

Land Tenure Indicators According to Iraqi Tenure Types: A Case Study of Al-Nassiriya City, Iraq

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Abstract

Land Tenure Security (LTS) is an effective way of enhancing the people rights in lands and can be safeguarded under various forms. With this in mind, Iraq is a country with especial conditions, as multi-cultural society and post war country; it currently suffers many of the abnormal situations. From that, understanding more complex dimensions of the Iraqi Tenure Indicators and local arrangements would help the local councils to illustrate deep misconceptions about the local critical factors influencing the Iraqi land tenure. Therefore, the purpose of this study is important to Iraqi land councils due to it works to describe the current extent and nature of formal/informal tenure practices in urban areas in Iraq, through undertaking a rapid assessment in *Al-Nassiriya* city. Thus, this paper was mainly a field study with original data collected therefore tools of data collection were mainly questionnaires, interviews, and observations (direct and indirect). The approach of this study is coming from a set of 4 indicators of Iraqi City Rapid Assessment (ICRA) through which UN-HABITAT in 2010 used to examine the extent of tenure rights and security in Iraqi cities. Therefore, from these, in the study areas, Participants were recruited based on; either their expressed dissatisfaction with tenure rights or their line-manager introduced them to improve their tenure security. In addition requested representatives of a wide range of local neighbourhoods within each of chosen areas were participated within a Focus Group Discussion (FGD). Also Participants from community members of diverse ages, genders, and professions were included. The study results are based on different measures as mixed methods which have been used to analyse the data. The research findings contribute to a better understanding of the land tenure distributions in *Al-Nassiriya* city to describe the extent and nature of formal/informal tenure practices in urban areas in Iraq.

Keywords: Land Tenure Distributions, Housing's Tenure Type, Iraq, Al- Nasiriya city, Land Tenure

1. Introduction

Tenure is legally intended to guarantee the right of ownership, it is form of policies based on ownership to protect individual and groups when they use and deal with land aspects, These legitimately titles are similar to the lifetime regulations that protects community from conflicts. It is necessary to know that the full range of formal, religious, customary and non-formal tenure categories be identified; this should preferably be carried out in discussions with representatives of each group, together with the associated rights applicable in practice to both men and women. This will make it possible to devise policies that can anticipate impacts on each category and protect the poor and vulnerable

Built on previous forms, Tenure term can be understood as the basis feature of the owning right of individuals or entities in order to act in a land by selling, purchase and transferring in diversity form of interactions of ownership within clear an agreed disposition process. As previously mentioned, the ownership typically takes their form from the native nations or tribes or even from state ideology.

It is clear that the security of land tenure is linked within a triangular relationship starting by the people as land users into an individual or group of persons as a family or group of families who apply for land or purchase it, and with the policies which are the specialised regulations controlling and saving the people rights in land restrictions. UN-HABITAT has developed a set of global indicators to assess progress against the Overall Habitat Agenda (UN-HABITAT, 2008). Among these are a set of shelter indicators designed to help assess the security of land and property tenure. Hence tenure types this first shelter indicator addresses the types of individual's tenure that are living under.

Therefore, from these, in the study areas of Iraqi City Rapid Assessment (ICRA), UN-HABITAT (2008) used a set of 4 indicators through which to examine the extent of tenure rights and security prevailing: tenure, planning, building regulations and protection against forced eviction:

1.1 Tenure Indicators:

Tenure type provides insight into the legal framework under which people occupy land or homes, and therefore offers an initial indication of tenure security which is further illuminated by the next three indicators:

1. Formal Tenure

Formal tenures are legally recognized in a constitution and/or national legal framework, or through recognised customary practices. UN-Habitat (2006) the tenure survey results, on São Paulo's tenure situation, that overcrowded and living in conditions of lack legal security are the specific characters of urban crises of the city. The extent of the people rights to deal with the land aspects within Statutory Tenure Systems (STS) is largely an

important concept in ownership which is established by law or as formal systems which can depend on the agreement forms and land trusts within the legal institutions. Consequently, this formal system can work as a protection to tenure rights against the multiple ownership claims regarding the land, and thus the STS agreement forms should be approved between the community and the person receiving the rights.

