Policy Challenges for Property Restitution in Transition – the Example of Iraq

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A. Introduction

There are many ways in which violent conflict or authoritarian regimes can be the source of significant alternations in land and property relations amongst the affected populations. Conflicts often cause mass displacement and the abandonment of homes, land and business which may subsequently be taken over by others.¹ Iraq is maybe the most prominent recent example where sectarian strife and violence have led to the flight of hundreds of thousands of people.² As was the case in the “ethnic-cleansing” campaigns during the war in the former-Yugoslavia,³ some of this displacement has been caused through deliberate violence aimed at creating homogenous areas in places where once multiple communities lived side by side.⁴ Disputes over land and property are also frequently amongst the root causes of especially internal conflict. This is the case for example in Darfur, where the conflict finds its origins in a competition between different communities over farming and grazing land.⁵ In authoritarian regime contexts, land and property rights will often become political commodities that

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² A recent overview of the displacement situation can be found in International Organisation for Migration (IOM), Iraq Displacement. 2007 Year in Review (Amman, IOM, January 2008), 7.
⁴ On sectarian cleansing in Baghdad and its consequences see, for example, International Crisis Group, Iraq’s Civil War, the Sadrists and the Surge (Brussels, International Crisis Group, 7 February 2008), 7.
⁵ See e.g. Molly Miller, “The Crisis in Darfur”, Mediterranean Quarterly (Vol. 18, 2007), 112–130.
are instrumentalised for maintaining or expanding political power. This was certainly the case in Iraq during the Baath Party reign, as will become clear later in the chapter. The denial or limitation of access to land and property rights can also be used as a tool in pursuit of racial or sectarian state policies, as was for example the case in South-Africa during the Apartheid era. Finally, authoritarian regimes can also engage in large-scale expropriations on the basis of ideological considerations. The struggle over property restitution in the formerly communist countries of Eastern Europe is still recent and, at this very moment, many Cuban exiles are undoubtedly awaiting the fall of the current regime to reclaim the properties they lost through communist nationalisation.

What all these situations have in common is that successful, durable transitions will require that policy makers find ways to address the aftermath of the alterations of land and property relations that were unjust, illegal or a violation of the rights of for example refugees and displaced persons. While the political urgency with which land and property rights issues should be addressed will vary from context to context, past experience has shown that where tensions, conflicts or significant injustices in respect of land and property rights exist, their exclusion from post-conflict or post-authoritarian regime transition arrangements seldom turn out to be a good strategy. This chapter will look at post-Baath Party Iraq where a significant attempt is being made to address a long legacy of forced displacement and the forcible acquisition of land and property by the former regime and touch upon some of the key issues that policy makers are likely to face when they try to address land and property rights issues in transitional contexts.

B. Land and Property During the Baath Party Era — a Brief Backgrounder

Land and property and especially the unequal distribution of agricultural land played an important role in the 1958 Revolution in Iraq which paved the way for the Baath Party’s eventual rise to power. A contemporary observer wrote that

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6 On the attempts to deal with the aftermath of these policies, see, for example, Lionel Cliffe, “Land Reform in South Africa”, *Review of African Political Economy*, Vol. 27, 2000, 273–286.


8 One example is East-Timor, where the failure of the UN-administration and subsequent national governments to address simmering land and property rights conflicts is generally seen as one of conflict drivers for the 2006 violence. See, for example, Cynthia Brady and David Timberman, *The Crisis in Timor-Leste: Causes, Consequences and Options for Conflict Management and Migration* (Dili, USAID Timor-Leste, 2006), at 20.

9 Historically, it is not entirely correct to present the era of the Baath Party rule as one unified whole: the ascension to power of Saddam Hussein – who became President of Iraq in 1979 – in