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# Comparative Study of the Legal Aspects of the Transfer of Ownership and Interests in Public Property and Legal Restrictions in Iranian and Iraqi Law

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## ABSTRACT

In various legal systems, public property occupies a distinct and vital position due to its intrinsic connection with the public interest and its essential function in advancing governmental objectives. Such property encompasses real estate, infrastructure, natural resources, and certain state-owned interests, all of which are governed by specific regulations and legal restrictions that determine their use and transfer. In both Iran and Iraq—two countries with independent legal systems yet influenced by shared cultural and religious foundations—the issue of transferring public property and monitoring this process holds significant legal, political, and economic implications. A major challenge arises from the inherent tension between safeguarding the public interest and ensuring economic efficiency in the utilization of such property. Concurrently, administrative corruption and weak supervisory mechanisms have, in certain instances, resulted in the misuse or mismanagement of public assets, underscoring the urgent need for reform in legal and oversight frameworks. The structural and procedural differences in the legal systems of Iran and Iraq concerning public property provide fertile ground for comparative analysis and mutual legal enrichment. Given the critical role of public assets in securing collective welfare, their transfer is strictly regulated by laws that impose specific conditions and limitations across both jurisdictions. This study adopts a comparative legal approach to analyze the mechanisms governing the transfer of ownership and usufruct rights in public property, as well as the corresponding legal constraints, within the frameworks of Iranian and Iraqi law. The findings reveal that both legal systems have developed comprehensive frameworks for the allocation, lease, and sale of public property to safeguard the public interest; nevertheless, notable differences persist in their legal structures, administrative processes, and implementation mechanisms. In conclusion, this article provides a comparative legal analysis and proposes recommendations for enhancing the effectiveness and integrity of public property governance within both Iranian and Iraqi legal systems.

**Keywords:** *transfer of ownership; transfer of interests; public property; legal restrictions*

## Introduction

With the collapse and dissolution of monarchies and royal systems worldwide, and the emergence of new scholarly ideas proposed by intellectuals in shaping models of governance adopted by nations, the notions of



democracy and popular sovereignty have increasingly influenced the establishment and administration of states, particularly in recent centuries (1, 2). Consequently, the management of public assets has naturally fallen under the responsibility of governments, and public property has attained a distinct legal and functional status (3). In this context, and to preserve and protect public assets, various laws have been enacted in accordance with the functions of relevant ministries and governmental bodies and have been officially promulgated as binding regulations (4). Public property, as an instrument of governance, plays a crucial role in the implementation of public policies. The utilization of such property—whether in form or benefit—is permissible only within the limits prescribed by law, since any unregulated use may lead to corruption, waste of public resources, and infringement of the people's rights (5).

This article aims to conduct a comparative analysis of the legal dimensions and statutory restrictions governing the transfer of public property in Iran and Iraq. Despite the fundamental importance of public assets in the legal systems of these countries, a review of legislative history in Iran, judicial precedents, and existing theoretical perspectives reveals that there remains no clear and comprehensive definition of the various categories of public property and the legal frameworks governing them (3, 6). As previously noted, social, economic, political, and historical factors play determining roles in defining the nature, scope, and governing system of such assets (5).

In the field of economics, a meaningful distinction is often not drawn between public ownership and state ownership; rather, the focus lies on the extent and manner of state intervention in ownership and economic governance. Within this framework, the state is viewed not merely as a political institution, but as an entity capable of influencing markets and implementing preferential policies vis-à-vis economic actors (7). In traditional thought, the state was considered a political entity responsible for maintaining public order, defending borders, and safeguarding national sovereignty (2). However, in the modern era and with the emergence of nation-states, the role and position of the state underwent fundamental transformations, manifested in scientific progress, industrial advancement, and economic development as unavoidable consequences of these changes. Today, nation-states derive meaning within the context of industrialization, infrastructure development, and the expansion of transportation and communication networks (1).

