

MINARET OF FREEDOM INSTITUTE POSITION PAPER: CONSTITUTIONAL PROTECTION FOR PROPERTY RIGHTS IN IRAQ

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This brief paper is provided as a resource for drafting a new constitution for Iraq. Because the Islamic tradition in Iraq is the common thread possessing the potential to unite the Kurdish, Sunni, and Shi`a communities, the Islamic principle of the sanctity of private property must be retained if reconstructed Iraq is to be economically viable on a culturally acceptable basis for the re-establishment of property rights. However, because some Iraqis are not Muslims and many Muslim Iraqis are more or less secular, I have avoided overt Islamic phrasing.

I am not aware of a single Muslims country today that has incorporated into its constitution a clear and inviolable protection of titled property rights. This is not due to any shortcoming of Islamic law, however, but rather to the influence of the French civil code that views the state as the ultimate provider of all social benefits and public goods that has superseded the influence of Islamic law. The classical Islamic model is one in which markets and voluntarily established institutions (*awqâf*) are means of society building. As was noted by the great 14th century Muslims historian, Ibn Khaldun,¹ the legitimate role of government is limited to five functions: 1) “defend and protect the community from its enemies;” 2) “enforce restraining laws among the people, in order to prevent mutual hostility and attacks upon property. This includes improving the safety of the roads;” 3) “cause the people to act in their own best interests, and ... supervise such general matters involving their livelihood and mutual dealings as foodstuffs and weights and measures, in order to prevent cheating;” 4) oversee the mint to prevent fraud in currency; 5) exercise political leadership. Ibn Khaldun explains the importance of property rights by quoting from Al-Mas`udi report of Mûbedhân's speech before Bahrâm: “Men persist only with the help of property. The only way to property is through cultivation [*imârah*, i.e. cultivating civilization]. The only way to cultivation is through justice.”

I believe that language for the protection of titled property rights for all Iraqi people should employ phrasing from the Qur'an, the Prophet's (peace be upon him) farewell pilgrimage, and the Medina compact. Accordingly, I propose the following:

“The lives and property of the Iraqi people are as sacred. The state shall protect the rights of all its citizens to own, buy, sell, transfer, or share property, and shall respect and enforce all lawful contracts. To men is the right to what they earn and to women the right to what they earn. No property may be taken from any Muslim or any non-Muslim who has paid their legal taxes except by his consent. No person shall be deprived of life, liberty, or property, in violation of Islamic law or without due process. No private property shall be taken for public use without just compensation.”

¹ See Wali ad-Din Ibn Khaldun, *The Muqaddamah*, Franz Rosenthal, *trans.* (Princeton: Princeton Univ. Press, 1967).