



Land tenure administration: Towards a regulatory backdrop to land tenure in Iraq



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ABSTRACT

This paper discusses some of those aspects of land law in the Iraqi case that might have a direct bearing on national development or retardation. In so doing it will follow a reviewing to the historical-developmental approach to questions of legal doctrine, thereby pointing in the direction to which the Iraqi land legal development is proceeding. This paper introduce background reviewing, and discuss the Iraqi's key institutional & regulatory framework, and introducing the administrative authorities of land and giving brief details of its hierarchy and responsibilities in this respect. Accordingly, this paper explores the Iraqi case within 5 different periods of time to review all those doctrines and decrees that shaped the pre-modern laws of land and land rights by focusing on the main administrative progresses during the implementation of the Iraqi national development. The discussion progresses to deal with the Iraqi current crisis in order to assess the role of Iraqi Land Authorities (ILAs) focusing on their efficiency under the influence of the recent situations. The paper also highlighted a set of the Iraq's complex critical factors, which are believed to be the fundamental considerations for implementing the land tenure and its security and saving the land users' rights in the Iraqi current case.

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1. Introduction

The English term 'tenure' is derived from the Latin term which means 'holding' or 'possessing' (Basset and Crummey, 1993: 12). Related to lands, this tenure meaning has been called by a variety of arrangements names, such as community, customary, communal, and collective forms. As a result of specific historical, political, cultural and religious influences, the tenure term has been varying widely between countries, and even cities. The concept, language and practices of the 'land tenure administration' have long and varied elements.

There is however a number of factors (external and internal) that affects the flow of the land tenure administration to the end-users. External factors include political, social and economic stability, land market size, administrative conditions, etc. Internal factors are mainly related to the quality and stability situation of the government institutions of the host country which is reflected by their level of transparency, bureaucracy and corruption. In fact, many

of these factors were influenced with the concept and elements of land tenure types and its administrations local scopes of the host country. On a simplified level, there is a common diversity of the land tenure existing theoretical explanation, applications and systems worldwide, and not surprisingly, the local influences can be distinguished. From the point of view of administrative development, each of these forms or categories present advantages or disadvantages, depending upon the extent of the rights that the holder or possessor enjoys. Indeed, a land tenure categorization could involve all these factors taken together.

In general, the administration of land tenure is not a new discipline. Noticeably, the term of land tenure was defined as both a physical commodity and an abstract concept in that the rights to own or use it among individuals/groups through clear agreements. According to USAID (2010) the land tenure was defined as an individual right and a responsibility with respect to the land.

Davis (2004) highlighted it as an integral element that deals with economic, political, social and even environmental issues. Other definitions adopted the same perspective include those of UN-Habitat (2011) who observed the term "land tenure" to convey the multiple legislation elements involved in the rules regulating access to land and its use and management by different groups and individuals.

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It is worth noting here that the link between the land and the tenure has been defined also as an administrative relationship between people with respect to land. Much empirical researches have focused on the tenure definition as relationship between users and their rights to use the land (USAID, 2010). More detailed definitions about this point have been provided in earlier reports where tenure has been defined directly as the reflection to relationships between the people as the user of the land according to specific rules/policy (Dale and McLaughlin, 2000; Payne and Durand-Lasserve, 2012; FAO, 2012). Focused on this triangular relationship of people, land and policy; UN-Habitat (2013a,b) has defined land tenure as a legal or customary relationship among peoples with respect to land-related objectives.

In this context, the UN-Habitat/UNESCAP report (2008: p. 5) also defines this relationship as “the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land”. In other words, the land tenure as the individuals and group rights protected by the state institution policy against the multiple claims from others, It can be defined as the formulation of guidelines, norms, standards, rules, legal instruments, and the setting of a mechanism for monitoring and evaluation of rights.

More specifically, though it is a site of struggle ideologies, it is well known that the some religious form of property rights conceives of its religious views as a sacred trust to the land tenure with adequate promotion of individual ownership. For example, UN-Habitat (2005: p. 6) emphasised that “it argues that an engagement with Islamic dimensions of land may potentially support land rights initiatives in Muslim societies and has implications for programmes relating to land administration, land registration, urban planning and environmental sustainability”. That was echoed also by Mohammad (2013) that the land tenure under the religious arrangements can be realized in various ways and forms of collective ownership. For instance, the Islamic land arrangements showed wide ranges of land classifications, it reflects of Islamic flexibility guardianship in this framework arrangements such as ‘Mulk’ (as a private full ownership), ‘Miri’ (as state’s lands), ‘Waqf’ (as endowment lands) and ‘Metruke’ (as common lands), and ‘Musha’ (as communal land), and other forms of collective ownership that were based on the doctrine of custom of the Islamic (see: UN-Habitat, 2005: pp. 11–12).

