types):

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<sup>14</sup> For example, in 1960 the Iraqi Officers Union in Baghdad acquired land in an area now called Zayoona, where they had a contract with a German company to build houses for members. Members were chosen by lot to receive houses. Some of the members suggested that the plots be allocated by lottery and members build their own houses. Cooperatives of this type dominated cooperative union activity in the 1960s.

- a. Private Real Estate—Estates owned by the owner whose name(s) is registered in the Title Deed document with no other partner.<sup>15</sup>
- b. Public Estates—These belong to the state and are divided into two parts: (1) properties given by Alezma and (2) governmental estates entrusted to the RERD. Both types of ownership affirm that the state is a partner owner with the individual accorded some ratio or period of use.
- c. Endowment (inheritance)—The property is registered in the Endowment Department and under its protection.

In some cases a landowner makes an agreement with another person to construct a building on his land. The two sides agree to make use of the property for a limited period of time. This type agreement is called “Al Musataha.” At the end of the agreed period, the property ownership reverts to the landowner, and the building should be registered at the Real Estates Registration Department.

### ***Transferring the Ownership of Real Estate Property***

There are two types of ownership transfers in Iraq: (1) transfer between individuals and (2) transfer between individuals and a governmental body or between two governmental bodies.

#### **Transferring ownership between individuals**

- *Sell-Buy Process.* This process (described in a later section) is long and rather a complex procedure that takes place at the RERD. The process is intentionally complex so that everything from checking ID cards to issuing the Title Deed can be examined accurately.
- *Exchanging Properties.* In this process, no money is exchanged. Instead, owners agree to exchange properties, and the new ownerships are registered at the RERD.
- *Living Inheritance.* The landowner has the right to register only one-third<sup>16</sup> of his property to whomever he would like. This should be registered at the RERD during his lifetime. The other two-thirds of his property are to be kept in his ownership. This law has been in force for a long time and is based on Islamic Law.
- *Donation* is the process of transferring a property ownership through donation to someone else, whether or not they are a relative. It is a metaphoric sale of property where no money changes hands. However, the owner has the right to impose any sort of condition that the other party must accept. The condition is released either with the owner’s death or by his decision to rescind the previous condition. Donation falls under the same rules that cover the sell-buy process.
- *Al Takharuj.* This is a transfer of one’s share of an inheritance to any of the other inheritors. This process usually takes place at a special court and in front of the judge. Then the property can be registered at the (RERD).

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<sup>15</sup> Partner means that there are no other legal entities who may claim rights to the land.

<sup>16</sup> The one-third ratio in donation or in the will is based on Islamic Rules. The donator is restricted to this ratio so that he may not deprive other inheritors of their legal rights.

### **Transferring ownership involving a governmental body (expropriation)**

- *Judicial Expropriation.* Any estate department may become the owner of a privately owned plot of land or a property via a Civil Court Decision. To expropriate a specific plot of land or property, the court is legally responsible for proving that no objection to the transfer exists. It should also have a stamped sketch of this property from the RERD with the names of the owners and their addresses. The RERD must be notified when money is exchanged.
- *Administrative Expropriation.* Real estate ownership is transferred from one governmental body to another. The amount of money exchanged is agreed upon either through the ministers, or sometimes through the prime minister if the transfer is between two different ministries.

### ***Ownership Restrictions Since the 1958 Revolution***

#### **Restrictions on foreign ownership**

Iraq was governed by reciprocity measures with other countries. The Civil Law allowed foreigners to own real estate in Iraq, but only under the following conditions:

1. The foreigner must have been living in Iraq for at least 7 years.
2. There is no administrative or martial objection to his property ownership.
3. The property must be at least 30 km from Iraq's international borders.
4. The property must not be arable.
5. The foreigner may possess only one residential property and another for his work, if needed.
6. All these restrictions are valid only if there is a reciprocity measure between Iraq and the foreigner's home country.

During the former regime, this law was canceled by Resolution No. 23 (1994). However, other conditions replaced it, which made this process more difficult and rather complex. It is anticipated that a new law will allow foreigners to buy real estate in Iraq based on provisions of International Law.

#### **Restrictions on arable lands ownership**

The Agrarian Reform of 1958, amended in 1970, set upper limits on the ownership of arable land. Details were discussed earlier in the section *Land Rights in an Independent Iraq*.

#### **Geographic restrictions on ownership**

As for Iraqi citizens, a resolution by the dissolved RCC was announced that would limit property ownership to the governorates where the individual or his father was registered. This meant that an Iraqi citizen who is registered at the Civil Affairs Department of Al Mawsil governorate could own real estate only in Al Mawsil and not in any other governorate. For a brief time, this resolution was amended to allow citizens registered at the Civil Affairs Department in Baghdad to own real estate in other governorates, only to be rescinded later. The state's inability to provide services to the major cities was the justification for these restrictions.

In September 2004, an order published under the title “An Annexation to Property Possession”<sup>17</sup> stated that “[a]ny relevant order or resolution that denies Iraqi citizens’ rights in possessing property all around Iraq is cancelled.” In effect, this order cancels the restrictions on Iraqis owning property in some jurisdictions.

### ***The Structure of the General Directorate of Real Estate***

The General Directorate of Real Estate in Iraq is the head of all governorate real estate directorates. Each governorate has one or more real estate directorates, depending on its size and population. For example, Baghdad, the largest of the governorates, has about 10 directorates. Al Mawsil has two directorates, which correspond to the two sides of the city. The districts and the subdistricts of each governorate have the Office of the Real Estate Superintendent. All these divisions are similar in structure hierarchically, up to the Ministry of Justice.

### ***Land-Registration Problems After the US-Led Occupation***

The Ministry of Justice has begun to face serious problems regarding real estate registration, which stems from the absence of Iraqi government authority after April 9, 2003. These problems can be divided into four major groups:

1. *Forgery of Title Deed Documents.* Forged documents claiming title have begun to appear, causing difficulties for the RERD. The administration of the Real Estate Directorate has established a new and more complicated policy to overcome this momentous problem.
2. *Appropriation of Public Property.* People without housing have appropriated many public buildings and converted them into living space.
3. *Encroachment onto Public Land.* Landless people have occupied public land and illegally built houses for themselves.
4. *Old Confiscations.* During the former regime, many people were forced out of Iraq. Many of them have now returned, but their property had been given illegally to other Iraqi citizens. This was illegal in the sense that the legal sell-buy process was not followed. Thus, it is possible that both parties can possess legally registered title deeds to the same property.