Therefore, Statutory Tenure Systems (STS) can be identified within various types as:

a. Registered

Registered tenures are recorded in land and/or housing registries, in frameworks of Ownership, leasehold as occupancy rights recorded in Land and/or Housing registries offices of state, or various use or occupancy rights (UN-Habitat, 2006). Formal, registered tenures involve various parties in home transactions or transfers. For example, HABITAT (2008) showed that Disputes on formally registered land or homes are settled by courts, since the owner (public or private), the buyer/renter, and the state, which registers all rights, and any transfer of those rights, in a state registry.

b. Unregistered but Documented

These tenures arise when registration is not necessary or required. Typical frameworks include unregistered leases, rentals, sub-rentals, “rent to buy” agreements, and various use or occupancy rights (UN-HABITAT, 2008). Such tenure is documented in that it involves a contract between 2 parties: owner (public or private), and tenants or occupancy rights holders. According to UN-HABITAT (2008) Courts will settle disputes, but according to state rental protection laws and regulations. Examples of unregistered, documented tenure around the world include the “*patta*” (or, lease) in India, the “certificate of rights” in Botswana, the “concession of right to real use” in Brazil, and so on (UN-HABITAT, 2012).

Therefore, provisional administrative permit to use or occupancy rights as unregistered lease, rental, sub-rental where registration is not necessary / required while there is a clear contract between owner (public or private) + tenant / sub-tenant or owner + occupancy right holder, the parties that sign the contract.

c. Group, Family and Household Rights

In many countries worldwide, several tenure frameworks exist in which customary rights permit access to and occupancy of land and homes. UN-Habitat (2011) identified examples included “family rights” in Africa, “self-defined family” rights, community land trusts and other Group frameworks in which large groups own bands of land and can then allow their members to take up homes there; as well as intra-household rights such as spousal co-ownership, co-occupancy rights that are jointly registered, and so on. In the Muslim world there are many Islamic tenure types and variations.

The Private tenure is largely an important concept in ownership in the hands of individuals. For example, the private ownership of land is also categorised within religious forms of ‘*Mulk*’ as in Islamic ownership rules (Sleglet and Peter, 1983; Al Rashid, 2005; UN-Habitat, 2008; Sietchiping et al., 2012; Payne et al., 2012). In certain Muslim countries, these rights have to be registered, but in some cases they are simply accepted as a fait accompli by municipal or province-level governments (Alfiky, 2012).

Therefore, these tenure types are forms of rights which are registered jointly or Co-ownership difference such as Customary / Tribal / Family rights such as Spousal co-Ownership of husband and wife, religious as Islamic inherited tenure.

d. Unregistered

In general, the term “ Documented Tenure” is used to signify the relationship between users such as tenant and lord, with considerable rights of ownership particularly in common law systems, since all the processing and the transferring of ownership are taking place between the two parties which should be officially documented within the legislation institutions forms in order to get close confirmed (UN-HABITAT, 2012).

Therefore, Undocumented tenures exist in cases where formal ownership or occupancy frameworks are possible despite tenants or occupants not having any immediate rights or documentation on their land or homes.

2. Irregular Tenure

Irregular tenures are those in which occupants of land or homes have no formal right to do so, in which planning was unauthorized, in which there was no consent to build, or some combination of all of these issues.

a. Irregular Documented

Several circumstances can result in documented irregular tenure. Among these are written agreements which have been drawn up between irregular owners and tenants, or between irregular tenants and sub-tenants; de facto recognition of occupation, based on documentation – such as utility bills – acquired over a certain period; illegal subdivisions of otherwise formal or legal property; and customary rights and/or historical claims that are not formally recognized.

b. Undocumented

Largely these involve the same cases as documented irregular tenure, but without written agreements. They include oral agreements between irregular owners and tenants, or between irregular tenants and sub-tenants; de facto recognition of occupation in which no physical proof exists, and only oral or hearsay evidence is available; and cases in which there is no recognition of occupation at all(UN-HABITAT,

2011).

To sum up, from the frequency of these types of tenure, it can readily be seen that Tenure is a real personal right supported by forms of laws. Unfortunately, in case of Informal Settlements, as illegally occupancy situation, the inhabitants with lack of documents is unauthorized to be covered by this financial instrument (figure 1).

