



## STRATEGY OF THE IRAQ HOUSING, LAND AND PROPERTY RIGHTS (HLP) SUB-CLUSTER SEPTEMBER 2016

### I. Background

The current conflict in northern and central Iraq has resulted in the displacement of 3.4 million individuals, of whom just 10% reside in camps.<sup>1</sup> Further displacement is expected throughout 2016 due to ongoing or planned military operations in Anbar and Mosul. At the same time, over 550,000 IDPs have spontaneously returned to their areas of origin, with 88% returning to their habitual residence, and the remainder residing in unfinished buildings, with host families, in informal settlements or rented houses.<sup>2</sup> Moreover, continued conflict in Syria has increased the number of refugees in Iraq to 244,642 individuals, of which 61% reside in urban areas.<sup>3</sup> Iraq also possesses around 1.1 million protracted IDPs from earlier waves of displacement (i.e. 2006-2008), particularly in the south-central regions, who have yet to achieve durable solutions.

### II. Protection concerns relating to HLP in Iraq

IDPs, Syrian refugees, and returnees face HLP challenges. The HLP challenges faced by IDPs and Syrian refugees are particularly critical for those residing in urban settings. These include: (a) restrictions on the freedom to choose one's place of residence, through sponsorship requirements and barriers to accessing residency permits or housing letters; (b) an acute shortage of affordable and adequate housing in areas of displacement, compelling displaced families to reside in sub-standard accommodation – including collective centres and informal settlements – characterized by highly insecure tenure and limited access to essential services; (c) limited or rapidly depleting financial resources, coupled with rising rental prices and increasing indebtedness; (d) difficulties in restoring lost civil documentation which is required to enter into lease agreements and to secure employment in the formal sector; (e) low prevalence of written or verbal lease agreements, leading to insecure tenure and risk of evictions; and (f) direct and indirect discrimination based on gender and ethnicity. These barriers limit the ability of displaced families to locally integrate. Indeed, evictions have led to increased vulnerability and severe protection risks, including secondary displacement, exposure to harsh weather conditions, interruption of education and access to other essential

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<sup>1</sup> IOM, Displacement Tracking Matrix data (March, 2016).

<sup>2</sup> IOM, Returnee Tracking data (March, 2016).

<sup>3</sup> UNHCR, Registration Trends for Syrian Persons of Concern (February, 2016).

services, loss of livelihoods, exploitation of vulnerable individuals (particularly women and children), and resort to negative coping strategies.

In areas of origin in Iraq, returnees face significant challenges such as ERW contamination, unlawful sales of their HLP assets by armed opposition groups and secondary occupation, damage or destruction of HLP, missing HLP documentation, prior histories of dispossession, and weak or non-existent mechanisms for property restitution and compensation. These challenges will make it particularly difficult for IDPs who wish to return, or those who have already done so, to reclaim their HLP. The authorities' ability to resolve these HLP issues will be compromised by the fact that land cadastres have been destroyed in some regions. Also, returns will take place to disputed areas where there is ambiguity about which body has the legal authority to take binding decisions on HLP issues. Similar HLP-related barriers to return exist for Syrian refugees.

Furthermore, the returns process is likely to be affected by political decisions and community preferences to build more homogenous ethno-religious communities. Political authorities may wish to favor one ethno-religious group in a territory over another in order to solidify their political control over the territory. Having experienced terrible violence, some communities express a wish to live in geographic isolation from other groups in order to protect themselves. These trends are likely to lead to discriminatory patterns in returnees' access to their property, since groups that are an unwanted minority may not be allowed to return at all, or upon return may find that their property has been destroyed or occupied.

