

In the name of God Most Gracious and Most Merciful

In the name of the People

The Presidency Council

By virtue of what was approved by the National Assembly in accordance with the provisions of paragraphs A and B of Article thirty three of the Law of Administration for the State of Iraq for the Transitional Period, and according to the provisions of Article thirty seven of the Law of the Administration for the state of Iraq.

The Presidency Council decided by a majority vote in its session held on January 9, 2006 to issue the following statute.

STATUTE
OF THE COMMISSION FOR THE RESOLUTION OF REAL PROPERTY
DISPUTES
Order No. (2) of the year 2006

Chapter I
PRELIMINARY PROVISIONS

Article 1

- I – The Commission for the Resolution of Real Property Disputes replaces the Iraq Property Claims Commission established according to the Coalition Provisional Authority Regulation number 12 of the year 2004.
- II – The Commission for the Resolution of Real Property Disputes is attached to the Council of Ministers and it is presided by an official who has the level of a Minister, holding at least a first university degree in law.
- III – The administrative and judicial structure of the Commission shall be formulated by a regulation.
- IV – The office of the region of Kurdistan shall be one of the administrative formations of the Commission and the offices in the governorates of the region shall be attached to it.

Article 2 – The meaning of the terms mentioned below is as indicated against each term:

- I – The Commission: the Commission for the Resolution of Real Property Disputes.
- II – The Cassation Commission: the commission competent to review the objections and the appeals relating to the decisions and judgments issued by the Judicial Committees.
- III – The Judicial Committee: the committee competent to review and resolve the real property claims.
- IV – The branches of the Commission: the branches of the Commission that are established according to this Statute in the governorates, counties and districts.

- V – The properties: and they include the tangible rights (primary rights *in rem*) set forth in paragraph (1) of article 68 of the applicable Iraqi civil law number 40 of the year 1959.

Article 3

- I – The Ministry of Finance shall pay the compensation amounts that the government is liable to pay according to the decisions issued in accordance with the provisions of this Statute.
- II – The government shall ensure that the Commission has all the necessary funds and amounts to facilitate the implementation of its administrative duties and to ensure the appropriate premises for the Commission and its branches for the purpose of performance of their function.

Chapter II **APPLICABILITY OF THE STATUTE**

Article 4 – The provisions of this Statute are applicable to the claims for properties that fall within the jurisdiction of the Statute during the period from 17 July 1968 to 9 April 2003 and that includes the following:

- I – The properties that were confiscated and seized for political, ethnic reasons or on the basis of religion or religious doctrine or any other events resulting from the policies of the previous regime of ethnic, sectarian and nationalist displacement.
- II – The properties that were seized without consideration or expropriated with manifest injustice or in violation of the legal procedures adopted for property expropriation. Exception is made to the properties that were seized according to the law of agricultural reform, the cases of in kind compensation and expropriation for purposes of public interest and which were actually utilized for public interest.
- III – The State real properties that were allocated to the clique of the previous regime without consideration or for a token amount.

Article 5

- I – The Commission shall have jurisdiction on the claims that fall within the provisions of this Statute.
- II – All the Iraqi courts must transfer the claims that fall within the jurisdiction of this statute to the Judicial Committees of the Commission until the end of the filing period.
- III – The Judicial Committees in the Commission have precedence over all the Iraqi courts with respect to the mandate of such Committees on the claims that fall within the jurisdiction of this statute.

