

2016

Housing, Land and Property (HLP) Issues facing Returnees in Retaken Areas of Iraq

A PRELIMINARY ASSESSMENT

LAND, PROPERTY AND REPARATIONS DIVISION
DEPARTMENT OF OPERATIONS AND EMERGENCIES
INTERNATIONAL ORGANISATION FOR MIGRATION (IOM)

SEPTEMBER 2016



IOM International Organization for Migration
المنظمة الدولية للهجرة

Acronyms

Gol	Government of Iraq
HLP	Housing, Land and Property
IDP	Internally displaced person
IED	Improvised Explosive Device
ISF	Iraqi Security Forces
IPCC	Iraqi Property Claims Commission
Daesh	The Arabic acronym for transliteration for Islamic State in Iraq and Syria
KRG	Kurdistan Regional Government
KRI	Kurdistan Region of Iraq
MoMD	Ministry of Migration and Displacement
RAC	Return Assistance Center

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Acknowledgement

We are very grateful to the Hjira Amina Program Management and Coordination team Alvina Samjawon, Mohammed Bassam, Usama Tawfik, Sana Kika, Hawkar Younis and Farah Zalzala for facilitating the planning and implementation of this assessment. Further, the skillful support of research team leaders Abdullah Bakr (Ninewah); Ahmad Aljbari (Salah al Din) and Adnan Alkazraji (Diyala) and the eight enumerators Marwa Alnamaat, Shiyan Ezzideen, Bashaer Adel, Omar Husham, Bassam Abdulhakeem, Mohammed Azawi and Mohammed Hasan was of critical importance for the success of the assessment.

The opinions expressed in the report are those of the authors and do not necessarily reflect the views of the European Union.

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CONTENTS

Executive Summary	3
Introduction	4
Study Objectives.....	5
Methodology.....	5
Limitations	6
Background: The 2014 Displacement crisis and return dynamics	6
2014: Conflict Timeline	6
Return movements	7
Legal provisions for property restitution and compensation in Iraq	8
Assessment Results.....	11
1. High degree of informal property rights before 2014	11
2. Widespread property damage and destruction	13
3. High prevalence of secondary occupation.....	15
4. Prevalence of mines and IEDs in property	16
5. Damage and destruction of property records	17
6. Illegal sales of property.....	18
7. Creation of new land and property institutions	18
8. Changes to property dispute resolution mechanisms	19
9. Increase in property disputes	20
10. Loss of personal and property documentation	21
11. Lack of dedicated HLP services and support in return areas	22
12. Respondents' recommendations and expectations	23
Recommendations	25

EXECUTIVE SUMMARY

This report, produced by the IOM Land Property and Reparations (LPR) Division under the EU funded HJira Amina Programme¹ implemented by IOM Iraq, presents the findings of a 1 month preliminary assessment into the extent and type of housing, land and property (HLP) issues facing returnees returning from displacement caused by the 2014 Daesh offensive in Northern and Central Iraq. In doing so, it builds on and complements information collected during IOM's 2015 assessment on HLP issues among internally displaced Iraqis² in order to identify policy needs and opportunities regarding the provision of adequate support and redress.

The findings presented in this report are the outcome of 80 key informant and 80 returnee household interviews (overall 160 respondents) from the three Governorates of Ninewah, Salah al Din and Diyala. The interviews took place 17 April to 17 May 2016.

Assessment findings can be summarized as follows:

- High degree of informal property rights before 2014
- Widespread property damage and destruction
- High prevalence of secondary occupation of private properties, in particular in Salah al Din Governorate
- Prevalence of mines and IEDs in properties
- Damage and destruction of existing property records
- Illegal sales of property
- Creation of new property and land management institutions
- An increased reliance on informal property dispute mechanisms
- An increase in property disputes
- Loss of property documentation among returnees, and
- Perceived lack of dedicated HLP services and support in return areas

These current grievances add a new layer to a historical pattern of HLP rights violations in Iraq, which stem from three prior and distinct waves of displacement between 1968 and 2008.³ With the addition of currently ongoing HLP right violations, assessment findings suggest that current systems for redress are overstretched and under -

¹ The EU funded HIJRA AMINA programme aims at assisting the Government of Iraq (GoI) and the Kurdistan Regional Government (KRG) in developing capacities in migration management by building on IOM's comprehensive capacity building programme, implemented in Iraq since 2003. In the context of the current migration crisis, HIJRA AMINA programme continues to boost migration management capacities of the Iraqi central government and KRG. Recent developments in the Iraqi migration context have led to a drastic shift in the capacity building needs and the HIJRA AMINA program now focuses especially on capacitating the GoI and KRG institutions to contribute to the formulation and implementation of a strong and coordinated emergency response.