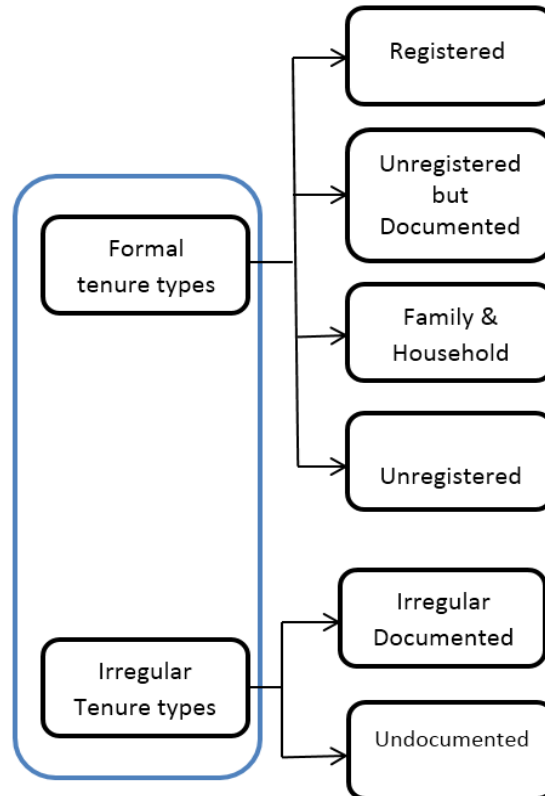


Figure 1: Shelter Legitimacy Indicators clarified according to Housing Ownership and Tenure.

2. Research Methods

This paper is conceptual, using literature and field study with tools of data collection; mainly questionnaires, interviews, and observations to provide clarity and insight for the adaptable tenure types. It is a rapid land tenure assessment which is carried out in Iraq, in order to do an initial examination of the nature and extent of common informal land tenure practices for housing in Iraq using *Al-Nassiriya* city as case study. *Al-Nassiriya* city was considered to be representative as the metropolitan. Local factors, each with in-depth knowledge of and experience in their tenure respective, were directed to carry out rapid assessments with the following specific tasks (Table 1). It is assumed that there would be linkages between housing types in the city, and that city's tenure patterns. For this paper, as listed in table 1, requested categories housing areas were chosen according to the typology developed in the Iraq Housing forms (UN-HABITAT, 2010b).

Table 1 : Categories Housing Areas according to the Typology in the Iraq.

Type	Housing forms
1	Historical Centre
2	Traditional Courtyard Housing
3	Attached Housing
4	Detached Housing
5	Government-provided Housing
6	Incomplete Subdivision (over 50% completed)
7	Incomplete Subdivision (under 50% completed)
8	Informal Housing or Settlement
9	Mixed Use Housing

However, following a broad categorisation of housing typology by area, for this paper, undertook an exercise to determine the types and extents of land tenure persisting within the city's various housing categories. The paper selected 3 specific areas— ideally of diverse housing types of their respective cities, and requested representatives of a wide range of local neighbourhoods within each of those areas to participate in a Focus Group Discussion (FGD).

Also Participants included community members of diverse ages, genders, and professions. Photographs linked to the city map, to help visualize the housing typologies of each housing type. Stakeholder interviews templates prepared by the researcher to prepare an initial data. Following this, clarifying findings and outline gaps were addressed. The paper also conducted interviews with local real estate agents (Brokers) and local urban councils. Each FGD included a briefing on tenure practices, an overview of the area map, a neighbourhood walkthrough, and a group discussion in which participants helped to identify the dominant as well as lesser-practiced tenure types in these areas. Local FGDs enabled researcher to fill in the below table, which comprises the primary basis for analysis in the remainder of this paper, as is illustrated in table 1.

Table 2: Land Tenure Indicators According to Tenure Types.

	Types	Indicator 1: Type of Tenure		Indicator 2: Building permits		
		Proportion of households	Proportion of women headed household	Is this tenure type secured (Y/N)	Authorised	Unauthorised
Formal Tenure Types	Registered					
	Unregistered + Documented					
	Family & Household					
	Unregistered					
Irregular Tenure Types	Irregular Documented					
	Undocumented					

	Dominate (estimated to be more than 50% household)
	Significant (estimated to be between 25 – 50% household)
	Exists (estimated to be less than 20% household)
	Does not exist or insignificant

3. Case Study:

3.1 *Al-Nassiriya*, City Briefing

Al-Nassiriya was founded in 1869 under the Ottoman Empire. The city is divided into northern and southern sectors by the Euphrates river; *Al Jazeera* in the north was established in 1869 when the city was initially founded (Al Rashid, 2005). It is mainly residential, and contains the city hospital, municipality and government offices. The second sector is *Al Shamiya* which was established in the 1970s, it has an agricultural band next to the river, as well as various residential areas, heavy industries works, a train station and railway line used mainly for industrial purposes.

