

**The Commission for the Resolution  
of Real Property Disputes**

**An  
Advanced Legal Model  
to Resolve the Problem of  
the People Deported During the Former Regime  
in Iraq**

**By  
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## **Introduction**

Iraq has inherited a great deal of human rights violations committed by the former regime in Iraq. The removal of that regime and the advent of the elected democratic government make it necessary to compensate the victims of human rights abuses. The first step, in this field, is to return the confiscated property of the people who had been deported by the former regime on ethnic, sectarian and national grounds. The establishment of the Estate Property Conflicts Resolution Commission, per se, is a great achievement to mitigate the sufferings of the effected.

### **Section One: Deported people whose property had been confiscated**

The Iraqi former regime had deported thousands of Iraqis outside Iraq and internally displaced other thousands, as follows:

1. In late 1970s and early 1980s, the Iraqi former regime arrested thousands of Iraqis and their families, deported them outside Iraq and confiscated their movable and immovable property under the pretext that they were of Iranian origin though they lived in Iraq for long times, since the Ottoman reign, where they, their fathers and grandfathers, were born. After the establishment of the Republic of Iraq, those people had got the Iraqi nationality and their sons had done the military service. After confiscating the property of those people, the Iraqi former regime had sold them in public auction or granted them to its followers or to the families of its victims who died in the wars between Iraq and its neighbors.
2. The Iraqi former regime had deported thousands of Filli Kurds and confiscated their movable and immovable property though they were amongst the oldest people who lived in Iraq where they were settling on Iraq-Iran borders, in Khanaqin, Mandeli, Zerbatiya, Badra, Qazaniya, Shahraban ..etc in Diyala and Wasit governorates. In central Baghdad, there is a district named

(Kurds District) where those people lived. They were living in many other places in Baghdad and other governorates.

3. During the deportation, many of them had died due to the difficulties they encountered or killed when they crossed the minefields on Iraq-Iran borders. Many youths and above 16 years boys had been arrested and disappeared.
4. The Iraqi former regime had also displaced large numbers of Kurds who were living in Mosul, Kirkuk and in villages adjacent to Iraq-Iran borders and settled them in housing complexes under its control.
5. The Iraqi former regime had confiscated large lands of the Turkman in Kirkuk, Tes'in district, Bashir village, etc., deporting their inhabitants to other areas.

The people mentioned in 1 and 2 above have been living in despair as refugees in Iran, Syria, Sweden, Norway, Denmark, Germany, Holland, Belgium, etc., looking forward to returning to their country and get their property back.

**Section Two: Establishment of Estate Property Conflicts Resolution Commission to resolve the problems of the deported whose immovable property had been confiscated.**

After the fall of the Iraqi former regime and the establishment of the Governing Council, and to address the problem of the deported, a law has been acted to establish Estate Property Conflicts Resolution. The law is comprised of 16 Articles which were hastily and inaccurately written. In 2004, the Coalition Authority issued the Organizing Bill No.12 of 2004. The law and bill, however, have not fairly and clearly addressed this problem. The law has decided to return the estate to its original owner depriving the first buyer of any compensation. If the ownership is transferred to other buyers, the last one has the right to claim from the one who takes the estate. This contravenes the law and the principle of equality. It rather removes injustice from someone and inflicts it upon another one. For these and other reasons, Law No. 2 of 2006 has been enacted. The reasons behind enacting this law are (the main goal of this law is to provide legal

protection of all. During the application of the Organizing Bill No.2 of 2004, it has become clear that some of its Articles are to be supplemented; other Articles are too long and ambiguous. These defects must be addressed in line with the Iraqi law and the trends of modern legislation.) Article 4 of the Law stipulates that provisions of this law shall apply to the claims its covers during the period 17 July 1968-9 April 2003. They include:

1. Estates confiscated and attached by the Iraqi former regime for political, ethnic, religious, sectarian or other reasons.
2. Estates seized without compensation, or possessed unjustly in contravention of the valid legal procedures, except for the estates seized for the Agrarian Reform Law, in kind compensation cases and the estates possessed for public benefit and used for that end.

Article 2/5 and Article 4/1,2,3 provide that the Commission Law is limited to the estate issues.

### **Estate Definition**

Article 62 of the Iraqi Civil Law defines the estate as everything which has fixed foundations so that it cannot be transferred or moved without any damage. It includes land, building, seedling, bridges, dams, mines..etc. This concept encompasses movable property which is used by the owner exclusively in the service of his estate.

Article 2/5 of Estate Property Conflicts Resolution Law No.2 of 2006 includes in kind rights provided for in Article 68 of the Iraqi Civil Law, which reads (the original in kind rights: the rights of property, estate, benefit, use, housing, easement, endowment and long term hiring.

