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Protecting property: the Iraqi experience

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Protection of property rights on a fair and non-discriminatory basis within Iraq's multi-ethnic society is central to the end of displacement and the start of durable solutions.

In the year of the 20th anniversary of the Guiding Principles on Internal Displacement it is worth reflecting on the central role of property rights at every stage of the displacement cycle. Fair, transparent and objective property laws which guarantee security of tenure can play a role in preventing conflict; protection of the property rights of internally displaced persons (IDPs) during displacement can help facilitate the process of returns; and post-conflict property restitution can be instrumental in reconciliation and the resolution of long-term disputes which might give rise to future conflicts and displacement.

Principle 21 of the Guiding Principles notes that “property and possessions left behind by IDPs should be protected against destruction and arbitrary and illegal appropriation, occupation or use” while Principle 29 highlights the responsibility of government to assist returning IDPs “to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement”. The Guiding Principles also provide that authorities should assist IDPs in obtaining appropriate compensation or another form of fair reparation when recovery of property and possessions is not possible.

The level of damage to property following recent conflict in Iraq is staggering. In assessments conducted by the UN Migration Agency (IOM) in 2016, up to 90% of respondents in Nineveh governorate, which includes Mosul and Sinjar, and 78% of respondents in Salah-al-Din governorate reported total destruction of their property.¹ In Norwegian Refugee Council (NRC) assessments from February 2018, 55% of respondents from Hawija sub-district, residing in camps near Kirkuk city, reported that their houses had been burned or destroyed. In Anbar governorate,

which includes the towns of Fallujah and Ramadi, 25% of respondents noted total destruction of their homes, with another 19% reporting heavy damage.² Destruction and damage to property are accompanied by a series of related consequences including secondary occupation of properties, loss of property records, forced evictions, looting and illegal property transactions.

A further exacerbating factor is the inadequate system of land tenure in Iraq. Research conducted by IOM in 2017 indicates differing levels of official property registration throughout the country with estimates of formal ownership as low as 10% in Nineveh governorate. As a result of the complex system of land rights, costs associated with land registration and the mass destruction of land registration documents resulting from the conflict, many Iraqis do not have documentary evidence of land ownership. Their ability to exercise their property rights under formal domestic law and in accordance with international standards remains limited in many cases, particularly where the actual or effective dispossession is supported or instigated by community leaders and authorities. Groups facing particular barriers to accessing rights include women and minority ethno-religious groups, plus IDPs alleged to have links to ISIS.

Global developments in HLP rights

Along with the increasing emphasis on durable solutions, there have been significant developments over the last 20 years in the international legal framework on housing, land and property (HLP) rights restitution and reparations. The restitution of HLP rights leads to three practical outcomes that help pave the way to sustainable durable solutions: it is a means of legal redress, it assists IDPs to return and it prevents new cycles of displacement.

The perceived need for an analysis of the practical implementation of the Guiding Principles gave birth to the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) and to the IASC Framework on Durable Solutions for IDPs (2010).³ While the Guiding Principles outline terms and rights, they do not address practical complexities. The Pinheiro Principles, on the other hand, provide practical guidance on the return of property to the pre-conflict owner, advocating monetary compensation when this is not possible. The IASC Framework analyses restitution from a durable solutions angle, acknowledging that restitution and durable solutions are intertwined, and that compensation should be extended to all displaced persons “who have lost ownership, tenancy rights or access entitlements to their HLP rights”. It elaborates on the importance of HLP rights and, importantly, provides possible indicators of progress towards durable solutions. A restitution programme based on the Framework would support the achievement of durable solutions and develop a culture of rule of law while fostering economic and social recovery through the respect and protection of HLP rights.

Developing legal frameworks in Iraq

Within formal Iraqi law, the Civil Code of 1951 and Real Estate Registration Law of 1971 outline a sophisticated legal framework for the protection of property rights. The Iraq Property Claims Commission, later renamed the Commission for Resolution of Real Property Disputes, was established in 2004 with the fall of the Ba’athist regime. The early models of the Commission make explicit reference to commissions established in South Africa, Bosnia and Herzegovina, and Kosovo, thus demonstrating an increasing acceptance of property restitution models applying the Guiding Principles. In 2009, the Iraqi parliament passed Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions. The Law was a significant milestone in introducing a compensation scheme for persons who suffered injuries

and property violations in the course of military operations and terrorist incidents in Iraq. The scope of the law was expanded in 2015, following ISIS attacks, to include the new and complex categories of loss and damage. It also applies retroactively to incidents that occurred in or after 2003. While subcommittees in all governorates are tasked with receiving all types of restitution claims, the central committee in Baghdad is responsible for final decisions on property damages and all related appeals.

With the return of 3.9 million of the 5.8 million Iraqis displaced between 2014 and 2017, Iraq would appear to be a qualified success story. Significant efforts have been made by the Iraqi government to facilitate returns, such as the replacement of thousands of legal documents and the re-opening of government offices in places of displacement and return. Conversely, a significant number of returns from camps have been premature and forced, resulting in further displacement, return to camps or other protection concerns.⁴ Whether or not the majority of the returns can be considered sustainable or durable will depend on many factors, including the restoration of property rights.

However, mechanisms for the recovery of housing, land and property and for obtaining compensation for losses are neither effective nor timely. The procedures take many years, the committees do not operate full-time and there is a major backlog of cases. Iraqi government authorities have been overwhelmed by compensation claims, and claimants lack confidence in the government’s capacity to pay claims in the foreseeable future. Historical and new grievances and reliance on customary justice mechanisms create significant barriers to accessing restitution and compensation. Respect for HLP rights remains weak in Iraq with little action by the government to implement domestic protections or international standards. This poses a risk to durable solutions in Iraq, threatening to contribute to an ongoing cycle of violence and displacement.

The effective application of the Guiding Principles, Pinheiro Principles and the IASC

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Framework in Iraq depends on recognition of the pluralist nature of Iraqi society, the diversity of HLP rights and the lessons of Iraqi history. Inclusion of all branches of the legal system (customary, religious and formal) and women and ethno-religious minority groups, and the ongoing, impartial support of government authorities at all levels, are central to building an inclusive, equitable and respected system of property restitution in Iraq and to its successful implementation.

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1. IOM (2016) *Housing, Land and Property (HLP) Issues facing Returnees in Retaken Areas of Iraq: A Preliminary Assessment* p13 bit.ly/IOM-HLP-Iraq-2016
2. NRC-IRC-DRC (2018) *The Long Road Home: Achieving durable solutions to displacement in Iraq: Lessons from Anbar*, p16 bit.ly/NRC-IRC-DRC-2018-Anbar
3. Pinheiro Principles bit.ly/Pinheiro-Principles
IASC Framework www.unhcr.org/50f94cd49.pdf
4. See endnote 2, p4