After 2003, many families (rural migrants and others) took advantage of the weak rule of law in *Al-Nassiriya*, occupied these vacant plots illegally, and built houses from temporary materials, including mud, straw and scrap metal. However, these peripheral areas have been subject to informal housing development, where people without land and limited resources have built basic, rudimentary housing, often with temporary material, (reed, mud and metal scraps) on municipal land or land that has been distributed to government staff, but not built on. Therefore, the following chosen neighbourhoods in *Al-Nassiriya* were chosen for a more detailed investigation:

3.2 *Al-Seef* neighborhood

Al-Seef's neighbourhood is in the old sector of the *Al-Nassiriya* city and lies on the north bank of the Euphrates (map 2). It is the first part of the city to be inhabited and as a mixed-use area, containing administrative buildings and a commercial street as well as residential uses. It is the most expensive land market in within the old sector of *Al-Nassiriya* city. According to Al Rashid (2005) the majority or land uses are offices, shops, storefronts and private clinics. For example, approximately 10-15% of properties for productive use is estimated by the consultant to be informal – either unregistered or unauthorised that made the area in general as commercial zone, as well as the locations of the specific housing types here chosen for closer study.



Map 2: Detailed map of *Al-Seeef* neighbourhood.
Source: AL-Nassiriya master plan report.

4.0 Tenure Analysis

A rapid overall assessment of land tenure revealed *Al-Seeef* neighbourhood to largely be comprised of households with formal title and authorized building permits. Inhabitants of these households perceived their tenures to be secure. A smaller but nevertheless significant percentage of households in *Al-Seeef* rent their housing and have documented rental agreements.

However, households in this area generally perceive documented rental to provide reasonable tenure security although rent control and tenants' rights are currently poorly enforced. Some housing exists without building permits, often due to extensions or subdivisions that have not been permitted. Such practices often take place when families require new dwellings for newly married family members, or sometimes to provide rooms to rent to others – particularly given the high rental values in this central quarter of the city. Such arrangements are often undocumented. In the case of subdividing or extending for family members, tenure is still perceived to be reasonably secure due to strong family traditions and religious customs.

Therefore, this is not necessarily the case when properties are subdivided and rented to non-family members without documentation.

4.1 Neighbourhood Individual Typologies

Three individual typologies in *Al-Seeef* neighbourhood were closely examined for more detailed information on land tenure and housing practices (Table 1), these include:

- Courtyard Housing (Type 2) in the east;
- Attached Housing (Type 3) in the southeast;
- Mixed use Housing (Type 9) in the northwest.

4.1.1 Land Tenure Distributions (Courtyard Housing)

The various tenure and ownership situations prevailing in a sample of courtyard housing studied in *Al-Seeef* are represented. According to field survey, Traditional courtyard housing (Type 2) which was built during 1950s and 60s, had an average plot size is 250sqm with average family size approximately 6 to 7 people. Although subdivided plots can be as little as 70sqm. The average house area is approx. 200m² that is usually built on 2 stories. The majority of households examined in this neighbourhood was registered formally through a title, are perceived to be secure, and have authorised building permits. A significant portion of homes here have been subdivided in line with legal conditions, but the subdivided plots themselves have not yet been registered. Other practices in *Al-Seeef* included family inheritance of properties, documented and undocumented, both of which is perceived to be secure due to family and religious traditions; documented and undocumented rental; and extension and letting of properties with and without building permits and with and without rental documents.

However, when houses without building permits are sold, owners are required to pay a fine to the

municipality property registration department. Houses and extensions built without permits tend not be threatened by demolition unless the extension has taken place outside of the plot boundaries. However, tenure here could be considered secure as it will ultimately be possible for households to attain registration for their subdivided plots, if within legal plot size limits. However, practices of illegal subdivision (the minimum legal plot size) also exist in this area. Since 2003, fines have been imposed by the municipality on owners of houses that have illegally subdivided. *Al-Seef* land tenure distributions, (Courtyard Housing) are illustrated in table 3.

