

Balancing the rights of displaced, returning and remaining populations: learning from Iraq

Nadia Siddiqui

The return of some 3.1 million IDPs in Iraq to their places of origin is seen as a benchmark of success in the aftermath of the recent civil war. However, the situation is complex, with critical questions related to mitigating competing rights and protection needs.

International guidelines for durable solutions to displacement highlight the need to protect the rights of the internally displaced wherever they are located. This includes their right to return to their places of origin, based on informed voluntary choice, and in safety and dignity. While this framing is important, however, it can often overlook the rights and needs of those who have already returned and/or those who have remained, particularly if returns are presented as the sole option for resolution to displacement.

This is the case in Iraq where government and international stakeholders have prioritised this outcome as the key to success in the aftermath of the conflict between the Iraqi government and ISIS. Such a framing may also neglect the fact that return is a continuous process and, like any other durable solution, can take years if not decades to be completed. Finally, it may also miss the fact that returning to the previous state of affairs is impossible in post-conflict settings in practical terms, nor is it a solution in rights-based terms since the context was probably unjust prior to the conflict, and may actually have contributed to the initial forced displacement.

Nowhere is this clearer than within the communities in the northern half of Nineveh Governorate in Iraq. The area, which is tribal in its social structure, had already suffered considerably from forced displacement, poor infrastructure and public service provision, and general neglect in development terms. Comprising the rural, ethnically diverse territory that is disputed by Federal Iraq and Kurdish authorities, and which surrounds Mosul City, northern Nineveh bore the brunt of ISIS attacks in 2014, in some cases with neighbours and whole villages pitted

against one another. Both the arrival of ISIS and their expulsion in 2015 caused further waves of displacement and return. Tensions and divisions remain both between those groups that stayed or were displaced for a short time and returned, as well as between these populations and those still displaced.

While returns to the area are slowly beginning to occur, disputes between Iraqi and Kurdish authorities and the absence of a formal durable solutions policy – beyond an emphasis on returns – have left these communities in a stalemate as to who can come home and who cannot. Fieldwork carried out in early 2017 raises key concerns that Iraqi authorities and international stakeholders will need to take into account if they continue to pursue a returns-focused policy.

Returns in the absence of strategy

While there are international standards to protect the rights of internally displaced persons (IDPs), it is important to note that those IDPs who have already returned may have particular protection concerns – and grievances – against those who have not yet returned. This is the case in northern Nineveh and in the bulk of other areas of Iraq affected by the conflict with ISIS, where many groups have collectively labelled those still displaced as somehow affiliated with the armed group. Acts of retaliation and revenge against those perceived to be ISIS-affiliated (and their property) have already been perpetrated by returnees and by security forces who removed the armed group. A policy that prioritises returns without taking into account the grievances held – whether legitimately or not – against those still displaced by those who would have to welcome them back,

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Badly damaged houses in the Al-Resala neighbourhood of west Mosul, Iraq.

coupled with the uncertainty of the process in general, opens the door to further conflict. Additionally, if there are no steps in place to ensure arbitration and appropriate restitution or compensation, a returns process may exacerbate competing claims over land rights.

“One of the important things to bring peace here is that the government must prevent the Arabs from coming back and living in our areas, because they are the reason for the arrival of ISIS to these areas; they betrayed us.” (Yazidi IDP)

“If other people do not want us back, well, then the government will have to arbitrate and decide. We want to return.” (Sunni Arab IDP)

Finally, it is critical to note that even in tribally oriented areas where the formal rule of law is secondary to tribal arbitration, divisions in the social fabric are now too great for a tribal process alone to heal. The call for the involvement of the federal government and the justice sector may pave the way for greater cooperation with tribes, slowly removing parallel legal systems.

“The government should find solutions to these problems with the help of tribal leaders and educated people. Why the government? Because the government has more problem-solving mechanisms than ordinary people... trust between people must prevail.” (Yazidi returnee)

The Federal Government of Iraq and its stakeholders must now prioritise developing an operational plan for the returns process beyond the ad hoc and variable measures currently in place. How

people return matters just as much as if they do or do not return.

Recommendations

A returns strategy should focus on understanding all victims’ needs to address suffering (past and present), taking into account all perpetrators of abuse. Tribes and communities are seeking formal interventions to help resolve issues related to returns, and this is an opportunity to connect tribal and formal processes. While Iraq and

the United Kingdom’s recent resolution to establish mechanisms for accountability for ISIS crimes is a useful start, it is critical to note that ISIS was not the only perpetrator of abuses in this context and that grievances are wide-ranging. It is also necessary to recognise that criminal justice proceedings alone are not enough and that other approaches – including reparation, truth-seeking and institutional reform – must also be considered.

A transparent and clear process for vetting and screening people for return should also be in place so that communities on all sides understand the criteria being followed to enable IDPs to return home.

Related to this, clear criteria for what constitutes ISIS affiliation – and the punishment that will be meted out according to the degree of affiliation – must be made clear and shared with communities. This will help in moving communities away from labelling or from meting out their own punishment to returnees.

Finally, and critically, social cohesion and peacebuilding programming, which at present is taking place with communities who have already returned, must be expanded to include those who are still displaced, before any further returns take place. This is to prepare both groups for living together again and to help in shaping processes that will mitigate conflict and tension, and address present and past grievances.

Nadia Siddiqui nadia@social-inquiry.org
 Researcher, Social Inquiry
[@inquiry_org](https://social-inquiry.org)