Therefore, there is an evidence that land tenure should be presented as a set of legal relationships that enable the land users, as individuals or groups, to use and benefit from the land resources with respect to land regulations, and that in such a context, there is the promise of achieving this human beneficial right officially under defined rules and managements with which the end users’ rights are saved officially.

1.1. The land tenure and tenure security

The general picture of the literatures had focused on how to help the host governments to implement the process of the securing access to land rights for their people to save and protect their ownership rights (Abelson, 1996; UN-Habitat, 2006; Gulyani and Bassett, 2007; UN-Habitat, 2012). According to FAO (2012), and USAID (2010) developing the quality of government organisations of lands will have a direct impact on the growth and overall development of the Security of the land tenure. They had focused on the institutional scopes (political, economic, social, and legal) structure that determines how individuals and groups secure access to land and all resources contained on it.

Conversely, lack of security of tenure, creates hiccups for sustainable growth and formal rights reduction. UN-Habitat (2006: p. 94) showed this issue by defining the land tenure security as a right and a legal protection to the land user “The right of all individuals and groups to effective protection from the State against forced

evictions”. And Boudreaux (2010: p. 17) echoed that land reform as social justice, and emphasis that the security of tenure is not linked automatically between informal land rights and insecurity of tenure “Security of tenure is not so much derived from the legal status of the rights held, as from social consensus on the legitimacy of these rights and the reliability of mechanisms for arbitration should conflicts arise.”, and therefore “Security of tenure takes various forms depending on the legal framework, social norms and value systems of each culture.” Further literatures stressed also that this right is justifiable and should be regulated by a legal and administrative framework (see UN-Habitat, 2005: p. 31; 2006: p. 94).

There are however many factors that have an important administrative role in the security of tenure. For example, UN-Habitat (2006: p. 94) has suggested that people will have a secure tenure when:

- There is evidence of documentation that can be used as proof of secure tenure status.
- There is either de facto or perceived protection from forced evictions.

However, other literatures stressed that security of tenure policies should be related to the legislative capacity and performance of organisations institutions, communities and other stakeholders associated with this administrative strategy of lands (see Abelson, 1996; Tebbal and Ray, 2001; UN-Habitat, 2006; Boudreaux, 2010). Also, this is an institutional theme echoed by Payne (2001), and the UN-Habitat reports (2012, 2013a,b) which stated that the security situation should be issued through a clear legal institutional structure and then it is an effective way of enhancing the peoples’ rights to land and other natural resources which can be safeguarded under various forms.

In general, different scholars and school of thought have classified security of tenure differently. Yet, there is a wide variety of security of tenure forms; this variety is particularly depended upon the land authority and the legal frameworks efficiency and availability. Therefore, the discussion is addressing the security of tenure needs for managing and monitoring the end-users’ rights. And so, the administrating of the security of tenure should principally be viewed as complex relationships involving the individuals and communities’ rights with regard to the land scopes within advantages and limitations.

In a brief word, the role of governance/institutional authorities is the protection of the user’s right and to build an effective security of tenure. Therefore, the sustainable institutional agenda is the principal mechanism through which tenure security can be sought. Thus, the absence of the administrative ability to address the more fundamental supply rights of land, inappropriate regulatory frameworks and weak financial mechanism; all lead to lack of the security of tenure.

1.2. The land tenure administration: concept and framework

The concept of the Land Tenure Administration (LTA) in relation to security of tenure embodies the notion that certain types of land functions are required to be issued within clear policy in order to make the effective urban administration. This section explores this concept and addressing the debate of the LTA frameworks which link to various elements during the national development processes.

1.2.1. The Concept of LTA

The LTA was defined by the UN-Habitat (2013a,b: p. 15) as a viable system implemented by the state for protection rights: “record and manages rights in land which can be determined as managing the public land and documenting and registration of freehold

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