## **Real Estate Finance**

A real estate property may be offered as security for a loan (i.e., mortgaged) from official banks. The loans may be specified in Iraqi dinar or other currencies.

### ***Types of Loans***

Loans are given for industrial, agricultural, commercial, and tourism projects.<sup>18</sup> Previously, loans were given on the basis of a personal and fiscal guarantee of any guarantor whom the borrower presented to the bank. But due to the widespread occurrence of forged documents, bank policies were changed April 9, 2003. Banks no longer accept any guarantee except that of real estate, with the condition that the borrower has a sufficient current account deposit at that bank.

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<sup>17</sup> Order No. 4, *Iraqi Gazette* Number 3987, September 2004, p. 8.

<sup>18</sup> There seems to be little emphasis on mortgages to buy and sell properties from the existing housing stock, rather mortgages are seen as the basis for loans to carry out a project of improvement or commercialization.

### ***Duration of Mortgages***

Nonspecialized banks offer 4- to 5-year mortgages. This duration may be extended at the borrower's request. The request is granted or denied by a relevant committee, which usually consists of the bank manager, a private specialist, and an employee from the RERD.

### ***Appraisal of Property for a Sale or Loan***

The appraisal process starts with the Project Utility Report, which is a study that shows the project feasibility and practical application, chance of success, potential profits, and all related details. The utility report has no standard form because each project is unique. The report may be completed by the applicant, or the applicant may hire a specialist, consulting office, or specialized company to complete the report. (To qualify as a specialist, one should have more than 15 years experience in a given field. Auditors, accountants, and civil engineers are typically specialists in their respective fields.)

After the bank approves the utility report, a committee—comprised of a certified real estate expert, the bank manager, an accountant from the same bank, an engineer, and a surveyor from the bank's General Administrative Office—evaluates the real estate according to the following criteria:

- location
- surrounding area
- type of building
- level of building

If the committee approves the real estate, it can be certified as a mortgaged property with the RERD. This is a benefit for the bank and for the bank branch where the transaction occurred.

After certifying the property, the borrower has to complete an application form at the bank that incorporates personal information according to official documents. The applicant should also provide the Real Estate Ownership Document. Due to the current state of affairs in Iraq, the bank typically sends a reliable employee to the RERD to ensure that the ownership document is an original and not a forgery.

All of these documents are kept at the bank's General Administrative Office, while the borrower retains a photocopy. If the bank approves the loan, the borrower completes the Bank Contract Application Form. This form indicates the amount of the loan, the rate of interest, the duration, the number of installment payments, and, lastly, the borrower's approval to any measures or changes adopted by the bank. The real estate registration document is amended at the RERD, showing that the property is mortgaged to the related bank.

If the borrower fails to stay current with the loan repayment, the bank has the right to sell the mortgaged real estate, but only after sending the borrower a notification. The bank then petitions the civil court in the jurisdiction where the real estate is located, as this is the court that would announce the sale of the real estate through public auction. The proceeds from the auction are used to satisfy the debt to the bank or to satisfy other claims that may have been made on the property. Any balance from the auction is kept in the court treasury for the benefit of the mortgagee.

### **Decision Process of Banks**

Of course, the bank is not obliged to give the borrower the entire sum requested. The bank thoroughly examines the most important application document, the Project Utility Report. The loan that is approved by the bank should correspond to the project's capacity and its advantage to the people being served. Also, the bank is not obliged to give a large loan, in spite of the high value of the real estate. The borrower's career and financial status are not ultimately the grounds for the bank's decision. The bank will first look closely at the borrower's moral standing in the community and then at his current deposit account.

Iraqi banks do not give loans all at once. Loans are given as installments, according to the agreement. As the bank pays the loan in the form of installments; a committee (comprised of the bank manager, his deputy, and the accountant) evaluates whether the project can move to the next step by determining whether the borrower merits the second installment; this is repeated with the remaining installments.

After the end of the life of the loan, the borrower repays his loan. The bank may give the borrower a 1-year grace period before demanding loan payments. The bank notifies the borrower 2 months before the first installment is due. If the borrower fails to pay back the loan on time, the bank has the authority to withdraw the money from the borrower's current deposit account. The bank charges interest (25 percent) on each delayed installment; otherwise, the bank has the right to sell the mortgaged real estate.

### **Buying Real Estate (the Sell-Buy Process)**

The procedure for buying real estate in Iraq is the same in all governorates. The seller and the buyer go together to the RERD. The seller presents the Title Deed as the only official document offering proof of his legal ownership. The office issues the permanent Title Deed, which is referred to as Document Sample 25 (DS-25). This document is issued after close examination of the real estate file and its registry to assure that it belongs to the seller and is unencumbered.

The sell-buy process cannot take place if the real estate is mortgaged or sequestered, or certification that the current owner has unencumbered authority to dispose of the property is not possible.<sup>19</sup> The real estate property must have a clear title before a sale can be completed. After the DS-25 is issued, a selling application form is given to the seller to be completed by all concerned parties. It is submitted to the RERD to be examined by the specialized deputy for the related real estate location. Baghdad has 10 real estate locations. If all of the above information is verified to be correct, the process continues.

The next step is that the RERD forwards the application to the Civil Affairs Department,<sup>20</sup> the governmental department responsible for the identification card (ID) of Iraqi citizens, which verifies the identities. The ID card contains all personal information, including the name of the person, eye color, complexion, hair color, any identifying mark, father's and mother's names, last name, place and date of birth, marital status, and a photo of the person. The name of the husband or the wife must be included. Any change in marital status is registered in the ID card (i.e., married, divorced, or widowed). In the past,<sup>21</sup> the buyer's name was examined to assure that the buyer or his/her father

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<sup>19</sup> All of these conditions would appear on the title.

<sup>20</sup> Located in each governorate and district and in the larger subdistricts, the Civil Affairs Department is a branch of the General Civil Affairs & Nationality Department, which falls under the Ministry of Interior.