As a result of these transformations, the nature, status, and functions of the state have also evolved, requiring public law to adapt to these new realities. Historically, theoretical frameworks were often shaped by dualistic models such as the opposition between liberal and socialist states, free markets versus planned economies, or individual versus collective interests. Over time, however, these simplistic dichotomies have been replaced by more complex and multidimensional perspectives (8). In the realm of public law, numerous theories have emerged concerning public authority, including command-based models under constitutionalism, the principle of separation of powers, checks and balances, democracy, representation, good governance, the rule of law, new public management, and private sector participation in public affairs (4, 9).

Among these developments, the emergence of a new branch known as *economic public law* is particularly noteworthy. This branch focuses on the complex interactions between the state and the market, introducing new forms of governmental intervention. One such form involves the establishment of extensive regulatory systems that transcend the traditional concept of administrative policing, enabling the state to deploy official inspectors and governmental agents within private institutions to exercise more active and in-depth oversight over economic processes (5, 10).

Iraq, as a nation endowed with vast oil resources and extensive public property, has in recent decades faced numerous challenges in the management, sale, and transfer of public assets. Wars, sanctions, political instability,

and administrative corruption are among the key factors that have affected the legal and executive frameworks governing public property in the country (8). The following section examines the historical background and general status of the sale and transfer of public property in Iraq from legal and administrative perspectives, along with the challenges involved. Public property, as one of the fundamental pillars of sovereignty, plays a vital role in securing public interests. Various legal systems, through specific definitions and criteria, have sought to distinguish public assets from private property and have enacted special regulations to safeguard them (3). In this regard, the continued review and modernization of laws concerning public property constitute a crucial step toward protecting citizens' rights and ensuring equitable utilization of national resources (4).

The main objective of this article is to conduct a comparative analysis of the legal mechanisms and statutory limitations related to the transfer of ownership and rights of public property in the legal systems of Iran and Iraq. Considering the significance of public assets as instruments for realizing the public interest and the risks posed by their unregulated transfer, this study aims to:

- Conduct a comprehensive examination of the juridical provisions governing the transfer of public property in both legal systems;
- Identify and explain the legal similarities and differences between the two countries within these bounds;
- Detect existing gaps or administrative challenges within each system; and
- Ultimately, present recommendations for reforming or strengthening the current legal framework (3, 6).

The central question of this article is: What are the key similarities and differences in the legal provisions and limitations governing the transfer of ownership and rights of public property in the legal systems of Iran and Iraq, and how do these differences affect the efficiency of governmental systems and the protection of public interests? The research methodology is descriptive–analytical and follows a comparative legal approach (4).

### **Concept and Types of Public Property**

According to the criteria derived from French law regarding the distinction between public and private property of the state, public property can be defined as property that is incapable of private ownership. This rule itself is an effect of public ownership, not a criterion for its identification. In other words, public property must first be recognized, and then the incapacity for private ownership can be attributed to it. Article 538 of the French Civil Code considers public property as part of the French territory that is not subject to private ownership. Examples include seas, rivers, ports, roads, and streets. Properties that, by their nature, are part of the national territory and possess a public character are regarded as public property (10).

As previously mentioned, other criteria, including “public use” or “dedication to the public interest”—meaning direct use by the general public—and the criterion of allocation for public benefit, have also been expressed within French legal thought and judicial practice (10). Therefore, since French law also lacks a specific statute distinctly classifying public and state property or enumerating such properties, the legal status of these assets in both the Iranian and French legal systems is almost similar. The difference lies in the fact that in France, the Constitutional Council and administrative courts have articulated these criteria based on legal principles and rules governing public property (8).

In contrast, the Iranian legal system has been largely silent in judicial practice. So far, neither the Supreme Court's unified rulings, the Administrative Justice Court's decisions, nor other court rulings have explicitly addressed the distinction between public and state property (4).

Some authors argue that the Iranian Civil Code does not accept the criterion of incapacity for private ownership (6). The title of the third chapter of the Civil Code—*Properties Without a Specific Owner*—implies that any property lacking a specific owner is considered public property. However, properties with a specific or unspecified owner are regarded as private property. Fundamentally, the criterion for identifying public property is its allocation to collective and public interests (3).