² IOM.2015. "A Preliminary Assessment into HLP issues caused by the 2014 Displacement Crisis in Iraq", available online at https://www.iom.int/sites/default/files/our_work/DOE/LPR/A-Preliminary-Assessment-of-Housing-Land-and-Property-Right-Issues-Caused-by-the-Current-Displacement-Crisis-in-Iraq.pdf

³ The first under the Ba'athist regime between 1968 to 2003, the second from the US invasion in 2003 until the bombing of the Shiite Al-Askaria Mosque in Samara in 2006, and the third from sectarian violence most pronounced in 2006-2008

capacitated. Without swiftly addressing these multiple HLP challenges, Iraq risks struggling to provide the country's displaced with durable solutions, which in turn will adversely impact socio-economic recovery, social cohesion and reconciliation in the country.

As such, addressing HLP issues must be an integral part of any post conflict reconstruction strategy in Iraq. To this end, IOM recommends:

1. Conduct a comprehensive mapping and cataloging exercise of the extent and type of HLP issues inhibiting sustainable returns, social cohesion and stabilization in the retaken areas to inform policy response
2. Assess the functionality of Law 20 ("Compensation Law") Committees in crisis-affected areas
3. Assess and where necessary capacitate the formal land and property administration in crisis-affected areas, including property dispute resolution mechanisms
4. Consider the establishment of Return Assistance Centers in return areas to assist with HLP-related issues
5. Consider the development of a unified legal/policy approach to address displacement and return related land and property rights violations

INTRODUCTION

With the military advances against Daesh in Central and Northern Iraq progressing, people displaced since the crisis began in 2014 have gradually begun returning to their areas of origin, predominantly to the governorates of Salah al Din (36%), Anbar (24%), Diyala (19%) and Ninewah (16%).⁴ Across areas of return, lack of access to pre-displacement habitual residences due to widespread property destruction, damage and secondary occupation in crisis-affected areas, has been identified as major concern by returnees. In the Ninewah Governorate, as in other governorates, the lack of housing is cited as the most important barrier to sustainable returns in Iraq - second only to security.⁵ A thorough understanding of the reasons behind lack of access to housing and property, as well as the design of policies for their resolution, is critical for socio-economic recovery, social cohesion, reconciliation and sustainable returns in Iraq.

This report outlines the findings of a 1 month preliminary assessment into the housing, land and property (HLP) issues which have arisen in the context of ongoing return movements in eight districts across the three most crisis-affected Governorates of Ninewah, Diyala and Salah al Din. Overall, 160 returnees and key informants in return areas were interviewed regarding their experiences and perceptions on of the main housing and property-related challenges in their respective areas of return. By outlining assessment findings, this report hence aims to provide

⁴ IOM Iraq, Displacement Tracking Matrix, 17th August 2016

⁵ UNDP. 2015. Recovery and Stabilization Needs Assessment for Newly Liberated Areas in Ninewah Governorate, p.12

policy-makers and practitioners with an initial understanding of the extent and type of HLP concerns existing in areas of return.

STUDY OBJECTIVES

The objective of this study is two-fold:

1. Obtain a clear understanding of the HLP right issues in identified areas of return across three Governorates (Diyala, Ninewah and Salah al Din)
2. Contribute to future planning for durable solutions for the displaced populations through the formulation of policy recommendations on how to address the HLP challenges in humanitarian, transition and development contexts.

METHODOLOGY

The inception and execution of the present study was informed by IOM's long standing engagement with HLP issues in Iraq, which began with technical assistance to Iraq's Property Claim Commission (IPCC) in 2003 and continued with technical assistance on land conflicts in the Kirkuk and Ninewah Governorates until 2012, as well as a 2015 preliminary assessment of HLP issues caused by the 2014 displacement crisis.⁶

Field research for this report was conducted from 17 April 2016 to 17 May 2016. Semi-structured Interviews were conducted with 160 individuals from the three Governorates of Ninewah, Diyala and Salah al Din. While the interview structure and content were uniform, 80 informants were asked to respond as individuals ("returnee-respondents") on their individual circumstances and 80 were asked to provide their perceptions on behalf of their community, ("key informants"). Key informants were chosen on the basis of their knowledge of community dynamics and comprised of local administration officials (35), returnee representatives (17), community leaders (14), legal experts (7), NGO leaders (4) and religious leaders (3).