<sup>21</sup> The residency requirement for property ownership has been abrogated by the Interim Iraqi Government.

was registered in the 1957 General Iraq Census<sup>22</sup> as a resident of Baghdad or the area where the property was located.

Next, the Monitoring Committee confirms the real estate's category (land, house, building, etc.) and land use type (residential, industrial, etc.). Subsequently, the real estate is evaluated. An evaluation is not necessary if the transaction is between a willing buyer and seller. In this case, the value is according to their personal agreement. But if the real estate is under any legal restriction (i.e., inheritance, mortgage, foreclosure, etc.), then an evaluation by the committee is needed. This committee consists of a judge from the Civil Court and a specialist who is typically not an employee of the RERD. The specialist might be an engineer or a broker with wide experience who is regarded as reliable by the court. Sometimes the committee may include representatives from both parties to the legal issue.

Changing one's residence is not a simple matter of moving from one place to another. If the change is within the same governorate, one must show either the new Title Deed or the new Contract of Tenancy<sup>23</sup> with a request to the Regional Police Station<sup>24</sup> Information Office, which is supported by the individual's ID card, Iraqi nationality certificate, old residency card, and monthly ration card. At the new police station, the family members are registered according to their official papers. After registering with the new regional police station, the old residency card and monthly ration card should be sent back to the former regional police station to be canceled, while new cards are issued for the new residential region. Because, a new monthly ration card is not easy to obtain, people prefer to keep their old one with them. This means that they continue receiving their food ration from their former residential region.<sup>25</sup>

Both the seller and buyer have to sign the selling application form, after listing all personal official information as shown in the ID cards (Iraqi nationality paper, civil affairs ID card). All official papers and signatures are to be checked against the ones given previously by the specialized deputy of the RERD.

If the real estate is worth more than 20 million Iraqi's dinars, all documents associated with the process are sent for approval to the General Taxes Department in the region where the real estate is located. Approval is granted when there are no outstanding tax liens on the property. After this examination, the Real Estate Taxes Department must also stamp the application to confirm that there are no unpaid taxes. The last step in this procedure is at the Municipal Directorate in the region where the real estate is located. This body also validates the procedure. Thus, three official bodies must ratify the transfer.

If the real estate is valued at less than 20 million Iraqi dinars, then the General Taxes Department may be excluded. At the Real Estate Registration Office, the procedure is completed by paying the tax on "Transferring an Immovable Property Possession."<sup>26</sup> Afterwards, both the seller and buyer sign the selling form, which the specialized deputy and the employee in charge of registration are also to sign. The application is registered at the Permanent Real Estate Registry, where the seller and buyer also must sign.

The Monitoring Committee (comprises engineers and surveyors) then determines whether everything has been carried out legally and without any missteps. After a decision from this

<sup>22</sup> This also true for any previous census, such as those in 1947 or 1934.

<sup>23</sup> A contract of tenancy implies that tenancy agreements are registered. This provides security of tenure to the occupant.

<sup>24</sup> By way of example, a local regional police station would be a branch of the Al Rusafa or Al Karkh Police Department, which is a branch of Baghdad Police Department, a division of the General Police Department, which is a section of the Ministry of Interior.

<sup>25</sup> This has possible consequences for a voter registration system based on the monthly ration card.

<sup>26</sup> This tax is a percentage of the property value, which is usually 7 percent, but it changes according to the resolutions of the Tax Department.

committee, a new permanent Title Deed (DS-25) can be issued with the buyer's name, certifying that the buyer has become the legal owner of this real estate. A photocopy of this registration is sent back to the Monitoring Committee to be examined, confirming that the registration is correct and legal. This committee also stamps the application and its registry and sends these documents to the General Real Estate Registry to be covered as a second copy of the original one. If the Monitoring Committee finds any error or deficiency in these papers, it sends them back to the branch concerned to be corrected. A third copy of this registration will be issued to a new branch in the General Real Estate Registration Directorate as a document file in a new computerized filing system.<sup>27</sup>

RERD offices in each governorate are related hierarchically to the General Real Estate Registration Directorate in Baghdad, a highly centralized system. Any problems related to missing documents for any type of real estate in any governorate may be solved by contacting this directorate.

### Changing a Real Estate Category

Changing a real estate category is governed by laws and regulations issued by the Ministry of Municipalities and Public Works (MMPW) and the local Municipality Directorate. For example, if the *Amanat*, Baghdad classifies the street as a commercial one, a residential real estate owner on that street could apply to change the category of his property to commercial.<sup>28</sup> The procedure for such a change follows:

1. The owner applies to the Municipal Unit in the property region, asking its approval for the category change.
2. A committee from the *Amanat* (usually consisting of an engineer and a surveyor) is established to examine the real estate and determine whether or not the application is legitimate.
3. After the committee approves the application, it is sent back to the *Amanat* through the Municipal Unit.
4. The *Amanat* requests that the Real Estate Registration Office ensure that the Title Deed is legitimate.
5. A private engineering firm, deemed reliable by the *Amanat*, designs a set of new commercial building sketches. If the sketches are approved to fit the related conditions, then an examining committee (again, consisting of engineers and surveyors) is established.
6. Approvals from the Water and Electricity Departments must be obtained to confirm the adequacy of the new building.
7. A certificate from the Tax Directorate should be obtained to confirm that the property is not mortgaged or sequestered.
8. An approval from the Ministry of Municipality and Public Works (MMPW) is needed to confirm soil analysis and groundwater adequacy.

The following form is used to apply for new construction or change the use category for a property.

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<sup>27</sup> This could become the basis for a national cadastre using GIS.

<sup>28</sup> Baghdad is used as the example here, but similar institutions exist in each governorate's municipal directorate.