Other provisions of the Civil Code reflect this view as well. Article 24 of the Civil Code states: “No one may possess public roads, streets, and alleys that are not blocked at the end.” Article 25 adds: “No one may possess properties that are used by the public and do not have a specific owner, such as bridges, caravanserais, public water reservoirs, old schools, and public squares.” Moreover, Article 26 enumerates properties that the government holds for public interests and national benefits, for instance, military and war assets, governmental telegraph wires, public museums, libraries, historical monuments, and similar assets (6).

### A. Definition of State Property

In Iranian law, state property is generally divided into two main categories: (1) public property, which is allocated for public use (e.g., roads and bridges), and (2) the government’s exclusive property, which belongs solely to the state but is not designated for direct public use (3). State property refers to assets over which the government or a public entity holds ownership rights similar to those of private individuals over their own possessions. According to this definition, it is clear that the owner of state property is the government itself.

However, the key question arises: What exactly does the term “state” mean? Does it carry a uniform meaning across all legal texts, implying a single owner of state property? Or, if multiple interpretations of “state” exist, could there be multiple owners? This question is central in this section, and its answer holds considerable significance. To address it, one must refer to various scholarly sources, including the writings of political theorists and experts in public and constitutional law (2, 4).

The concept of “state” is one of the most fundamental and complex notions in political science and public law, and different scholars have presented diverse perspectives to unravel its intricacies (1, 8). A detailed examination of these views exceeds the scope of this article. Nonetheless, briefly stated, in legal and political texts, the term “state” is used in three senses: the general sense, the specific sense, and the narrow sense (9).

Dr. Jafari Langroudi defines state property as properties that do not belong to private individuals or juridical persons, such as unowned lands (*mowat*), public squares, and public libraries. Some of these properties are subject to private ownership, while others, like public squares, are not. Moreover, in legal terminology, state property is defined as any movable or immovable asset under the ownership and control of the government.

To provide criteria for distinguishing state property from public property, it should be acknowledged that state property holds two legal meanings: in the broad sense, state property includes assets of the executive branch as well as those of the state in the general or governmental sense; in contrast, the narrow meaning refers solely to the assets of the executive branch (4).

It is worth noting that according to Articles 106 and following of the Iranian *Public Accounting Law* (approved in 1987), state property consists of assets over which the government exercises ownership rights, and such properties can be transferred by the government to third parties under public regulations (5).

In Iraqi law, this distinction is also recognized through terms such as *public property* and *state-owned property*, which correspond respectively to public property and exclusive state property (3). The primary legal basis for

defining state property in Iraq is the *Iraqi Civil Code*. Article 87 of the Code states: “Public property consists of assets owned by the state or public legal entities and allocated for public benefit, whether such allocation is factual or established by law, decree, or official decision” (4).

### *B. Distinction Between the Corpus and Benefits of Property*

The corpus of property (the “thing” itself) refers to the asset itself, whereas benefits represent the fruits or temporary usufruct derived from that asset. In practice, the transfer of benefits (such as lease agreements) is not necessarily more restricted than the transfer of the corpus (such as sale), but it is subject to legal requirements (6).

Private ownership is defined as the ownership of property belonging to a specific person or persons—a right granted by law. According to Article 30 of the Civil Code: “Every owner has the right to possess, use, and dispose of his property, except in cases where the law has provided exceptions.” This article refers to the legitimate and lawful right of use, and on this basis, the owner holds the right to transfer and waive ownership. Under the principle of free will sovereignty, the owner is entitled to any form of control over their property (3).

Therefore, whoever owns a property has the right to exercise full dominion and authority over it, and consequently, the benefits and fruits of any property belong to the owner along with the corpus (5). This rule, known in legal terminology as the *principle of dominion (tasallot)*, is limited to ensure that use and enjoyment do not harm others or exceed customary bounds or purposes of necessity and prevention of harm to the owner (Article 132 of the Civil Code). In cases where the principle of dominion conflicts with the *no-harm principle (la-darar)*, the latter prevails (6).