Table 3: Al-Seef's Land Tenure Indicators according to Tenure Types (Courtyard Housing)

	Types	Indicator 1: Type of Tenure		Indicator 2: Building permits		
		Proportion of households	Proportion of women headed household	Is this tenure type secured (Y/N)	Authorised	Unauthorised
Formal tenure types	Registered			Y		
	Unregistered + Documented			Y		
	Family & Household			Y		
	Unregistered			Y*		
Irregular Tenure types	Irregular Documented			N**		
	Undocumented			N**		

	Dominate (estimated to be more than 50% household) .
	Significant (estimated to be between 25 – 50% household).
	Exists (estimated to be less than 20% household).
	Does not exist or insignificant.

Table Key : *Undocumented rental perception of security varies, depending on the landlord
 ** Particularly if subdivision is below legal requirements.

4.1.2 Attached Housing (Type 3)

The below table represents prevailing tenure situations in a sampled section of *Al-Seef* built with attached housing. Houses here were built in the 1970s, Average plot size is approximately 200sqm, average house size is approximately 190sqm (typically encompassing 2 stories), and the average household occupancy is approximately 6 persons. The majority of households here are registered through formal titles.

However, there are cases where original owners have subdivided their homes and provided housing to sub-renters, either through sub-leases, through inheritances, or – the most common of these – families subdividing their plots to provide housing in cases of newlywed family members or other similar situations. In such instances, the title for the plot generally remains with the head of the household, and subdivisions for family members are rarely registered.

However, inhabitants of all these types of households generally perceive their tenure to be secure. Two consistent issues with the studied sample and similar examples where attached houses are subdivided are overcrowding and inadequate street layouts. There are cases where extended families (with more than 6 people) are living in homes as smaller than 100m². Many houses are served by very narrow streets (3-4.5 meters wide) originally planned since 1869, but widened somewhat in early twentieth century, Services were provided to these streets during the 1970s, however the capacity of infrastructure cannot serve the level of demand today. This is particularly due to the extent of subdivision and subsequent overcrowding, and lack of investment.

In *Al Seef*, an entertainment complex originally intended for high ranking Army officers was occupied by Internally Displaced People (IDPs) and rural migrants. They lived there from 2003 to 2008. During this time local in the 2003 invasion, Ba'ath party administrative buildings that were damaged or destroyed by international forces were looted by local people. During the period of internal displacement that followed the war, due to political tensions which escalated in 2006, such buildings were informally occupied by IDPs, moving due to political tensions (UN-HABITAT, 2010). They were also occupied by rural migrants, looking for work in urban areas as well but also settling opportunistically, in hope of receiving compensation to vacate these premises. *Al-Seef* land tenure Indicators, (Attached housing), is illustrated in table 4.

Table 4: *Al-Seef's* Land Tenure Indicators according to Tenure Types (Attached Housing).

	Types	Indicator 1: Type of Tenure		Indicator 2: Building permits		
		Proportion of households	Proportion of women headed household	Is this tenure type secured (Y/N)	Authorised	Unauthorised
Formal tenure types	Registered			Y		
	Unregistered + Documented			Y		
	Family & Household			Y		
	Unregistered			Y*		
Irregular Tenure types	Irregular Documented			N**		
	Undocumented			N**		

	Dominate (estimated to be more than 50% household)
	Significant (estimated to be between 25 – 50% household)
	Exists (estimated to be less than 20% household)
	Does not exist or insignificant

*Undocumented rental perception of security varies, depending on the landlord. ** Particularly if subdivision is below legal requirements.

4.1.3 Mixed Use Housing (Type 9)

The two major commercial buildings of the area streets, including *Al-Haboubi* Street are used for commercial purposes on their ground floors, and for residential purposes on upper floors. Average plot size is approximately 200 m², with ground floors built up to cover 90-100% of plots, and upper levels occupying 60% of plots. Upper floors often cantilever 2-3 meters over pavements. However, *Al Haboubi* Street and other streets intended for commerce but still experience crowding, since buildings were converted by the owners from residential use to commercial in the 1970s. In these main streets of *Al-Seef*, residential housing has been formally converted into commercial shops, and small grocery stores. However, small industries such as carpentry, mechanic, and blacksmith shops contravene the official land use. In some cases, houses here were converted outright into commercial premises; in others, families lived in smaller quarters after subdividing their homes. Households owning properties with ground floor commercial and upper levels residential have moved to other neighborhoods due to noise and pollution, and due to the income potential of letting. Ground floors (commercial/light industry) accommodation has high rental values, while upper levels have lower rental values, and therefore are usually occupied by lower-income families. While most of these converted properties were formally registered, a small percentage of these conversions were done through subdivisions within legal limits, but without registering the subdivided plots.