## The Republic of Iraq A Building License

Amanat  
Municipality Unit- 7<sup>th</sup> April

The Central Statistics Institution  
The Central Statistics Directory

1. Governorate	2. District	3. Subdistrict			
4. Full name of the license ownership					
5. Address of the license ownership				Phone no.:	
Name of engineer or architect ID no.: Address:					
a.					
b.					
c.					
6. Sketch Details:		No. of bill	Date	Iraqi cent	Iraqi dinar
a. Building sketch					
b. Pavement sketch					
c. Stamp tax					
d. Parking tax					
e. Additional building tax					
f. Sidewalk occupancy tax					
g. Others/					
7. Taxes are paid		Signature			
Accountant		Signature			
8. The real estate relation to resolution no. (37)		9. The license is renewed and money in the amount of .....was paid according to the bill no..... Dated.....			
Altered		Accountant			
Not altered		Engineer in charge of licenses			
Employee in charge of resolution (37)					
10. No .of the real estate:					
11. No. of the property: District no. Street no.: Building no.:					
12. Use:		13. I have given the measurements and at the location just with the starting of the project.			
Signature		Signature			
Geometrical drawer		Surveyor			
14. Type of building and use: 1)new building 2) building addition 3)building alteration 4)repair 5) fence 6) reconstruction 7) a house 8) a residential building 9) commercial shops 10) a factory 11) classified hotel 12) a commercial building 13) a workshop 14) official buildings 15) others Building Material: 16) brick 17) block 18) Thermostone 19) stone 20) others					
15. Area of the real estate	Built area		Fence length		
16. No. of floors	No. of apartments	No. of rooms	No. of shops		
17. Title Deed no.:		18. No. of the Real Estate Registration Sketch:			

<p>19. The text of the license:                  Pulling down a part of the house. Reconstructing a building of two floors. The ground floor is for shops no.....The first floor is for commercial offices no.....with a guard room. Additional building to the original house with a room behind the house. The real estate has been built since 1969 according to the General Taxes Institution certificate of no.....                  Dated.....It has the order of occupancy for 6 months starting from .....to.....with the approval of the communication directorate ,water, and electricity according to certificates no.....dated.....</p>		
License no.:	License Date:	
Signature:		
License Engineer	Engineering Department Deputy	Unit Manager

## Conclusion

A land registration procedure, housing finance, and a procedure for controlling land use are in place. However, these procedures are cumbersome and limit the emergence of a robust housing market. There is reference to land use, but seemingly no process for citizens to object to proposed changes in land use or to influence the 5-year plan.<sup>29</sup> Nevertheless, a national registry of titles (and apparently leases) exists, which could become the basis for an inexpensive and easily accessible land registration system and national cadastre. A recent survey shows that 75 percent of Iraqis are home owners, and that 97 percent of those owners have title deeds registered with RERD. Most owners who claimed to have purchased their properties said they did so with their own savings (90 percent). Yet, only 2.8 percent of the owners claimed their houses were under a mortgage at the time of the survey (these mortgages were chiefly for improvements, rather than for initial or additional purchases).<sup>30</sup>

The next section of this report examines the reasons that an intervention is necessary—Iraq has an acute shortage of housing. The mortgage market is limited, and no secondary mortgage market seems to exist. Iraq has the capability to produce much of its own building material. A robust mortgage market, coupled with an accessible land registration system, can fuel large improvements in employment in the construction sector. Construction is apparently needed to satisfy a known demand for housing.

<sup>29</sup> Citizen oversight does not seem to exist. The process of developing the 25-year municipal design is referred to in the Article 43 of Law 165 of 1964 “Municipalities Management,” but the role of citizen participation or review is not clear.

<sup>30</sup> LGP (2004), QOL Surveys 2 and 3. Just 3.5 percent stated that they had ever had a mortgage.

## **Housing Stock and Housing Policy in Iraq**

Although no recent survey has provided an assessment of housing stock or housing need, the World Bank and UN-HABITAT estimate a housing shortage in Iraq of between 1 and 1.5 million housing units.<sup>31</sup> The same report notes the absence of an updated housing policy.<sup>32</sup> Estimated total housing stock is 2.8 million units, well below the minimum needed for the current population of 25 million. Housing quality is believed to have decreased significantly in the past decade. “Housing space per person declined to 10 square meters in 2000.”<sup>33</sup> About 30 to 35 percent of housing stock is below the standard previously set by the Ministry of Housing, especially in the large urban centers.”<sup>34</sup>

Housing policy in Iraq follows a socialist model in which the state assumed the responsibility for providing housing.<sup>35</sup> The state did not adopt a strategy that included the private sector or local communities. The Real Estate Bank was the lone provider of mortgages and home loans. As were all financial institutions in Iraq, it was under state (ultimately Ba’athist) control. As with other state institutions in the 1980s and 1990s, it was used both to reward and to punish citizens. Reportedly, favored clients received loans at below-market interest rates and longer-term amortization periods. Allegedly, the Real Estate Bank of the 1970s functioned well and has potential for revitalization under a new housing policy.<sup>36</sup> A modern financial service industry, with systems for savings and loans and the development of mortgage-finance instruments, should be seen as a high priority. Current law permits foreclosure when loans are not repaid, but aspects of the enforcement mechanism remain unclear. Given the housing deficit and high unemployment, it seems clear that specialized lending products for low-income households are needed. It is likely that many households would not be able to meet the basic conditions of conventional lending. Special programs that underwrite loans for home ownership may be required.

Property registration mechanisms appear to be in place, but need reform that will permit decentralization of some of the land use rights functions, while retaining other cadastral features and real property registration at the national level. The objective is to devolve the rights of property taxation and control of land use to the local authorities, while jointly maintaining a standardized cadastral system. However, RERD offices are found in most locations but remain disconnected from local government revenue collection or land use policy.

We have limited historical information on the Iraqi housing market, but it is important to note that, during the early Ba’athist period (1970s), housing construction loans were made available to all Iraqi citizens. This occurred after the nationalization of oil production, when the state acquired considerable new revenue. Under the socialist economic model, only state banking institutions

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<sup>31</sup> *United Nations/World Bank Joint Iraq Needs Assessment*, Task Manager: Chris Williams, UN-HABITAT, Agencies participating: UN-HABITAT and World Bank, October 2003, p. 6–23.

<sup>32</sup> “The latest official ‘Housing Policy of Iraq’ is based on the 1986 Report, the 1979 Report, and the 1974 Report, and is influenced by a 1989 report, ‘Development Planning for Iraqi Governorates,’ and includes a chapter on housing policy.”

<sup>33</sup> *United Nations/World Bank Joint Iraq Needs Assessment*, p. 31.