### **Transfer of the Corpus of State Property**

In both Iran and Iraq, contracts concluded by public entities such as municipalities may be classified as *administrative contracts* if they contain exceptional clauses—such as unilateral termination rights or mandatory compliance with specific executive regulations (9).

In Iran, based on the *Municipal Financial Bylaw* and the provisions of the *Municipal Law* (enacted in 1955), municipalities are authorized to sell or lease their assets through public auction, provided that public interests are observed. These contracts are often governed by special administrative rules and benefit from specific juridical protections (3, 4).

Similarly, in Iraq, the *Law on the Sale and Lease of State Property No. 25 of 2011*, along with Executive Regulation No. 1 of 2012, provides the legal framework for municipal transactions (8). Both the State Councils and the Iraqi Administrative Judiciary have regarded municipal contracts as administrative in nature, provided they meet certain special conditions (10).

In Iranian judicial practice, Unifying Opinion No. 700 issued by the General Board of the Administrative Justice Court (2016) explicitly states that contracts concluded by municipalities—even if they contain specific exceptional conditions—remain subject to the provisions of the *Municipal Financial Bylaw*. Any deviation from the required legal procedures renders such contracts void (4).

In Iraq, the Federal Court of Appeals Ruling No. 5787/H.T/2026, which upheld the termination of a lease contract by the mayor of Kirkuk due to the tenant’s breach of contract, reflects a judicial position recognizing the municipality’s authority to exercise administrative powers in such matters (8, 9).

### *Governing Regulations on Transfer in Iranian Law*

As stipulated in Iranian law, the ownership of state-owned property (tangible assets) is generally non-transferable except in cases where the law expressly allows (3, 4). The transfer of usufruct (benefits) is recognized as a more common method, which itself is subject to specific regulations designed to ensure the optimal utilization of public assets while safeguarding national interests (5). In Iran, the transfer of ownership of state property—especially public property—is subject to explicit legislative authorization. The principle of non-transferability of public property is implicitly recognized in Iranian laws, and any conveyance may only occur within the framework of special provisions, including executive bylaws approved by the Cabinet or specific statutory permissions (e.g., the *Law on Adjusting a Part of Government Financial Regulations*) (6).

The transfer of state-owned tangible property refers to the conveyance of ownership of immovable or movable assets belonging to the state to natural or juridical persons. Since these assets are regarded as national assets and belong to all citizens, the presumption is that their transfer is prohibited, except under exceptional statutory authorization (3). These restrictions are established to preserve the public interest, prevent the misuse of public funds, and protect the rights of future generations (7).

#### 1. The Legal Basis for Transferring Tangible State-Owned Property

The legal foundation for the transfer of state-owned tangible property is set out in Article 115 of the *Public Accounts Law of the Country* (enacted in 1987), which states:

“The sale and transfer of immovable property belonging to ministries and governmental institutions shall be conducted solely upon the proposal of the relevant minister or highest authority of the respective body and with the approval of the Cabinet.”

Accordingly, only immovable assets—such as land and buildings—fall under the purview of this article, and both a proposal by the executive body and Cabinet approval are required for such transfers (4). The transfer must be conducted through a public auction to ensure transparency and the safeguarding of public interests.

The *Bylaw on State Property* (enacted in 2012 and amended in 2021) provides the procedural details of Article 115. Article 94 of this bylaw stipulates that executive bodies must officially evaluate the property prior to transfer, a process to be carried out by a certified judicial expert. Article 97 specifies exceptions to the auction requirement—such as transfers between governmental entities—while Article 98 mandates that proceeds from such sales be deposited into the state treasury and expended within the framework of the *National Budget Law* (9).