Estimated to be more than 50% household showed an impact on this area's mixed use housing, as an indicator. This area also suffers traffic congestion, poor road conditions and pollution, which is reflected in security level of tenure in area. *Al-Seef* land tenure Indicators according to Mixed Use Housing tenure type is illustrated in table 4.

Table 4: Al-Seef 's Land Tenure Indicators according to tenure types (Mixed Use Housing).

	Types	Indicator 1: Type of Tenure		Indicator 2: Building permits		
		Proportion of households	Proportion of women headed household	Is this tenure type secured (Y/N)	Authorised	Unauthorised
Formal tenure types	Registered			Y		
	Unregistered + Documented			Y		
	Family & Household			Y		
	Unregistered			N**		
Irregular Tenure types	Irregular Documented			N**		
	Undocumented			N**		

	Dominate (estimated to be more than 50% household)
	Significant (estimated to be between 25 – 50% household)
	Exists (estimated to be less than 20% household)
	Does not exist or insignificant

5.0 Al-Seef neighbourhood (overall)

The paper presents complex dimensions of the Iraqi tenure indicators focused on influence of land tenure distributions. The evictions have taken place in a city where the majority of the population lives with lack of documented forms of land possession and ownership in informal housing areas. Thus consequential insecurity of land tenure has occurred. So, without a legally recognized Shelter Ownership; Vulnerable individuals and groups of Women, children, youth, older, indigenous people, ethnic and other minorities all will suffer excessively and become under forced eviction.

Therefore, “Documented Tenure term” as protection of ownership right, is all processes that should be issued through legal institutions. Thus, documented forms of Tenure are important step to save rights of ownership particularly in common Law Systems avoiding of forced eviction facing that cause a sever humanitarian crisis, as is illustrated in table 5.

Table 5: Al-Seef 's Land Tenure Indicators according to tenure types (overall).

	Types	Indicator 1: Type of Tenure		Indicator 2: Building permits		
		Proportion of households	Proportion of women headed household	Is this tenure type secured (Y/N)	Authorised	Unauthorised
Formal Tenure Types	Registered			Y		
	Unregistered + Documented			Y		
	Family & Household			Y		
	Unregistered			Y**		
Irregular Tenure Types	Irregular Documented			N**		
	Undocumented			N**		

	Dominate (estimated to be more than 50% household)
	Significant (estimated to be between 25 – 50% household)
	Exists (estimated to be less than 20% household)
	Does not exist or insignificant

*Undocumented rental perception of security varies, depending on the landlord

** Particularly if subdivision is below legal requirements.

6 Conclusions

The study observed that tenure indicators are linked with security level among the households in the study area hinges significantly on tenure types and the residential land use. Also, households' involvement in non-formal households in the urban areas that augments income level with assets base that enabled some local households to live in informal tenure practices.

Based on the findings of this study, the following policy measures aimed at improving households' security status in the study area were recommended:

- Currently in the study area, tenure indicators are predominantly formal households intensive, at a continuation level and characterized by local traditional practices. There is therefore the need to increase formal access to extension security, official cooperatives to enhance household's productivity. Efforts towards extension tenure security strengthening in the urban areas, households should be encouraged to form and sustain formal tenure practices and increased awareness on tenure security.
- As with the Neighborhood's case in *Al-Seef*, the paper found that the tenure types provide insight into the legal framework under which people occupy land and homes, and therefore provides an initial indication of the level of tenure security.
- Although the majority of *Al-Seef's* households here have registered tenure via a formal title, this tenure type is still unauthorized and is apparently to be secured.
- *Al-Seef* is example demonstrates the fact that government since 2003 has been weak in enforcing land use regulations, particularly in peripheral areas, and has a tendency to eventually modify land use on its master plan to reflect actual practices.
- The paper concludes that the residential land uses have been modified illegally by their owners. Due to weak rule of law, and public acceptance of commercial and light industrial uses, no active action has been taken against the local informal practices, and it is expected that in due course, the land use on the city's master plan will be changed to formalize these activities.

7 Suggestion for further Study

Based on the findings of this paper, there is need to examine in deep the tenure security determinants among non-formal households in the urban areas according to tenure types and the residential land use. This will offer an opportunity for comparison of land security status among households in the urban areas of *Al-Nassiriya* city, Iraq.

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