<sup>34</sup> Estimates presented are based on a rapid assessment prepared by the World Bank, as well as consultations with various Iraqi officials and professionals carried out by UN-HABITAT as part of the joint needs assessment during July 2003. Many Iraqi professionals emphasized that, while standards have fallen, the previous standards are comparable to western standards.

<sup>35</sup> The National Action Charter of 1971 proclaimed by President Ahmed Hassan Al-Bakr states “The state is responsible basically for building large residential units all over the country in which good health conditions and security will be available.” Section 3, Paragraph 5.

<sup>36</sup> *Op. cit.*, p. 12, however, the QOL 3 survey noted that not more than 5 percent of households currently held a mortgage, or reported one in the past.

existed; as a result, a private mortgage market did not develop. By the 1980s, this loan facility was limited to state employees; by the 1990s, it was further limited to those who served the Ba'athists. Initially, the intention was to encourage the construction of new housing on land that had been allocated by the state. Beginning in the late 1980s and throughout the 1990s, rapid inflation set in, and the value of the Iraqi dinar declined rapidly. During the period of sanctions, this became more acute, and the development of new housing was constrained.<sup>37</sup>

## Land and Displacement in Iraq

Following the First Persian Gulf War in the early 1990s, the former regime introduced a law that restricted nonresidents of a given area from owning land there. For example, an Iraqi who was not born in Baghdad (or whose father was not born in Baghdad before 1957) could not own land in Baghdad. The purpose for this was that the state could not provide an adequate level of services in the cities, and they wished to discourage migration (especially migration to Baghdad). This would have had a substantial influence on the housing market by increasing the demand for rental properties. Under the latter part of the Ba'athist regime, land rights and security of tenure were the purview of the state and were used as an instrument to control and reward citizens.

There are many examples of the official displacement of persons. Ethnic Persians were expelled from Iraq beginning in 1979 and extending through the 1980s. Even though they were Iraqi citizens and spoke Arabic, their property was seized and they were expelled to Iran. They then became internally displaced persons (IDPs), living along the border with Iran in temporary shelters. Some managed to restart their lives in Iran. Their seized property was sold at a reduced price mainly to Ba'athists who then resold it at a profit. These ethnic Persians were found in many governorates, but especially in the south near An Najaf, Karbala, and, to a certain extent, in what is now Sadr City District. Since the war, many of those expelled have returned, hoping to reclaim their land and homes. This situation is similar to the more familiar expulsion of the Kurds and Turkomen near Kirkuk.

Currently, 41.8 percent of total fixed U.S. assets are held as privately owned residential assets. These assets have a current estimated value of more than US\$13 trillion. For 2004, mortgage interest paid by owner- and tenant-occupied residential housing<sup>38</sup> was estimated at US\$460 billion.<sup>39</sup> At the end of 2003, total mortgage debt outstanding held by home owners was US\$6.7 trillion while, during 2003, an estimated US\$817 billion was added to home borrowing.<sup>40</sup> The foundation for this massive financial market rests with security of title to the land, coupled with accessible administrative procedures. In the United States, land registration is localized at the county or city level, where it is used, not only as evidence of ownership, but as a basis for property taxation. Unlike Iraq, the United States has no centralized cadastre or register of land. As a result, the basis for this massive industry is laid down by local institutions that guarantee individual ownership and property rights to land.<sup>41</sup>

<sup>37</sup> Anecdotal evidence suggests that, during this period, formerly large plots were subdivided and new houses constructed. Innovative solutions to finance housing construction, such as advanced rent, were noted.

<sup>38</sup> Federal Reserve Board estimates published by the Bureau of Economic Analysis.

<sup>39</sup> Annualized rate.

<sup>40</sup> Federal Reserve Statistical Release (2004), "Flow of Funds Accounts of the United States: Flows and Outstandings," Second Quarter 2004, Board of Governors of the Federal Reserve System, Washington DC 20551. Various tables.

<sup>41</sup> Unlike Iraq, the United States has never had a centralized land registration system.

## Economic Importance of a Developed Housing Market

The importance of land in an individual's asset portfolio has been well established and is deep-seated in developing countries.<sup>44</sup> In developed countries, residential assets account for a considerable portion of total fixed assets, as illustrated in an example from the United States.

The use of capital gains and home equity as engines for growth in developing countries has been the subject of recent discussion by development economists, most notably Hernando de Soto.<sup>45</sup>

Although Iraq may not be classified as a developing country, clearly its housing and mortgage markets are not fully developed.

In a 1999 speech, Alan Greenspan estimated that each U.S. home sale since 1995 realized US\$35,000 in capital gains for the home owner. This is roughly \$150 billion in capital gains each year. He noted that this was "largely in the form of unencumbered cash."<sup>42</sup> He went on to say that most people tend to think of the mortgage market in terms of new house construction and ownership. However, in the United States, the mortgage market is predominantly responsible for financing access to the existing housing stock. The sale of existing homes and refinancing to convert home equity to unencumbered cash has been an important source of working capital for the individual entrepreneur<sup>43</sup> and for consumption expenditure.

## Property Taxation and Local Government Finance

The other aspect of land registration is found in the local generation of public revenue. Property taxes or rates have long been seen as the linchpin of locally generated revenue.

In administration of the property tax, local governments are better able than higher levels of government to match taxpayers and beneficiaries and to avoid "free riders." For home owners, the capitalization and high value asset of their homes, coupled with the immobility of the asset, makes them more wary of community decline and, therefore, more active in the community.<sup>48</sup> However, without an effective cadastral and land registration system and a robust housing

Property taxes have a long and troubled history in the United States and elsewhere. Although initially thought of as a benefit tax,<sup>46</sup> with the value of the tax liabilities being capitalized into the value of the property, this view has changed to suggest that the tax is regressive, as it falls most heavily on those who can least afford to pay it. The belief that the tax is regressive has been popular—in the United States, it has led to local and state initiatives or such "revolts" such as Proposition 13 in California, which placed limits on property taxation. More recently, the property tax has again been viewed, at least academically, as being beneficial—"the dues one pays voluntarily to gain access to the services and facilities the club offers. That is, the 'voting with one's feet' mechanism converts local public services from public goods to private goods."<sup>47</sup>

<sup>42</sup> Alan Greenspan, "Mortgage Finance," Remarks, Mortgage Bankers Association, Washington, D.C., 18 March 1999.

