



Creating Institutional Software that Works in Iraq: Peace through Secure Land Title

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While there have been thousands of articles written concerning what the U.S. military should and should not have done in Iraq, and thousands of articles concerning conflicts among the various ethnic and religious rivalries in Iraq, there has been no focus on the issue of land title in Iraq. With violent conflict occurring daily, perhaps it seems misguided to shift focus to a legal detail as pedestrian as land titles. And yet there is no doubt that without a successful economy, violence in Iraq will continue whether the U.S. surges or withdraws. With unemployment rates estimated at 40%, nearly half the population has nothing to do but suffer, attack, or both.

In the past year alone, the U.S. has spent \$760 million to promote industry in Iraq, and yet nearly half the Iraqi people continue to go without work. Something is not working. While certainly violence is slowing the re-birth of the Iraqi economy, it is also in the midst of a transition from a highly managed economy to an economy based on free enterprise. But in order for Iraqi entrepreneurs to flourish, they must have access to capital. In most nations, real estate provides a very significant source of equity against which entrepreneurs can borrow. In Iraq, banks almost universally refuse to provide loans based on equity in real estate, because much of the land is owned by unwieldy groups of relatives and encumbered by feudal era rights retained by the government.

Hernando de Soto has become famous for discovering that throughout much of the developing world, the poor do not have title to their land. His book, "The Mystery of Capital" was subtitled "Why Capitalism Triumphs in the West and Fails Everywhere Else." He observed in 2003 that "Property rights make the market possible. Once it's established, the world of credit comes along. It makes investment possible... So no property rights, no modern Iraq."

Unlike some nations with poorly defined property rights, Iraq, as it turns out, has a very sophisticated system of land titling, with clear records going back in many cases more than 400 years. The difficulty is that the records are too good! Over several generations wives, children, grandchildren, great-grandchildren and so on have inherited ownership interests in their "family" farm. In some cases there are hundreds of registered owners, most of whom own less than 1% of the farm. In Iraq this land is called "dead land" because after 70 years of tyranny, purges, conflict and emigration it is difficult or impossible to find enough of the owners to legally use the farm. To make matters worse, on much of the land the Ottoman land registries recorded and the government still retains some form of an ancient tribal chief's right to take back tribal land with little or no compensation. It is no surprise that a bank will not loan money to a mob of owners or accept as collateral land encumbered by the government's claim.



What may be a surprise is that on many of the farms some of the registered owners still live on them, or near them, and try to use the land as best they can knowing full well that their right to use the land can be taken from them at any moment, that some distant relative may claim a share of the lands income going back many years, and that any investment they make in the land also belongs to all of the a nonparticipating owners.

To make this “dead land” come alive it is necessary to have a land reform that provides unitary ownership and removes the right of the government to seize the land without full compensation. Land reform is often a very adversarial process where one group takes the land and gives it to another. However, a group of dedicated lawyers, consultants and researchers spent nearly a year in Iraq analyzing its legal system and interviewing dozens of Iraqi officials, bankers, lawyers, farmers and businessmen and have discovered a cooperative process whereby the Iraqi government helps the current owners and users of the land perfect their titles.

The key feature of this process would be that the owners who are present and available could request to have the multiple individual claims on the land converted into a single corporate claim, with all former owners, both present and absent, having a claim to shares of the corporation in proportionate to their claim on the land. Shares would be distributed to the available owners and they would be able to elect corporate officers with authority to manage the land in its entirety. The corporation would be allowed to distribute its profits to the available owners only up to the proportion of ownership they had in the land. The profits accruing to the undistributed shares of missing owners could be reinvested by the corporation, but could not be distributed. Missing owners who make themselves known would have a right to be issued shares, but would not have the right to dissolve the corporation or seek income from previous years since the value of the shares should contain the value of their reinvested earnings.

This process is cooperative in that the current owners would have to request the conversion to corporate title. The owners would be encouraged to do so because the government would explicitly remove any residual claims it has to the land and provide unencumbered “freehold” title. Thus the present and available owners would have legal decision-making authority over the land immediately, the ownership interests of the missing owners would not be forfeited, and the banks would have single, competent and empowered borrower - the Corporation- to deal with. These features, as well as others in support of these principles, would release enormous quantities of capital directly to those Iraqis who are currently striving to create new lives for themselves in Iraq.

To test this process we propose that the Iraqi government create an "Economic Transformation Zone"(ETZ), analogous to the concept of a Special Economic Zone, in which government delegates the authority needed to implement this process. We propose that the first Economic Transformation Zone be designated in Nineveh because it is Iraq’s most intensive agricultural production area, with nearly one fourth of Iraq’s arable land. Many thousands of farmers could quickly obtain access to capital, and begin investing in crops, machinery, irrigation, and increased production. In addition, Nineveh has a reform-minded governor and is relatively peaceful. A broad-based title reform, as sketched above could provide a foundation for the



beginnings of a successful local economy in Iraq. If successful, this reform could then be replicated in other parts of Iraq.

It is important to understand that this reform is not a panacea – it will not solve all the problems in Iraq. It will not even resolve all land disputes. But it is important to understand that it could bring a majority of the land “back to life,” and provide a capital base for the private sector.

Until and unless Iraq develops a functioning, private sector economy, there will be many thousands of angry, unemployed, frustrated, individuals eager to be recruited to the causes of religious and ethnic conflicts. But bit-by-bit as many thousands of Iraqis begin working, owning property, and building prosperous lives for themselves, they and their families will become increasingly angry and resentful towards trouble-makers.

Especially in a nation that has recently been destroyed by war, land is one of the few forms of potential equity remaining. In Iraq, conflict over control of oil wealth and domination by state owned factories have allowed few other sources of wealth or income to exist; it has been estimated that 90% of the Iraqi economy passes through the government. Bringing the land wealth of the nation “back to life,” in the private sector will increase useable wealth for millions of Iraqis, giving them quite literally a greater stake in a peaceful future for Iraq, and give needed credibility to the central government.

Northern Ireland, notorious for terrorist violence from the 1960s into the 1990s, had an unemployment rate of 17.6% in 1986. Then the Irish economy took off in the 1990s, the economy of Northern Ireland benefited directly from the Irish boom, and now the unemployment rate is 4.5%, among the lowest in all of Europe. Not coincidentally, decades long conflicts between Protestants and Catholics have ceased, and people in Northern Ireland are now more focused on water prices at election time than they are on ethnic and religious righteousness. The Irish used to be just as willing to kill for their clan as are the Iraqis. Now they have better things to do.

There are key Iraqi officials interested in these proposals. But they need the support of the U.S. government to make it work. We believe that U.S. should support the creation of such an Economic Transformation Zone in Nineveh. Perhaps the most remarkable part of this proposal is that all the benefits of unleashing the wealth and entrepreneurial spirit of the Iraqi farmers does not require a large budget and could be started even given the current levels of violence.

Let’s create institutional software that works in Iraq. Let’s create peace through secure land titles.