#### 2. Types of State-Owned Property and Conditions for Their Transfer

If we categorize state-owned property and the conditions governing its transfer, it may be divided into two main categories:

- Public Property (*Anfal*)
- Exclusive (Privately-Owned) State Property

Under Article 45 of the Constitution:

“Public wealth and *Anfal*, including wastelands, mines, seas, and the like, are under the control of the Islamic government and are not subject to private ownership.”

Consequently, these assets are essentially non-transferable except under exceptional legal authorization. For instance, certain wastelands or natural resources may be transferred for development projects through specific parliamentary approvals (3).

Exclusive state property constitutes the second category of state-owned assets—referring to assets that the state owns as a private legal entity. Examples include administrative buildings or surplus lands. These assets can be transferred in compliance with juridical formalities, and due to the state's exclusive ownership, such transfers are governed by stricter financial regulations (5).

Under Article 97 of the *State Property Bylaw*, transfers to other governmental entities may occur without an auction, provided both parties are governmental bodies and the transfer serves a public purpose (4). Additionally, the transfer of state land to municipalities or public institutions is permitted only through a special resolution and under strict juridical conditions.

Lastly, transfers of state property within the framework of national development projects are also exceptions to the general prohibition. For example, annual *Budget Laws* may authorize the government to sell certain surplus properties to finance development projects (6).

In conclusion, the transfer of tangible state-owned property in Iranian law may not occur unless expressly authorized by law. While the transfer of exclusive state property is possible, public property (*Anfal*) is generally non-transferable. The transfer process must remain transparent, conducted through public auctions, and subject to oversight by the *Supreme Audit Court* to prevent any infringement of public rights (3, 9).

### *B. Governing Regulations on Transfer in Iraqi Law*

In Iraq, the *Law on the Administration of State Property* (Law No. 32 of 1986) allows for the transfer of public property only under specific conditions, and only where Parliament or another competent authority has provided approval (8). Similar to the Iranian framework, the prevailing principle in Iraq is that the transfer of public property is prohibited unless explicitly authorized by law. Accordingly, the *Public Financial Management and Budget Law*, the *Public Law*, and various other legislative instruments governing state-owned property prescribe detailed procedures for the assignment, sale, or lease of public assets (4).

The sale of public property must be conducted via public auction in the interest of transparency and public welfare (9). Core principles governing the administration of public property—such as transparency, promotion of public welfare, and the principle of free competition—are explicitly set out across multiple legislative instruments. Contracts for the sale or lease of public property are subject to direct oversight by supervisory bodies, and noncompliance with the applicable regulations can render such contracts void or expose officials to liability (10).

To safeguard public interests and prevent misuse, contracts concerning public property—particularly at the municipal level—are subject to numerous juridical restrictions and compliance requirements, which must be strictly observed (1). These agreements, concluded by ministries, public organizations, and non-ministerial state institutions, play a critical role in the management of public assets and in securing financial resources for the state. However, given their sensitivity, they are governed by strict legal frameworks and rigorous oversight mechanisms (4).

In Iraq, contracts for the sale or lease of public property concluded by governmental or municipal entities fall under public law and carry specific legal implications (8). Contracts involving ownership transfer (e.g., sale agreements) and those involving usufruct rights (e.g., leases) receive special legislative attention due to their direct

relation to public assets (3). In many legal systems—including those of France, Egypt, and Iraq—such contracts, when containing exceptional clauses or sovereign powers granted to administrative authorities, are classified as *administrative contracts* (9, 10).

Although earlier Iraqi jurisprudence occasionally treated municipal lease contracts within the civil law framework, contemporary rulings by Iraq's Administrative Judiciary affirm their public-law nature. For instance, *Decision No. 65/Administrative/Appellate/2251* upheld the termination of a lease agreement due to the lessee's failure to fulfill obligations, recognizing the administrative character of the contract (4).

These legal restrictions aim to ensure transparency, fairness, and efficiency. The primary limitations governing the transfer of public property under Iraqi administrative law include:

**Requirement of Public Auction or Tender:** One of the fundamental principles in the sale or lease of government-owned property is the obligation to conduct a public auction or tender process, fostering competition and preventing favoritism or corruption (8).