### **III. Legal framework**

The HLP Sub-Cluster recognizes that the Government of Iraq (GoI) and the Kurdistan Regional Government (KRG) have the primary responsibility to respect, protect and promote the HLP rights of all individuals within their jurisdiction in accordance with international and national legal obligations. These include the right to adequate housing,<sup>4</sup> the freedom to choose one's place of residence,<sup>5</sup> and protection of women from discrimination with respect to matters relating to HLP.<sup>6</sup> In advancing the HLP rights of displaced persons in Iraq, the Sub-Cluster will be guided by the Guiding Principles on Internal Displacement (1998),<sup>7</sup> the Refugee Convention (1951),<sup>8</sup> the Pinheiro Principles on Housing & Property Restitution for Refugees & Displaced Persons (2005),<sup>9</sup> the protection of HLP rights under the Iraqi Constitution (2005),<sup>10</sup> Iraqi Civil Code (1951), the Law of Estate Lease No. 87 (1979), the KR-I Law No. 9 (2008), the Personal Status Law No. 188 (1959) and other relevant domestic legislation. Moreover, the Sub-Cluster will advocate for the operationalization of the GoI's National Housing Policy (2010-2016), National Development Plan (2013-2017), and the Ministry of Migration &

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<sup>4</sup> Art. 11(1) of the ICESCR, ratified by Iraq on 25 January 1971.

<sup>5</sup> Art. 12 of the ICCPR, ratified by Iraq on 25 January 1971.

<sup>6</sup> Art. 2(f) & 16(h) of the CEDAW, acceded to by Iraq on 13 August 1986, with reservations.

<sup>7</sup> Principle 9 (prevention of displacement), 18 (adequate housing), 21 (protection during displacement) and 29 (return or resettlement) directly address HLP rights.

<sup>8</sup> Art. 13 (property rights) & Art. 21 (housing rights). However, Iraq is not a party to the Refugee Convention.

<sup>9</sup> Principle 2 (restitution or compensation).

<sup>10</sup> Art. 23.

Displacement's National Policy on Displacement (2008) and Iraq National Strategy: Longer-Term Shelter Solutions for People Affected by Displacement (2012).

#### **IV. Priority Activities**

**Mapping:** To better understand the breadth and depth of key actors relevant to HLP issues, the HLP Sub-Cluster will map key actors and areas of work within the humanitarian sector (Protection & Shelter), early recovery, development and government partners, including the Ministry of Migration and Displacement, the Ministry of Justice, the Ministry of Housing and Construction, and the Ministry of Planning at the federal and regional level and Land Registries at the Governorate level.

**HLP Focal Points:** In order to support HLP initiatives across Iraq, the HLP Sub-Cluster will work to establish HLP Focal Points at the Governorate-level. The HLP Sub-Cluster will also serve as the Protection Mainstreaming Focal Point for the Shelter Cluster during Humanitarian Response Plan (HRP) and pooled funding mechanisms.

**Advocacy:** HLP advocacy will remain a key component of the HLP Sub-Cluster. Continuous efforts will be undertaken to update HLP-related advocacy messages for the Humanitarian Coordinator (HC)/Humanitarian Coordination Team (HCT), in coordination with the National Protection Cluster (NPC).

**Resource Mobilization:** The HLP Sub-Cluster will make concerted efforts to obtain funding for HLP interventions, including through advocacy with donors and directly through the Protection Cluster, participating in the NPC's Peer Review Panel for pooled funding mechanisms related to the HRP, and contribution of HLP analysis, outputs and indicators to the 2017 HRP for the Protection and Shelter Clusters.

**Analysis/Technical Support:** The HLP Sub-Cluster will provide analysis to national, regional or governorate-level Protection and/or Shelter Cluster strategy documents, work plans, contingency plans, and advocacy plans, as well as Inter-Cluster Coordination Group policy/operational products, particularly those related to return movements. The HLP Sub-Cluster will also provide technical support to Protection and Shelter partners on property restitution and compensation issues in areas of return.

**Coordination:** The HLP Sub-Cluster will work to mobilise and coordinate humanitarian response by Protection actors to threats of eviction or forced evictions. The HLP Sub-Cluster will also take part in relevant coordination forums, including the Protection Cluster, the Protection Cluster Strategic Advisory Group, and the Inter-Cluster Coordination Group.

**Development of Key Partnerships:** The HLP Sub-Cluster will reinforce strategic partnerships and seek to engage with national/regional/local authorities on property restitution and compensation issues in areas of return.