<sup>43</sup> Federal Reserve Board, *1998 Survey of Small Business Finances* (SSBF), Board of Governors of the Federal Reserve System.

<sup>44</sup> Ibbotson, R.G., L.B. Siegel, and K.S. Love. (1985), "World Wealth: Market Values and Returns," *Journal of Portfolio Management* 12 (1): 4–23. A study in Uganda shows that 60 percent of asset value is held in land.

<sup>45</sup> de Soto, H. (1993). "The Missing Ingredient: What Poor Countries Need to Make Their Markets Work." *The Economist* 328 (7): 8–28, and de Soto, H (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books.

<sup>46</sup> The assignment of tax liabilities in accordance with the benefits received from the associated public services.

<sup>47</sup> Dick Netzer (2001), "Local Property Taxation in Theory and Practice, Some Reflections," in *Property Taxation and Local Government Finance: Essays in Honor of C. Lowell Harriss*, Lincoln Institute of Land Policy, Cambridge, Massachusetts, 2001, p. 328. Note that "voting with one's feet" assumes that there is a free and open housing market with active mobility based on choice.

<sup>48</sup> William A. Fischel, "Municipal Corporations, Homeowners and the Benefit View of the Property Tax," prepared for the conference on Paradise Valley, Arizona, January 16–18, 2000.

market, the use of property tax as a source for local revenue is limited. In Iraq, a land registration system exists that could become the basis for local property tax.<sup>49</sup>

Currently, most of the land and property registration offices in the local areas collect revenues.<sup>52</sup> Revenues collected are from user fees, which are related to property transfers and permits that must be paid to change the use or structure on a property. No periodic taxes or rates are levied on property. The QOL 3, conducted on September 4-15, 2004, asked respondents to rate their satisfaction with RERDs. In the survey, a majority of respondents reported satisfaction with the services provided. However, a large variance existed between respondents from the Kurdish governorates, who reported high levels of satisfaction, and many in the South, who were not satisfied at all. Concurrently, an assessment of local government departments, conducted in early 2004, asked for a self-assessment of needs. Three-quarters of the RERD noted that technical training needs were not being met, which implies that land registration departments are open to revitalization and improvement. Few of the land registration departments thought that any of their functions could be decentralized, although 90 percent said that their services were provided at the governorate level or below.

Historically, in all forms of local government in the United States, property tax has been decreasing as a percent of total local revenue. At the beginning of the 20th century, 68 percent of local government revenue came from property tax. This has gradually declined to the present level of about 25 percent.<sup>50, 51</sup> Netzer<sup>47</sup> estimates that more than 50 percent of the property tax in U.S. local governments is devoted to financing local education. In the United States, most local governments spend their revenues on schools and roads.

## What Are Land Rights? Why Are They Important?

A recent report, "Land Policies for Growth and Poverty Reduction," by the World Bank provides an in-depth review of the consequences of land policy.<sup>53</sup> The report is the result of four regional workshops that brought together global experience in land rights issues. The report notes that secure tenure and land use rights are based on both formal and informal law and custom.

*Land rights are social conventions that regulate the distribution of the benefits that accrue from specific uses of a certain piece of land. A number of arguments support public provision of such rights. First, the high fixed cost of the institutional infrastructure needed to establish and maintain land rights favors public provision, or at least regulation. Second, the benefits of being able to exchange land rights will be realized only in cases where such rights are standardized and can be easily and independently verified. Finally, without central provision, households and entrepreneurs will be forced to spend resources to defend their claims to property, for example, through guards, fences, and so on, which is not only socially*

<sup>49</sup> The existing system needs to be supplemented with development of a national cadastre, computerization of records, and improved management practices. In principle, however, land registration exists.

<sup>50</sup> Therese McGuire (2001), "Alternatives to Property Taxation for Local Government" in Wallace E. Oates (ed), *Property Taxation and Local Government Finance*, Lincoln Institute of Land Policy, Cambridge, Massachusetts, USA, p. 303. Table 2 shows that in 1992 the overall average percentages of total general revenue for cities in the United States were 28 percent from intergovernmental sources, 23 percent from property tax, 7 percent from general sales tax, 5 percent from total selective sales tax, 6 percent from income tax, 3 percent from other taxes, and 28 percent from miscellaneous charges.

<sup>51</sup> Op.cit., p. 324

<sup>52</sup> The LGP 2004, Government Department/Directorate Assessments. This assessment noted that nearly 90 percent of the RERDs collected revenues.

<sup>53</sup> Klaus Deininger (2003), "Land Policies for Growth and Poverty Reduction," A World Bank Policy Research Report, The International Bank for Reconstruction and Development/The World Bank, 1818 H Street, NW, Washington, DC 20433.

*wasteful, but also disproportionately disadvantages the poor, who will be the least able to afford such expenditures.*<sup>54</sup>

There is a land-registration system in Iraq that is highly centralized. Trust in the system and in the title deed documents has waned since the recent war, but the system is widely accepted overall by citizens and commercial institutions, despite instances of abuse during the Arabization program and the disenfranchisement of ethnic Iranians. These abuses were not the fault of the registration system, but of its enforcement.

### ***Desirable Characteristics of Property Rights***

Looking toward a review of land policy, of which the land registration system is the backbone, the broader issue of property rights is discussed below:

*Property rights to land need to have a horizon long enough to provide investment incentives and be defined in a way that makes them easy to observe, enforce, and exchange. They need to be administered and enforced by institutions that have both legal backing and social legitimacy and are accessible by and accountable to the holders of property rights.<sup>55</sup> Even if property rights to land are assigned to a group, the rights and duties of individuals within this group, and the way in which they can be modified and will be enforced, have to be clear. Finally, as the precision with which property rights will be defined will generally increase in line with rising resource values, the institutions administering property rights need to be flexible enough to evolve over time in response to changing requirements.<sup>56</sup>*

Characteristics found in a property rights system are

- duration of rights
- modalities of demarcation and transfer
- enforcement institutions
- subject of rights, and
- evolution over time.