Chapter III FORMAL PROCEDURES

Article 6 – The Judicial Committees shall take the following procedures when reviewing the claims brought before them:

- I – Annul the decisions of confiscation, seizure and allocation which took place in violation of the adopted legal norms on any property which title deed is still registered in the name of its original owner in the records of the real estate registration.
- II – Restitute the ownership of the properties that were confiscated or seized and that are still registered in the name of the State, to its original owner.
- III – Restitute the ownership of the mosques, places of worship, religious schools, places of worship (husseiniyat), hospices and charities associations that were confiscated or seized with manifest injustice, to its original owners.
- IV – If it is established that some senior members of the former regime or its clique and those who took advantage of their power, acquired a property in an illegal manner, such property shall be returned to its original owner pursuant to the provisions of this Statute.
- V – If the confiscated or seized property was sold to a person (natural or juristic) and no adjuncts or improvements were made, the original owner has one of the following two options:
 - a) Return the title of the property back to his name, and in this case, the current owner shall be compensated the equivalent value of the property at the time the claim is lodged. The party that sold the property after confiscation or seizure shall be liable to pay the compensation.
 - b) Compensation for the value of the property, and the party that (first) sold the property after confiscation or seizure shall be liable to pay compensation for the value of the property at the time the claim is lodged.
- VI – If a property was confiscated or seized and subsequently adjuncts or improvements were made to it, the original owner has one of the following two options:
 - a) Return the title of the property back to his name and pay to the current owner the value of the existing adjuncts or improvements valued at the time the claim is lodged. In this case, the party that (first) sold the property after confiscation or seizure shall be liable to compensate the current owner for the equivalent value of the property at the time the claim is lodged less the value of such adjuncts or improvements.
 - b) Accept compensation equivalent to the value of the property at the time the claim was lodged less the value of the adjuncts or improvements made. In this case, the party who (first) sold the property after confiscation or seizure is liable to pay compensation.
- VII – If a property was sold after it was confiscated or seized and subsequently an adjoining property was added to it and both properties were combined, then the original owner has the following options:
 - a) Have the original and adjoining property registered back in his name, if it is impossible to separate both properties, provided that such original owner compensates the current owner the equivalent value of such adjoining property valued at the time the claim is lodged. The party that (first) sold the

- property after confiscation or seizure shall be liable to compensate the current owner for the value of the original property at the time the claim is lodged.
- b) Have the ownership of the confiscated or seized property, without the adjoining property, if this is possible, restituted to his name and have the ownership of the confiscated or seized property registered back in his name and the title to the adjoining property shall remain in the name of the current owner. The party that (first) sold the property after confiscation or seizure shall be liable to compensate for the value of the original property at the time the claim is lodged.
 - c) Request compensation if the value of the adjoining property is higher than that of the confiscated or seized property and it is not possible to separate them without damage or high costs.
- VIII – If the confiscated or seized property was encumbered with a loan or a mortgage registered in the real property records, the property shall be returned to the original owner free from any such charge or loan after payment of the mortgage value by the party who seized the property or sold it. Such party can claim the value of the settled mortgage from the mortgagor provided the mortgage or the loan was certified before 09/04/2003.
- IX – If the confiscated property was sold in a public auction and was thereafter purchased by its original owner or his heirs or one of his heirs, such owner or heirs are entitled to claim from the party who sold the property, an amount equivalent to the purchase price at the time the claim is lodged provided that the title to such property be re-registered in the name of all the heirs if it was purchased by one of them.
- X – If the confiscated or seized property was utilized for public interest or charitable purposes, the government or the party who (first) sold the property shall be liable to compensate the original owner for the value of the property, at the time the claim is lodged provided the property continues to be used for the purposes mentioned.
- XI – If the confiscated or seized property was given to another party without consideration or for a token amount, such property shall be registered back in the name of its original owner and the provision of item VI of this article shall apply in case of adjuncts or improvements.
- XII – If the property was built prior to confiscation or seizure and then it was sold and subsequently demolished and a new building was built on it, the original owner has one of the following two options:
- a) The transfer of the ownership of the property to his name after he pays for the value of the constructions that were built less the value of the construction that was demolished. The party that sold the property shall be liable to compensate the current owner for the value of the property before its demolition valued at the time the claim is lodged.
 - b) Compensation for the value of the property in its condition at the time of confiscation and with its equivalent value at the time the claim is lodged and the party that sold the property shall be liable to pay such compensation.
- XIII – a) If the confiscated or seized property was an empty plot not built upon and subsequently constructions were made on such plot and the value of these constructions is higher than that of the plot, the title to the property shall remain

in the name of the current owner and the party that (first) sold the plot shall compensate the original owner for its value at the time the claim is lodged.

b) However, if the value of the plot is higher than that of the constructions, the property, land and building, shall be returned to the original owner who shall be liable to compensate the current owner for the value of the constructions as they exist at the time the claim is lodged. The party that (first) sold the plot shall compensate the current owner for value of such plot, to be valued at the time the claim is lodged.