**Data Collection and Information Management:** The HLP Sub-Cluster will reinforce its information management capacity to enhance informed advocacy efforts and ensure improved prevention and response to HLP concerns and risks through various data sources, including the recruitment and employment of focal points at the governorate level. In addition, the HLP Sub-Cluster will actively collect for dissemination HLP-relevant reports, studies, and training materials, etc. and invite members and non-members to present these materials to HLP Sub-Cluster members. Finally, the HLP Sub-Cluster will work the National Protection Cluster Information Management to develop infographics for its members.

Referral: Through utilization of information gathered through its various data sources, the HLP Sub-Cluster will actively engage in appropriate existing referral mechanisms. Where gaps in referral mechanisms exist, the HLP Sub-Cluster will work with partners and other key actors to ensure that appropriate referral systems are in place.

## **V. Capacities of the HLP Sub-Cluster members**

The capacities of the main actors in HLP issues include the following:

- *Advocacy capacity.* HLP Sub-Cluster members can conduct advocacy with the central government and KRG authorities on issues of civil documentation, land and housing policy, displacement policy, as well as other HLP-related policies.
- *Analytical capacity.* HLP Sub-Cluster members can analyze legislation, map government capacities, and develop guidance and tools for humanitarian actors.
- *Training capacity.* HLP Sub-Cluster members can train humanitarian Protection & Shelter actors on how to promote security of tenure in their programming.
- *Provision of information, counseling and legal assistance on HLP.* HLP Sub-Cluster members have limited capacity to provide information, counseling and legal assistance on HLP directly to beneficiaries. Given the size of the area affected by conflict, the diversity of HLP laws, policies and practices nation-wide, and the small number of actors focused on HLP issues, the HLP Sub-Cluster members can deliver information, counseling and legal assistance services relating to HLP directly to only a small fraction of the population in need of these services. Priority will be given to those facing the most severe risks, such as wide-scale evictions or discrimination upon return. For other groups, the HLP Sub-Cluster will work with other actors to disseminate HLP-related services.
- *Data Collection.* HLP Sub-Cluster members can access various data sources to collect information regarding HLP issues. Further, and if necessary, members can conduct assessments to capture quality information.
- *Referral.* HLP Sub-Cluster members can engage in existing referral mechanisms and work with partners and other actors to address any gaps in referral systems for HLP issues.

## **VI. Gaps and constraints**

There are many barriers to establishing security of tenure for displaced populations. Host communities perceive that they are over-burdened and would like to keep pressure on IDPs to return home as soon as possible; therefore, they resist longer-term lease arrangements. Overall, the state's policy is directed at returns, rather than allowing IDPs to choose to settle in their place of displacement. In the rental market, landlords strongly prefer informal arrangements over legally-binding contracts because they avoid the taxation associated with registering the lease and retain maximum flexibility over the use of the property in a highly insecure environment. Use of the courts to enforce rental agreements is rare. Recent trends show rental prices rising steeply, especially in Baghdad and KR-I, putting tenants in a disadvantaged position to claim their rights. Many IDPs are squatting in unfinished buildings or have rented structures (finished or partially finished) in informal settlements that were constructed without permission. As well, IDPs living out of camps have experienced increased

debt levels and decreased reliance on savings, suggesting the gradual depletion of resources. In short, their tenure is extremely precarious. Given these constraints and the available capacities, the strategy outlined in this document is modest in its scope.

For returnees, the HLP situation in Iraq is particularly complex given the long history of conflict and displacement. Some families have been displaced multiple times over generations. Property disputes dating to previous displacements remain unresolved, and the population generally has low confidence in the state's ability to resolve property disputes. There is ambiguity about which state authorities will be responsible for resolving property matters in disputed areas. Land registries have been destroyed. There is massive property destruction in areas that were under control of IS. The state does not yet have a coherent policy or operational framework on property restitution or compensation for destroyed property. Political and community pressures may result in discriminatory practices in returnees' access to property.

Finally, significant gaps still remain in the prioritization and funding of HLP interventions as a means for achieving truly durable solution for IDPs.<sup>11</sup> Until HLP is prioritized, as evidenced by the existence of sufficient resources, HLP actors will continue to face challenges in responding to HLP needs.