### **Section Three: New legal principles of Law No.2 of 2006**

The most important new principles contained in the new law are:

1. The Ministry of Finance shall pay the compensation if the government is obliged to do so under the decisions issued by the judicial committees, which are approved by the cassation commission in accordance with the provisions of Article 3 of this Law.
2. The first and last buyers have the right to compensation for the value of the estate (both the land and buildings) at the time when the case is filed.
3. The original owner (the deported) has the right to get his estate back or to take compensation.
4. If the confiscated or seized estate is encumbered with a loan or mortgage, it shall be returned to its original owner free from the loan or mortgage. The value of the loan or mortgage shall be paid by the party that seized or sold the estate. This party has the right to claim the value of the loan or mortgage from the mortgager.
5. The case may not be canceled if one of the conflicting parties is present taking into consideration the circumstances of the deported defendants who cannot appear before the judicial committees regularly.
6. The sentences of the judicial committees may be challenged through retrial, if it is justifiable.
7. The sentence may be challenged through objection by the effected people pursuant to the provisions of civil proceedings.
8. The real estate and executive authorities shall execute the final sentences pursuant to their own competence and in accordance with the provisions of

the law. The occupant shall have 90 days from the date of notification to evacuate the estate and hand it over empty from any belongings.

9. The provisions of the amended Civil Proceedings Law No. 83 of 1969 and the amended Evidence Law No. 107 of 1979 shall be applied to the cases that are not provided for in this Law.
10. The courts shall not look into the cases covered by this Law. They shall refer them to the judicial committees during the period in which this Law is coming into force.
11. The resolutions of the resolved Revolution Command Council on the confiscation, seizure and allocation that were taken in contravention of legal procedures, shall be cancelled. Article 6.
12. This Law has retroactive effect on cases happened in the previous period as contained in Article 4 which reads as follows: (the provisions of this law shall apply to the claims concerning the estates it covers during the period from 17 July 1968 to 9 April 2003).
13. The compensation shall be for the value of the estate at the time of its confiscation and at the time on which the case is filed. The party that sold the estate (the Ministry of Finance) shall pay the compensation.
14. The provisions of this Law shall apply to the compensation decisions issued by the judicial committees before it comes into effect, as follows:
  - a. The decisions, which did not determine the party that must pay the compensation or the amount of compensation.
  - b. The decisions, which gave the right to the parties of the case to file a claim for compensation before the courts.
  - c. The decisions, which determined the compensation amount at the time of confiscation, possession or seizure, rather than at the time on which the case was filed.

#### **Section Four: The Structure of the Commission.**

The Commission shall be headed by an officer, at ministerial rank, holding a university degree in law. He shall supervise the activities of the Commission and its branches. He may establish or cancel any staff position for the benefit of the Commission work. He may issue instructions facilitating the implementation of the provisions of this Law. The Commission shall be attached to the Council of Ministers. Several legal and administrative departments shall be attached to the Head of the Commission to help him discharge his duties. The departments shall be headed by officers, at director ranks. The computer center shall be attached to the Commission Head Office.

The Commission shall have 30 branches, six of them in Baghdad and 24 in other governorates and towns. Each branch shall be headed by an officer at a director rank. Several offices shall be attached to the branch director: collection, archives offices, audit committee (legal counselors), computer center and informants office. The branch shall receive the claimants or their representatives and give them formats prepared by the Commission for this end. After verifying that the claim meets the required conditions, the branch requests the concerned real estate department to send a detailed account on measures taken in this respect. After completing and verifying the necessary procedures, the claim shall be registered and a file shall be opened to it. The file shall bear a serial number. The claimant shall have a receipt. The claim data shall be put on the computer and sent to the computer center in the Commission headquarters.

The branch shall notify the defendant and ask him to respond within 15 days from the day following the notification. The notification shall be done according to a format prepared by the Commission for this end. The branch shall put the notification format and the response of the defendant on the computer. Then, the file shall be referred to the audit committee which is a legal committee comprises three legal officers who have no less than seven years experience. The committee shall verify the file and referred it to the judicial committees according to the dates on which they are filed, coupled with a legal decision. According to the Commission instructions, the claims of the deported whose property had been confiscated, have a priority to other claims.



### **Section Five: The Judicial Committee.**

This committee shall look into estate property cases. It is comprised of a judge appointed by the Supreme Judicial Council as a head, representative of real estate department and a legal officer who has no less than ten years experience, nominated by the Commission head, as members. The committee shall look into the following cases:

1. Estates confiscated for political, ethnic, religious, sectarian reasons or as a result of ethnic, sectarian and national deportation policies.
2. To lift the attachment or non-disposition imposed on an estate for political reasons.
3. Claims for compensation or returning the estates seized without compensation
4. Claims for compensation for the estates possessed unfairly in contravention of law.
5. Claims for returning the estates possessed for public benefit.
6. State estates allocated to the followers of the Iraqi former
7. State estates allocated to the followers of the Iraqi former regime for nominal compensation.