XIV- 1- If the property was confiscated in violation of the legal practices or with manifest injustice or was not utilized for public interest, then the original owner has the following two options which are:

a) Return the ownership of the property to his name and in this case, he shall be liable to pay the consideration of the expropriation that he received valued in gold and with the equivalent of gold in Iraqi dinar at the time the claim is lodged.

b) Get compensated for the difference between the consideration of the expropriation that he received from the expropriation claim and the actual value of the property at the time of expropriation, valued in gold and with the equivalent of gold in Iraqi dinar at the time the claim is lodged before the Commission.

2- If the property was appropriated in violation of the legal practices or with manifest injustice and was utilized for public interest, then the original owner is compensated pursuant to the provisions of paragraph (b) 1 of item 14 of this Article.

Chapter IV

THE FUNCTIONS OF THE COMMISSION AND ITS BRANCHES

Article 7

- I – The Commission shall prepare the claim form of the property claims.
- II – The party concerned (either natural or juristic person) or his/her legal representative shall submit the claim to any of the branches of the Commission provided that it is forwarded to the competent branch of the Commission according to the location of the property.
- III – The claim must meet all the conditions required in the claim form.
- IV – The branch of the Commission shall request from the relevant Real Property Registration Department a detailed report about the transactions made on the property at issue.
- V – The branch of the Commission shall carefully examine the claim form and the report of the Real Property Registration Department to ensure that all the conditions required are met. The claim is then recorded in the claims' ledger, and a file is opened for the claim, then it is assigned a unique number and the claimant will be given a filing receipt.
- VI – The claim and its data shall be entered in the computer, and then an electronic copy of such data shall be sent to the central computer section in the headquarters of the Commission.

- VII – The branch of the Commission shall notify the respondent of the subject of the claim to allow him to respond within a period of 15 days starting from the day that follows the day he is notified or considered as notified according to the response form prepared by the Commission.
- VIII – The competent branch of the Commission shall enter the notification sheet of the respondent and the response form in the computer.
- IX – The claim file shall be transferred to the competent Judicial Committee for consideration in accordance with the Statute.
- X – The notifications shall be served pursuant to the applicable Civil Procedures Law.
- XI – When the decision of the Judicial Committee is issued, the claim file shall be forwarded to the computer section for data entry of the necessary data.

Article 8

- a) The Commission shall encourage reconciliation and amicable resolution of the property disputes between parties of the claim in accordance with a form prepared for this purpose to the extent that they do not contravene with the law, the public order and the public morals.
- b) The Judicial Committee shall certify the agreement of amicable resolution between the parties in the claim and its decision shall be subject to cassation.

Chapter V **THE JUDICIAL COMMITTEE**

Article 9

The judicial Committee shall be composed of:

- 1- A judge appointed by the Supreme Council of Judges, who acts as the head of the Committee.
- 2- The Director of the Real Property Registration Department or the person who represents him.
- 3- A legal officer nominated by the head of the Commission from Commission's staff and who has legal experience or practice as a lawyer for a minimum period of ten years.

Article 10

The Judicial Committee shall consider the claims brought before it, after holding a pleading session at least once. The Committee is entitled to conduct a site visit to the property within its jurisdiction to hear the statements necessary for the resolution of the claim.

Article 11

The Judicial Committee shall consider the claim in the event the parties are not present, after verification of the accuracy of the notifications and it is entitled to issue the appropriate decision to settle the claim in light of the documents and attachments that are presented. The claim shall not be deferred and revoked in case one of the parties was present.