## **VII. Strategic objectives**

### *For displaced populations*

A. Displaced populations are able to restore their lost personal and civil documentation.

The lack of personal and civil documentation is a major barrier to the exercise of HLP rights in the Iraqi context where these documents are a requirement for entering into lease agreements, obtaining legal employment in the formal sector, accessing justice and receiving public benefits. Members of the HLP Sub-Cluster will work with the government authorities to map procedures for restoring documentation, and assist IDPs to secure civil documents.

B. National and international organizations providing legal aid to displaced populations provide accurate legal information and high-quality services regarding HLP issues.

Many international and national NGOs provide legal services to IDPs across the country. Many are members of the Protection Cluster, or partners of UN agencies or international organizations. They dispense legal information and counseling about many different issues, including civil documentation and HLP issues. They have varying levels of expertise in these matters. The HLP Sub-Cluster will support this network to improve the quality of legal services related to HLP through a variety of capacity-building activities: conducting legal research (on tenancy norms as distinctly applied to IDPs versus refugees), providing guidance notes on specific topics (e.g., eviction response), developing resources (e.g., model rehabilitation and security of tenure agreements), preparing mass information materials (e.g., HLP-related fact sheets), and providing training and coaching (e.g., on HLP, dispute resolution, and displaced women's HLP rights).

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<sup>11</sup> One of the eight criteria for determining to what extent an IDP has achieved a durable solution is access to effective mechanisms for timely restitution of their housing, land and property. IASC Framework on Durable Solutions for Internally Displaced Persons (2010).

- C. Households receiving shelter-related assistance from humanitarian actors enjoy security of tenure.

Humanitarian actors are providing different types of shelter-related assistance to IDPs who live outside of camps. They provide modest repair or winterization assistance to families living in unfinished or semi-finished buildings. They provide cash grants to pay their rent. If the families do not have security of tenure after this assistance is provided, then the assistance does not achieve its intended goal of providing stable shelter to families. The HLP Sub-Cluster will work with shelter actors to include measures to ensure security of tenure, such as lease agreements and rent-control mechanisms, into their programming.

- D. Wide-scale forcible evictions are prevented through advocacy and provision of legal information and counseling.

Though the HLP Sub-Cluster members cannot provide direct legal services throughout the country, they have capacity to work in selected areas of the country where there are risks of wide-scale eviction, especially Dohuk, Erbil, Kirkuk and Baghdad. In these regions, HLP Sub-Cluster members will provide direct legal services, which will serve two purposes: the prevention of wide-scale forcible evictions and the development of good practices, based on direct experience, that can be shared with other legal aid organizations. The HLP Sub-Cluster will also engage in advocacy through its members, the national, regional or Governorate-level Protection Cluster mechanisms and the HCT to prevent wide-scale forcible evictions.

- E. The state authorities' policies on housing are planned and implemented in a manner that promotes IDPs' access to adequate and affordable housing with security of tenure, regardless of the durable solution that they choose for themselves.

The HLP Sub-Cluster will work closely with government authorities at varying levels (central government, KR-I, governorate, municipal) as they plan and implement housing policies with the goal of expanding IDPs' access to adequate and affordable housing with security of tenure. A goal will be to work with the authorities to establish successful examples of the small-scale integration of IDPs into local housing schemes, since this will build the confidence of authorities and host communities that local integration of IDPs can be accomplished. Without this confidence, authorities and host communities are likely to exert a great deal of pressure on IDPs to return, even if the situation at home is not safe for them to return or they have other reasons to remain in the place to which they were displaced. In order to prevent forcible returns, the HLP Sub-Cluster will strive to present local integration as an economically and socially viable alternative.

#### *For returnee populations*

- F. Returnees are supported in restoring their rights to housing, land and property on a non-discriminatory basis.

The HLP Sub-Cluster will support the authorities in re-establishing land cadastres where these have been damaged or destroyed and transferring records from Baghdad where necessary. It will also assist authorities in establishing fair and expeditious procedures for property restitution or compensation in cases where land cadastres cannot be restored, or the extent of disputed property claims overwhelms the existing systems. Where possible the HLP Sub-Cluster will support IDPs to secure their HLP rights while still in areas of displacement. This will encourage the prospect of return and reduce the risk of protracted

IDP displacement, while facilitating more rapid, effective and lower cost mass HLP restitution in the future.