**Prohibition on Selling Vital and Strategic Assets:** Certain public properties, due to their essential nature and role in public services, may not be sold. Such assets must be preserved as permanent public capital and managed under specialized legal frameworks (3).

**Necessity of Approval by Competent Authorities:** The sale or lease of municipal property requires the approval of the City Council or other relevant bodies. This requirement reinforces institutional oversight and prevents unauthorized or unlawful decisions (4, 9).

### Transfer of the Benefits of Government-Owned Property (Lease, Use, etc.)

In Iranian law, the transfer of the benefits of government-owned property functions as a mechanism for the economic utilization of public assets, provided it is conducted pursuant to juridical procedures, secures public interests, and remains under formal supervision (3). Although relatively comprehensive regulations exist, effective implementation requires greater transparency, streamlined administration, and stronger anti-corruption safeguards (9, 10).

#### A. Mechanisms of Benefit Transfer in Iran

Under the *Bylaw on State Property* and executive guidelines issued by the Ministry of Economic Affairs and Finance, leasing or granting use of public assets is contingent upon public auction procedures, official valuation, and safeguards for the public interest (4). In Iranian law, transferring the benefits of public assets—such as leasing or temporary use—is a flexible and commonly employed tool by which the state utilizes public property. Unlike the transfer of ownership, which is subject to stringent regulatory restrictions, the transfer of benefits enables revenue generation or infrastructure support through temporary, regulated access to state property (5). Nevertheless, such transactions are subject to specific regulatory requirements, administrative protocols, and rigorous oversight to prevent corruption, monopolistic practices, or the squandering of public resources (8).<sup>9</sup>

Article 114 of the *Public Accounts Act* (1987) stipulates:

“Executive agencies may lease out their movable or immovable property that is deemed surplus to their needs, provided that such leasing is carried out in accordance with a bylaw approved by the Cabinet.” (4)

Chapter 8 of the *State Property Bylaw* is dedicated to the “Procedure for Transferring the Benefits of State-Owned Assets.”

- **Article 89:** “Leasing and utilization of state-owned immovable property must comply with this bylaw and be approved by the highest-ranking official in the relevant executive body. In principle, such transactions shall take place via open bidding procedures.” (3)

- **Article 90:** Outlines exceptions to public auction requirements, permitting lease agreements without auction only in limited circumstances, e.g., when the lessee is another government agency, or when the lease is granted to charitable or public-benefit organizations with ministerial (or higher) approval (4).

- **Article 91:** Provides that the lease term should not exceed 10 years unless otherwise authorized by the Cabinet (9).

- **Article 92:** Requires inclusion of a termination clause permitting the executive agency to cancel the agreement upon a change in property use or renewed administrative need (3).<sup>10</sup>

Public auctions remain the default mechanism for leasing government-owned property, ensuring competition and maximizing returns for the state; auctions must be publicly advertised, and the base rental value set by an official appraiser certified by the judiciary (4). Exceptions to auction requirements are construed narrowly (e.g., inter-governmental transfers or leases for educational, health, or public-service purposes) and are subject to heightened justification and approval (8). Lease contracts are time-bound and commonly include unilateral termination provisions tied to administrative necessity or changes in designated use (9).

### *B. Comparable Status in Iraq*

In Iraq, under the *Law on the Administration of State Property*, the utilization of public assets through lease or temporary transfer requires a decision by the Public Property Board and must comply with transparency and public-bidding principles; even in exceptional cases, duration and purpose must be clearly specified in the contract (4, 8). The governing framework—primarily *Law No. 32 of 1986 on the Sale and Lease of State Property* and its executive regulations—mandates public auction for leases but faces practical challenges, including weak oversight, broad exceptions, and corruption risks. Reforms aimed at strengthening executive regulations, improving auction transparency, and reinforcing supervisory institutions are therefore pivotal (9, 10).