Article 12

- I – If the claimant is present and the respondent is absent, even though he was notified, the Committee issues a decision *in absentia*. The respondent is then entitled to object to the decision within a period of (ten days) starting from the day following the day he is notified of the decision or considered as notified.
- II – If a decision *in absentia* is not objected within the deadline specified under (I) above, or an objection was made but does not state the reasons for the objection, the Judicial Committee shall reject the objection as formally deficient, otherwise the Committee shall consider the objection pursuant to the Statute by upholding the decision, revoking it or amending it as the case may be.

Article 13

The Judicial Committee shall hold its session to consider the claim and the head of the Committee shall issue his decision resolving the claim pursuant to the Statute. The two other commissioners or one of the two is entitled to record his dissenting opinion on a separate sheet in the event he has as an opposing opinion.

Article 14

The decisions issued by the Judicial Commission are final and binding, unless they are appealed before the Cassation Commission within a period of 30 days starting from the day following the day the decision is notified or the day it is considered notified.

Article 15

The head of the Judicial Committee shall place a sign of non-disposition on the property at dispute indicating that it should not be subject to any legal transaction by notifying the competent Real Estate Registration Department when a claim is submitted.

Article 16

The heir shall represent the rest of the heirs if he submits a claim in his name claiming the return of the ownership of the property.

Chapter VI
THE APPELLATE COMMISSION

Article 17

The Cassation Commission shall be composed of seven judges who have legal practice in the Cassation Court. They are nominated by the Supreme Judicial Council either from active or retired judges, one is nominated as head and another one is his deputy provided that two of them are nominated by the government of Kurdistan region. This Commission shall be independent in its jurisdiction from the Cassation Court. Two alternate members are also nominated to replace any member of the Commission who may be absent or unavailable for any reason and in case of absence of the head of the Commission, he shall be replaced by his deputy.

Article 18

The Cassation Commission shall take its decision by a majority vote.

Article 19

The Cassation Commission shall be competent to consider the following requests:

- a) The appeals relating to decisions and judgments issued by the Judicial Committees.
- b) The transfer of a claim from one committee to another.
- c) Relief of the head of the Judicial Committee
- d) Recuse of judges.
- e) Providing advisory opinions.

Article 20

The head of the Cassation Commission shall examine the request of relief by a member of the Cassation Commission from considering the claim. Where the head of the Cassation Commission relieves himself, the chairman of the Supreme Judicial Council shall be competent to examine such request.

Article 21

The Cassation Commission issues decisions either to uphold the appealed decision or judgment, to amend it or to substitute it. Such decision of amendment or substitution is binding in case it is upheld.

Article 22

When the decision of the Cassation Commission is issued, the branch of the Commission shall transfer the claim file to the computer section for data entry of the necessary data.

Article 23

The judgments issued by the Judicial Committees can be objected by reconsidering the trial or by the objection of another party according to the provisions set forth in the civil procedures law.

Chapter VII

ENFORCEMENT OF THE DECISIONS AND JUDGMENTS

Article 24

- I – The final judgments and decisions are enforced at the Enforcement Department and Real Estate Registration Department according to the competence of each department according to the provisions of the law.
- II – The occupant of the property is given a period not exceeding 90 days, starting from the notification date the execution is served, to vacate and deliver the property free from any hindrance.

Chapter VIII

THE FINAL PROVISIONS

Article 25

The real property claims shall be adjudicated according to the provisions of this Statute, and the provisions of Procedural Civil Law number 83 of the year 1969, as amended and

Evidence Law number 107 for the year 1979, as amended shall govern matters not provided for in the Statute.

Article 26

The transfer of real property on which a final decision is issued according to this Statute shall not be subject to income tax, or tax on transfer of real property, or any other tax or duties.

Article 27

Any provision that is inconsistent with this Statute shall not be applicable.