### ***Land Use Regulation***

In Iraq, much of the land suitable for cultivation and habitation is defined by access to the Tigris and Euphrates Rivers. Access to and protection of these national resources needs to be balanced between individual property rights and broader social concerns for desirable land use.

U.S. local governments devote a great deal of time to discussion and resolution of appropriate land use. This is generally applied through zoning or restrictions of use that are based on the participatory development of a land use plan. Although this presents a restriction on property use rights, it is generally seen as a means to achieve socially desirable land use. In Iraq, land use restrictions were centralized, with certain land areas classified for specific use (agricultural,

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<sup>54</sup> Klaus Deininger (2003), p. xxii, op. cit.

<sup>55</sup> In parts of Africa, more than 90 percent of land is outside the existing legal system.

<sup>56</sup> Op. cit., p. xxii

residential, industrial). The restrictions on use were classified in the title, and whenever a construction permit or transfer of property took place, the land use of a property came under review of the authorities, which was arbitrary at times. The LGP needs to encourage a system that provides market information and citizen oversight of land use. Empowerment of citizens at the local level to make and review land use is arguably the preferred solution to ensuring an appropriate balance between individual property rights and social goals.<sup>57</sup>

### ***Land Registration Systems***

As noted previously, a centralized land registration system does exist in Iraq. This system needs to undergo technical improvement that will support local empowerment and encourage a more active housing market. The land administration system needs upgrading to be able to effectively manage the cadastre that contains information on ownership and land use.

In Iraq, the development of such a system would not start from scratch, but seek to build upon existing land administration. The devolution of responsibility to local administration and citizen oversight would be crucial.

### ***Implications for Land Sales Markets***

The development of a cadastre and land registration system is essential in creating a marketplace for real estate. “The ability to formally prove land ownership at low cost and, because of this, transact more extensively in sales markets, can be conducive to the development of formal financial markets and producers’ access to formal credit, even if few actual transactions are observed.”<sup>58</sup>

Secure land ownership promotes investment. Ownership that can be verified and transferred at a low cost is fundamental to the development of a formal credit system. Land is both immobile and indestructible, and it is hard to imagine a better source of collateral for access to credit provided that the land is clearly defined and ownership is easily transferable.

The banking system in Iraq needs concurrent revision so that it can incorporate advances in the land registration system to develop a more rapid evaluation of loans based on real property. Bank appraisal methods need to be modernized and made transparent to lenders. Appraisal methods should be consistent with those that may be used by local authorities for land tax purposes.

### ***Transaction Costs***

Transaction costs related to land normally include notary fees, registration fees, survey fees, and property transfer fees. All of these apply in Iraq. High transaction costs increase the cost of providing credit. In severe instances, this may lead to the development of collateral substitutes. Inevitably, high transaction costs will restrict private-sector development. In Iraq, under the Ba’athist regime, the responsibility for providing adequate housing was seen as a right conferred by the state and warranted in the constitution. It is important to ensure that transaction fees are limited to cover the

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<sup>57</sup> Social goals that include natural resource issues, and economic welfare issues.

<sup>58</sup> Klaus Deininger (2003), *Land Policies for Growth and Poverty Reduction, A World Bank Policy Research Report*, Oxford University Press, page 93 ff. “Mortgaged land, however, cannot be used as collateral for working capital, so owners who purchase land on credit do not reap the production credit advantage, and therefore will be unable to repay the loan out of increased income from the land unless some equity is used to finance part of the transaction. Thus land sales are likely to be financed mostly out of household savings so that the purchased land can be used as collateral for credit to finance improvements and equipment. This need to purchase land out of savings tends to make the distribution of landholdings more unequal, despite the greater value of land to smaller owners arising from its insurance value and their lower labor costs.” (page 96)

costs of administration of a system that provides secure tenure and to discourage temptations to use transaction fees as a general revenue collection device.

### ***Decentralization and Local Revenue Generation***

The LGP is concerned with the establishment of viable and participatory local government. As we move toward some mix of decentralization in the new Iraq,<sup>59</sup> taxes on land and real property provide an ideal mechanism to increase fiscal responsibility in a way that has few distortionary effects. They have potential to strengthen fiscal responsibility at the local level in a way that might encourage more effective use of land.

Effectively supporting and administering a property tax implies having easy access to an official record (or cadastre) stating the size, value, and ownership for each plot of land in the administrative area. Property tax administration also requires a property tax law, and, thus far, we have found no evidence that such a law exists in Iraq.<sup>60</sup> As discussed previously, the Ministry of Justice assigns property rights and keeps a registry of titles. We have limited evidence suggesting that this is done efficiently in Iraq. The municipality ensures that tax obligations are met and that the registry is kept current, but its revenue collection and registration activities are disconnected from local participatory mechanisms, especially those regarding land use. There is little local autonomy. The imposition of a local land tax would no doubt stimulate citizen participation and activate discussion of preferred local land use.

Devolution of power to subnational governments, along with a strengthening of their administrative capacity, will be needed to facilitate local revenue collection and empowerment. The imposition of a land tax should be coupled with better service delivery, so that payments are related to increased property values. Also, valuation of the property for tax purposes must be seen as fair and objective.

### ***Land Policy***

A review of land policy in Iraq should be placed high on the government's agenda. An Iraqi citizen should be able to purchase and use land in any part of Iraq. A review of land policy should support the broader aims of decentralization in line with what has been discussed earlier.

A revised land policy should address (1) the property rights to land and tenure security and its impacts, (2) the scope for accessing land and the functioning and impact of market and nonmarket channels, and (3) the broader regulatory framework governing land and related sectors. The development of such a policy should be informed by data and indicators collected systematically. Appendix III provides some illustrative and quantitative indicators.

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<sup>59</sup> No. 159 for the year 1969, "Governorates Law," provided for local revenues including a real estate tax (see Annex). It is believed that this law was never implemented.

<sup>60</sup> Exceptions were noted in Law 159 of 1969, "The 1969 Governorate Law." See Appendix II.