As in many legal systems, the transfer of benefits in government-owned property to natural or legal persons is a legitimate modality of public-asset utilization. Iraqi authorities are empowered by law to lease or temporarily assign use of public or state-owned assets, subject to strict formalities designed to protect state property, prevent corruption, and secure the public interest (3). The principal instruments are:

- (a) *Law No. 32 of 1986 on the Sale and Lease of State Property*, explicitly permitting the leasing of state property; and

- (b) Executive regulations and administrative instructions issued by the Ministry of Finance and sectoral ministries, which govern leasing modalities and, at times, are complemented by provisions in annual budget laws (4).<sup>11</sup>

**Article 3 of Law No. 32 of 1986:** “The authority to lease state-owned property lies with ministries, departments, and public institutions, and must be exercised in accordance with applicable executive regulations.” (4)

Accordingly, competent Iraqi authorities include: (i) the Ministry of Finance for general public movable and immovable property; and (ii) ministries and independent public institutions for assets under their direct control (9). By default, leasing proceeds via public auction, subject to statutory exceptions (e.g., charitable or public-interest entities, government-affiliated institutions, or state-owned companies) (8). Lease terms are limited and extensions require renewed approval. Under Law No. 32 and its regulations, authorities may unilaterally terminate leases for

non-payment of rent, unlawful use or unauthorized changes, or urgent government need (10). The Ministry of Finance not only promulgates executive instructions and issues licenses but also supervises contract performance to ensure legal compliance and protection of public interests (9).<sup>12</sup>

### Restrictions and Considerations Governing the Transfer of State-Owned Property

Restrictions and considerations governing transfers serve to safeguard public assets and prevent corruption and abuse. Both Iranian and Iraqi systems aim to implement suitable frameworks, though persistent challenges—weak oversight and political or economic interference—underscore the need for legal reform and enhanced transparency (4, 10). One foundational principle of public law is the protection of public and state-owned assets: these assets are part of the nation's wealth and belong to the public, with the state acting as trustee and administrator, not true owner (8). Consequently, any transfer—of substance (*'ayn*) or benefit (*manfa'ah*)—is subject to constitutional and statutory limitations (3).

The most fundamental rule shaping the juridical regime of state-asset transfers is the *principle of inalienability*. In both Iran and Iraq, the prevailing rule is non-transferability of state-owned resources absent legal authorization or an overriding public-interest justification; this principle operates as a structural guarantee for preserving communal assets (4). Exceptions must be clearly articulated by law and executed under the supervision of competent oversight bodies. The concept means that certain public properties are, by nature, not eligible for transfer to private persons because they are collective resources intended to serve public interests; the state thus acts as custodian and administrator rather than proprietor (1). The objective is to protect common resources, deter privatization of public wealth and economic monopolies, and ensure continued public access and benefit (7).

In Iran, the constitutional basis lies primarily in Article 45, which states that natural resources and public wealth (*anfāl*) are not subject to private ownership and are only to be managed and utilized by the state (4). Non-transferable assets under Iranian law include natural resources (e.g., mines, oil, gas, forests, pastures), *anfāl*, government-owned public property (e.g., roads, bridges, parks), and certain categories dedicated to public purposes (3, 6). Any transfer—of substance or benefits—must align with the public interest and protect state and citizens' rights; violations may result in nullity or criminal/administrative liability (9).

In Iran, oversight of state-asset transfers is exercised by the Supreme Audit Court and the General Inspection Organization of Iran, while in Iraq similar supervisory roles are performed by the Federal Board of Supreme Audit and the Integrity Commission (8, 9).

### Conclusion

The comparative analysis reveals that, although the legal frameworks of Iran and Iraq share fundamental commonalities—for example, the inalienability of public property unless explicitly authorized by law—there are notable differences in the implementation of regulations, responsible institutions, and oversight mechanisms. The juridical systems governing the transfer of state-owned property in both countries require fundamental reforms at the levels of legislation, oversight, and administration.