The HLP Sub-Cluster will also build the capacity of legal-aid providers working in areas of return to improve the quality of legal services related to HLP through a variety of capacity-building activities: conducting legal research (on HLP-related barriers to return), providing guidance notes on specific topics (e.g., property restitution and compensation), developing resources (e.g., on alternative means to prove ownership), preparing mass information materials (e.g. HLP-related factsheets), and providing training and coaching (e.g. on HLP, dispute resolution, and displaced women's HLP rights).

Women face additional difficulties in re-establishing property claims. Their property may be in the name of a deceased or missing male family member, and without documentary proof of the relationship and the male kin's death or disappearance, they may not be able to claim the property. The HLP Sub-Cluster will give particular attention to documenting the challenges faced by women in exercising their HLP rights, and developing guidance for women on how to claim their property. It will conduct outreach to women's NGOs – which may not be traditional providers of legal aid, but which can disseminate information more easily to women.

The HLP Sub-Cluster will document situations in which certain groups of returnees (or potential returnees) are blocked from restoring their HLP rights on a discriminatory basis or on political grounds.<sup>12</sup> In such cases, the Sub-Cluster will conduct advocacy through its established channels for fair and equal treatment of all returnees, regardless of ethnicity or religion. It will also try to provide direct legal aid to these populations, pending availability of humanitarian access and resources.

G. Government authorities are supported in developing a policy framework and action plan regarding property restitution and compensation.

The government has not yet embarked on any clear plan to deliver compensation to families whose property was damaged or destroyed in the current conflict, or to restore property unlawfully sold or occupied by others. Many families will be unable to re-build their homes without assistance, or return to their habitual residence. While any large-scale programming for property restitution or compensation will fall under the purview of development actors, the HLP Sub-Cluster, given its members close links with IDP and returnee communities, will consult with affected communities regarding their expectations, needs and proposals about property restitution and compensation. This will form the basis of advocacy with the authorities on developing their policy framework and action plan on property restitution and compensation.

## **VIII. Coordination**

The HLP Sub-Cluster will work with a variety of different groups and networks so that information regarding HLP is gathered and disseminated efficiently among actors working with IDPs, refugees and returnees. The Sub-Cluster will prioritize the following linkages:

- Inter-Cluster Coordination Group (ICCG). The ICCG leads inter-cluster coordination, which is a cooperative effort among sectors/clusters to assure coherence in achieving common objectives, avoiding duplication and ensuring

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<sup>12</sup> See Art. 140 of the Iraq Constitution, read together with Art. 58 of the Iraq Transitional Administrative Law.

areas of need are prioritized. The HLP Sub-Cluster will work within the ICCG, in particular with the Protection and Shelter Clusters, to provide necessary support.

- Protection Cluster. The HLP Sub-Cluster will conduct advocacy *inter alia* through the Protection Cluster to the HCT and other bodies. The HLP Sub-Cluster will also work with other Protection Cluster Sub-Clusters to ensure that, e.g., HLP rights for women are mainstreamed in the Gender-Based Violence Sub-Cluster's priorities; land clearance by Mine Action Sub-Cluster members is tied to restoration of land tenure to rightful owners.
- Shelter/NFI Cluster. The national Shelter/NFI Cluster brings together humanitarian organizations that provide shelter-related assistance to IDPs, and the HLP Sub-Cluster will work with them to ensure the security of tenure for beneficiaries of shelter-related assistance.
- Recovery and Stabilization Actors. The HLP Sub-Cluster will work with these partners to ensure that HLP issues are considered in development planning, coordinate activities in return areas, and avoid any duplication of efforts.
- International and National Legal aid NGOs. The HLP Sub-Cluster will broaden contacts with a wide network of legal aid NGOs for the purposes of information dissemination and capacity-building.
- UNDAF Planning. The HLP Sub-Cluster will work with UN agencies involved in the planning process for the UN Development Assistance Framework to ensure that HLP issues are mainstreamed and captured in this planning.