## Appendix I

## The Republic of Iraq

The Ministry of Justice  
Real Estate Registration

Sample (25)

General Real Estate Registration/ Rusafa

Application Sample of the Permanent Real Estate Registry

Description of the Current Permanent Real Estate Registry			Governorate	District (Qada')	Subdistrict (Nahiya)	Street	Floor no.	Apartment no.
No.	Date	Cover no.						
Description of the Permanent Real Estate Registry transferred from			Real Estate order	Quarter	Door no.	Plot no.	Province no.	Province name
No.	Date	Cover no.						
The owner or the authorized person instead and his origin:							Real Estate Category::	
							Additional Residential Buildings:	
<u>Borders</u> North East: North West: South East: South West:							Type of Real Estate(type):	
							Easement rights:	
Area	Square meter	Owlk (Measurement unit)	Dunam (1000 m <sup>2</sup> )	Title deed type		Description of the Permanent Real Estate Registry transferred to		
						No.	Date	Cover no.
Type of the Registration and its Documents:					Signs of sequential assurances and registry locations:			

The real price		The actual money paid		The sum money under taxation		<p>This is a photocopy of the real estate registry issued according to a request from.....</p> <p>The tax money that is.....is paid according to taxes registry no.....dated.....</p> <p>Signature.....</p> <p>Head of Directory signature.....</p> <p>Employee name and signature.....</p> <p>The Real Estate Directory Registration Date:</p>
ID	Iraqi cent	ID	Iraqi cent	ID	Iraqi cent	
The Official Stamp						

## **Appendix II**

### **Law No (159) for the year 1969 Governorates Law**

#### **Ninth Section**

##### Revenues of the Local Administration

Article 105:

The revenues of the local administration are comprised of funds from the following sources:

1. Local revenues:
  - a. Half of the benzene duties
  - b. Grants of the secondary, intermediate, and primary, and the grants that are allocated in the general budget for the positions which are transferred to the councils of the administrative units.
  - c. The special grants that the government presents in order to carry out specific projects.
  - d. The fees of the passages that are related to the local administration.
  - e. The revenues of the organizations that are managed by the councils of the administrative units and exhibitions that organize it and the properties that belong to the local administration.
  - f. Additions to the agricultural taxes and taxes on real estate, income, and inheritance.
  - g. The amounts allocated from the general budgets to the council of those administrative units in greatest need.
  - h. Gifts and inheritance of those who have no inheritors.
  - i. Loans
2. The municipality revenues are generated from revenues, duties, and fees allocated to the municipality in accordance with the related laws.

Article 106:

1. The Ministry of Interior divides the revenues of benzene duties on the councils of the administrative units in proportion to the number of population of these units.
2. The Ministry of Interior deducts the amount not exceeding 5 percent from the share of each council for the councils of Administrative Units in the governorates from the revenues mentioned in Para (1) from this Article and add to it the share of the concerned Governorate in order to avoid the administrative and technical expenditures that concern all of the councils of the Administrative Units in the Governorate.

Article 107:

1. The councils of the Administrative Units collect the additional tax that is decided to be re-imposed on the Real Estate tax, agricultural tax, the two taxes of income and inheritance, border fees and revenues of organizations that it manages and exhibitions that it organizes, and revenues from the Real Estates that are related to it for its own account.

2. To pay the municipality revenues by the councils of the Administrative Units according to the concerned laws and the mentioned councils replaces the Municipality Councils for that purpose.

Article 108:

The council of the Governorate may impose additions to the Real Estate Tax, the Agricultural Tax, the income and inheritance taxes provided that it should not exceed (2.5 percent) from the origin of the tax and it shall not be effective but only after the approval of the council of ministers, these additions when they are imposed includes the central Governorate and the Administrative Units related to it.

Article 109:

The council of the concerned Administrative Units may decide to increase duty percentages and fees that the municipality collect in accordance with the law of the municipality revenues, reducing or canceling them. The decision will not be effective only after its certification by the Ministry of Municipality and Rural Affairs,<sup>61</sup> and if the local administration is indebted then the Ministry of Finance shall certify that also.

Article 110:

The concerned council of the Administrative Unit, based on the proposal of the governor and the approval of the two ministers of Finance and Interior, may decide to conclude a loan for the purpose of funding what is required to perform its duties, provided that the amount of the loan does not exceed the budget and that it is possible to conclude a loan that is equivalent to the ordinary revenues that the annual budget is based on with the approval of the ministerial council.

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<sup>61</sup> Former name of the MMPW—prior to the arrival of the Coalition Provisional Authority (CPA).

## Appendix III

### Indicators for Monitoring Land Policy<sup>62</sup>

#### 1. Tenure Security

- a. Land held formally
- b. Land held informally (occupied without formal title)
- c. Share of land held by women
- d. Cost of registering a parcel of land (time and money)
- e. Are the rights of indigenous people and minorities protected?
- f. How important is land as an asset and source of income for the poor?
- g. Inequality of ownership of land
- h. How much land in rural and urban areas is informally occupied by squatters?
- i. What criteria and mechanisms allow squatters to obtain recognized property rights (adverse possession)?
- j. How many land conflicts take place each year? (Are they concentrated?)
- k. How long does it take to resolve a typical land conflict?
- l. How much land does the state hold? (What mechanisms could be used to divest such land?)

#### 2. Markets and Productivity

- a. What share of land is transacted annually in sales and rental markets?
- b. Price comparisons for different types of land
- c. Is mortgage financing for land acquisition available?
- d. Is mortgage financing available for access to the existing housing market?
- e. Is mortgage financing available for the development of new housing?
- f. Is inheritance regulation unfavorable to women?
- g. What are the interest rates for different types of loans?
- h. What is the level of informal land transactions (define in the Iraq context)?
- i. What type of land restrictions are in effect? (size, location)
- j. What are the costs to register a land transaction and to subdivide land?
- k. What are the average prices of land in rural and urban areas? (Also, what are the regional differences?)

#### 3. Regulatory Framework

- a. Are maps and cadastral and registry information readily available at a low cost to those who request them?
- b. What is the share of cost recovered from fees for service?
- c. What percentage of land is held as collateral by financial institutions (and how much is in default)?
- d. How long does it take to register a mortgage?
- e. Can creditors foreclose on a property that is in default?
- f. How long does it take to complete the foreclosure process?

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<sup>62</sup> Adopted from: Klaus Deininger (2003), *Land Policies for Growth and Poverty Reduction, A World Bank Policy Research Report*, London: Oxford University Press.