Confronted with persistent issues—such as corruption, weak institutional oversight, and structural inefficiencies—achieving effective governance of state assets demands structural reform, procedural transparency, and strengthened supervisory institutions to ensure the protection of public interests and prevent the waste of

national resources. Accomplishing this goal will require serious governmental commitment and active participation from legislative, supervisory, and judicial authorities.

The comparative review of juridical systems in Iran and Iraq regarding the transfer of ownership and usufruct of government-owned property indicates that both countries, recognizing the role of state assets in serving public interests, have adopted specific regulations to safeguard such property. Although both legal systems are rooted in Islamic jurisprudence and influenced by modern juridical doctrines, differences exist in institutional structures, implementation methods, and levels of oversight concerning state property transactions. In Iran, comprehensive statutes such as the *Public Accounts Law* and the *Law on Regulating Part of Government Financial Provisions* establish the general framework for the transfer of state property. Active oversight institutions—including the Supreme Audit Court and the General Inspection Organization—are responsible for monitoring such transfers. Nonetheless, the complexity of administrative procedures, overlapping decision-making bodies, lack of transparency in certain stages, and legal gaps—especially regarding usufruct transfers—have created avenues for abuse and corruption.

In Iraq, while regulations for the sale, lease, and transfer of state assets exist, significant challenges persist, including weak oversight institutions, widespread administrative corruption, political instability, and serious transparency deficits. Many property transfers in Iraq remain subject to political and economic influence, which hinders the realization of public interest objectives.

A shared necessity in both countries is the reform of legal frameworks and enforcement mechanisms to ensure both economic efficiency in the use of public assets and the protection of collective interests. However, Iraq is in greater need of rebuilding its supervisory structures and establishing the rule of law more firmly.

The following recommendations are proposed:

1. **Present clearer and more comprehensive legislation:** Both countries should enact specialized and independent laws addressing the classification of state-owned assets, the conditions for transferring ownership or usufruct, and the rules governing such transactions. These laws must be drafted with input from experts in public law, economics, and policy, ensuring alignment with national development goals while avoiding ambiguity and conflicting interpretations.
2. **Strengthen oversight mechanisms and transparency:** Establishing electronic platforms for recording and supervising asset transfers, public disclosure of transaction data, and active inspection by monitoring bodies can help reduce corruption and foster public trust. In Iran, empowering the Supreme Audit Court and General Inspection Organization and mandating periodic public reporting are essential. In Iraq, alongside reforming supervisory bodies, there is a fundamental need to establish independent anti-corruption entities.
3. **Clearly distinguish between public, state, and private assets:** Juridical systems in both countries must adopt precise definitions of “state-owned property,” “public property,” and “private state assets” to ensure differentiated legal and administrative approaches tailored to each category, thereby preventing misuse or unlawful appropriation.
4. **Restrict the transfer of strategic assets:** Properties critical to national sovereignty and essential public services must be subject to stricter transfer restrictions. Any transfer should occur only under exceptional conditions and require approval from high-level legislative and supervisory authorities.

5. **Provide effective legal sanctions:** Legislation must include clear and enforceable penalties for violations of asset transfer laws, including annulment of unlawful contracts, restitution of misappropriated property, and criminal or administrative accountability for violators.
6. **Draw on successful international models:** Given the relevance of comparative law, both Iran and Iraq should study and adapt the experiences of countries with transparent and effective systems for managing and transferring public assets, such as France, Germany, and Scandinavian nations.
7. **Promote juridical education and public awareness:** Training public officials, judges, and citizens on the legal status of state assets and the rules governing their transfer can play a key role in preventing violations and strengthening juridical culture.
8. **Improve bilateral legal and institutional cooperation:** Considering the cultural and juridical affinities between Iran and Iraq, creating joint working groups to exchange experiences and harmonize practices can promote the development of public and economic law in both countries.

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### Authors' Contributions

All authors equally contributed to this study.

### Declaration of Interest

The authors of this article declared no conflict of interest.

### Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

### Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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