Article 28

- I – The claimant or his legal representative may withdraw a claim or part of the claim at any time until the Judicial Committee issues its decision.
- II – The decision of the Judicial Committee approving the withdrawal of the claim shall be final and not subject to any objection.
- III – The withdrawal of the claim shall be pursuant to a form prepared for this purpose.

Article 29

Any person who files a claim in bad faith and using fraudulent means shall be punished pursuant to the applicable Penal Code.

Article 30

The individuals who reside outside the country may submit their claims pursuant to the provisions of this Statute to the branches of the Commission which shall be opened for this purpose or through the Iraqi diplomatic missions.

Article 31

The courts shall refrain from considering the claims falling within the jurisdiction of this Statute and shall forward such claims to the Judicial Committees of the Commission during the period of validity of this Statute.

Article 32

The Head of the Commissions occupies the highest position in the Commission; he shall supervise all the activities of the Commission and its branches; he has the authority to create or cancel any staffing positions, as the work of the Commission requires.

Article 33

The Head of the Commission may issue regulations to facilitate the implementation of this Statute.

Article 34

The provisions of this statute shall apply to the compensation decisions issued by the Judicial Committees before enforcement of this statute as follows:

- a) The decisions that do not specify the party who is responsible for the payment of compensation or that do not specify the amount of compensation or that gave the right to one of the parties to refer to the civil courts to file a claim for compensation.

- b) The decisions involving valuation of the compensation amounts at the time of confiscation and expropriation or seizure and not at the time the claim is lodged.
- c) The decisions issued rejecting the claims for compensation pursuant to the annulled Regulation number 12 of the year 2004.

Article 35

The provisions of the Civil Service Law number 24 of the year 1960 and the Employees Law number 25 of the year 1960 the Law of Discipline of the Employees of the State and the socialist sector number 14 of the year 1991 and the Civil Retirement Law number 33 of the year 1966, shall be applicable to the employees of the Commission.

Article 36

All the decisions of the dissolved revolution command council and the consequences resulting there from that contradict the provisions of this law shall be cancelled.

Article 37

Committees shall be established within the Commission for the Resolution of Real Property Disputes to consider claims for properties that fall within the jurisdiction of this Statute during the period from 14 July 1958 to 16 July 1968. The work of such committees shall be regulated by an annex to this Statute.

Article 38

The Cassation Commission shall refer to the experts of the Islamic law (Al Sharia'a) and follow their opinions upon the request of either parties of the claim.

Article 39

The Regulation number 12 of the year 2004 issued by the Coalition Provisional Authority shall be annulled.

Article 40

The order number 22 of the year 2004 issued by the Council of Ministers shall be annulled.

Article 41

This statute shall enter into force from the date of its publication in the Official Gazette.

Reasons for issuance of this draft law

The main reason for this draft law is to ensure legal protection for all the people. It appeared from the application of the provisions set forth in the Regulation number 12 of the year 2004 that: there are some shortcomings in some articles that need to be complemented; use of lengthy language that needs to be abbreviated; ambiguity in some articles that needs to be clarified in compliance with the approach of the Iraqi laws and in line with the recent legislation and its trends and some texts lack preciseness in the language and clarity in their rationale, which created differences of opinions. The draft law includes a name for the Commission consistent with the Law of Administration for the Transitional Period. It also addresses the composition of the Judicial Committees whereby the director of State properties or his representative is one of the formations that are part of the Ministry of Finance, while there are several claims in which the Ministry of Finance is adversary to the dispute. The draft law also addresses the issue of compensation of the first buyer and clarifies the ambiguity of the valuation of compensation as it considers the time the claim is lodged as the standard for the valuation of compensation. In addition, the parties who are liable to pay compensation are specified. The draft law also addresses the objections of the final decisions issued by the Judicial Committees, by those who were affected by the decisions, or whose rights were affected by the decisions while they were not party to the claim. It is also in harmony with the applicable Civil Procedures Law in specifying the periods of appeal and objection to decisions *in absentia*.