After receiving the claim, the Audit Committee at the Commission branch summons the concerned parties through the Committee informants, in order to hear their testimonies and verify the relative documents and instruments in accordance with the provisions of Civil Proceedings Law. The Committee shall consider the Minister of Finance as a third party, in addition to his post, since he is responsible, by law, for the payment of compensation pursuant to Article 3 of the Commission Law. The Committee shall request three experts, including the representative of the real estate department, to see the estate on site in order to estimate its value in consultation with the members of the

judicial committees. If the two parties request the Committee to select the experts, it shall select the experts who are famous for their efficiency, integrity and fair estimation from a table prepared by the Commission. The Committee shall put the report of the experts before the concerned parties in order to hear their remarks and objections, if any. If the report is overestimated and detrimental to the treasury rights, the Committee shall request five experts, including the representative of the real estate department or estate tax department to re-estimate the value of the estate. The Committee shall put the new report before the concerned parties to discuss it and hear their views and objections, if any. If the Committee and the concerned parties find that the report is duly and fairly done according to the criteria of the real estate and estate tax departments, it shall end the proceedings and decide a date to declare the final sentence. The head of the Committee shall issue the final sentence in consultation with the other two members. The other two members, or one of them, have the right to write his objection to the sentence on a separate paper. The decisions of the Committee shall be final and obligatory unless otherwise challenged before the Cassation Commission within 30 days from the day following the notification date. The Committee shall keep a copy of the experts report, and send the claim file coupled with its decision to the Commission branch in order to put it on the computer and take other duly measures.

#### **Section Six: The Cassation Commission**

The Cassation Commission is comprised of seven judges who served at the Cassation Court. The Supreme Judicial Council shall nominate the judges, including two judges to be nominated by the government of Kurdistan. Two standby judges shall be nominated to replace the absent members of the Commission. The Commission shall have a chairman and deputy chairman. The Commission shall look into the appeals concerning the decisions and sentences issued by the judicial committees. It may support, amend or change the decisions and sentences. If it supports the sentence, its decision shall be final. If it amends or change the sentence, its decision shall be obligatory. After the issuance of the Cassation Commission decision, the Commission branch shall refer the claim file to the computer center to store the data.

The Cassation Commission has other competences contained in Article 19 of the Commission Law, including giving advisory views to the judicial and legal committees.

Most of the sentences are appealed through cassation, particularly those that oblige the Ministry of Finance to pay compensation in order that the representatives of the Ministry avoid legal accountability.

### **Section Seven: Merits and Benefits**

1. The Commission undertakes to execute the compensation decisions and to pay the compensation allocated by the Ministry of Finance to the entitled people according to the decisions issued by the judicial committees. For this end, the Commission has established compensation section. The Commission head supervises the payment of compensation to the entitled people in order to preserve their rights. The amount of money paid, up to 31 January 2008, is 106.347.652.789 billions of IDs to 1018 beneficiaries.
2. The Commission and its branches depend on the most advanced techniques, benefiting from the experience of the international organizations, such as IOM.
3. The computer center in the Commission headquarters and its branches is processing all the information the Commission and its branches need.
4. The number of the claims settled by the judicial committees, up to 31/12.2007, is 41187 of the 134832 claims filed by the citizens. This means that the Commission has settled 30% of the claims.
5. The Commission depends on efficient staff who are capable to discharge their duties.
6. The Commission undertakes to protect the public wealth through direct coordination with the judicial committees and branch directors in order to select the experts who are famous for their efficiency and integrity. For that end, the Commission has prepared a table containing the names of those experts.

7. The Commission coordinates with the relative departments, such as State Estates Department, Real Estate Department and Estate Tax Department to exchange information concerning the claims and to nominate their representative in the expert committees.
8. The Commission has reprinted all the decisions taken by the resolved Revolution Command Council for the period 1968-2003 in one volume and distributed it to the judicial committees to make use of it.
9. The Commission has printed the cassation principles and distributed them to all its branches.
10. The Commission has issued Al-Hal magazine, which deals with the Commission activities and the legal and social contributions of its staff members.

#### **Section Eight: Problems and Obstacles**

1. Due to the security situation which forced many claimants to leave their houses, it is difficult to notify them of the proceedings dates. This has forced the judicial committees to postpone the sessions. Some of the claimants are living outside Iraq, or their addresses are incorrect.
2. As a result of the events of 9 April 2003, many files of the estates were burnt. This makes it impossible for the judicial committee to verify the state of the estate and its extensions at the time of confiscation, and the additions made after the estate confiscation, particularly in case there several buyers.
3. Some state departments do not cooperate with the Commission in respect of information exchange and the nomination of their legal representatives to defend their rights.
4. The Cassation Commission has delayed the claims settlement for more than two years. The number of the cassation decisions issued for the period from

2005-2007 is only 9009 decisions, i.e. three thousands a year, which is incompatible with 135000 claims filed so far. Thus, I propose to establish five cassation commissions comprising three judges each to accelerate the claims settlement.

5. The staff of the Commission are provisional although the Commission Law stipulates that the staff of the Commission are covered by the laws of employment, staff and retirement. Therefore, most of the staff members seek to move to other departments of the state.
  
6. The judges of the Commission are not protected. The judge has only an unarmed bodyguard. His duties, particularly on site verification may endanger his life. A number of the Commission staff had been killed, including Mr. Mustafa al-Mudamgha, Head of the Cassation Commission and Mr. Hasan Ali Abdul-Hussein, Director of the northern branches.