The topics covered by the interviews were divided into 5 main areas (see interview forms in Annex A):

- 1) HLP issues before displacement
- 2) HLP issues upon return (private, public and cultural/religious)
- 3) Initiatives to address HLP issues

⁶ Peter van der Auweraert, 2009. "Recommendations for Resolving the Remaining Land and Property Issues in the District of Kirkuk", see <http://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/Iraqi-Property-Claims-programme.pdf>

- 4) Prior and current dispute resolution mechanisms related to HLP issues
- 5) Needs and expectations in relation to the resolution of HLP issues

In total, research participants comprised of 17 women and 143 men coming from 8 districts across Diyala (Al Khalis District), Ninewah (Tal Afar District, Til Keif District) and Salah al Din Governorate (Balad, Al-Dour, Tikrit, Samarra, and Baiji District). Combined, the three governorates covered by the assessment have an estimated returnee population of 617,412 individuals; that is, approximately 70% of all returnees currently registered across Iraq.⁷

LIMITATIONS

Accessibility due to ongoing security issues: Erbil –was originally selected for interviews but proved to be inaccessible due to ongoing military operations (i.e. Makhmour in Erbil Governorate).

Gender composition of respondents: In spite of best efforts, women constituted only 10% of the surveyed population for this assessment, which is a significant underrepresentation given that more than half of all returnees are women. Traditional gender roles in the affected communities and the rapid and preliminary nature of the assessment did allow addressing the imbalance in female and male respondents, which requires prolonged engagement. A follow-up and more in-depth assessment, as recommended below, will need to ensure the participation of a greater number of female and male respondents.

BACKGROUND: THE 2014 DISPLACEMENT CRISIS AND RETURN DYNAMICS

2014: CONFLICT TIMELINE

Since January 2014, the continued violence by Daesh and associated groups has caused a displacement crisis across Central and Northern Iraq which is massive in both size and complexity. Iraqi Security Forces (ISF) and the Kurdish Peshmerga as well as allied forces launched a liberation campaign in December 2015, which is currently ongoing. Since January 2014, an estimated total of 3,352,884 people have been displaced throughout Iraq.⁸

Concretely, displacement and conflict patterns since the Daesh onslaught in early 2014 can be divided into six distinct waves:⁹

⁷ IOM Iraq Displacement Tracking Matrix, 1st September 2016

⁸ IOM Iraq Displacement Tracking Matrix, 1st September 2016

⁹ IOM Iraq Displacement Tracking Matrix, 1st September 2016

1. December 2013 - late May 2014: An estimated 536,760 individuals became internally displaced as Daesh launched a military campaign to capture the cities of Fallujah and Ramadi in Anbar governorate.

2. June - July 2014: Another 714,234 were forced to flee their homes after Daesh took control over Mosul, Iraq's second largest city. Fighting subsequently spread over several areas in the Governorates of Ninewah, Anbar, Salah al Din, Kirkuk and Diyala.

3. In August 2014 alone, over 844,900 people became internally displaced, primarily as a consequence of heavy fighting between Daesh and Kurdish Peshmerga in the northern parts of Ninewah governorate.

4. September 2014 - March 2015, at least another 570,510 individuals became displaced mainly from Anbar, Baghdad, Kirkuk and Ninewah Governorate as a consequence of ongoing clashes between Daesh and various armed groups.

5. April 2015 - February 2016: following the outbreak of the Ramadi crisis in Anbar Governorate, another 734,152 individuals were forcibly displaced, with approximately 436,320 individuals coming from the governorates of Anbar and Baghdad.

6. Post March 2016: Military efforts to liberate areas occupied by Daesh intensified in March 2016 which has led to the displacement of another 228,120 individuals as of August 3rd.¹⁰ Many of these (104,239) fled increased levels of fighting in Anbar governorate. Further, since military operations to retake Mosul have begun since mid-July, an estimated 93,330 individuals have been displaced.¹¹ The humanitarian community is currently preparing for the displacement of an additional 1 million people once Mosul city is retaken from Daesh.

RETURN MOVEMENTS

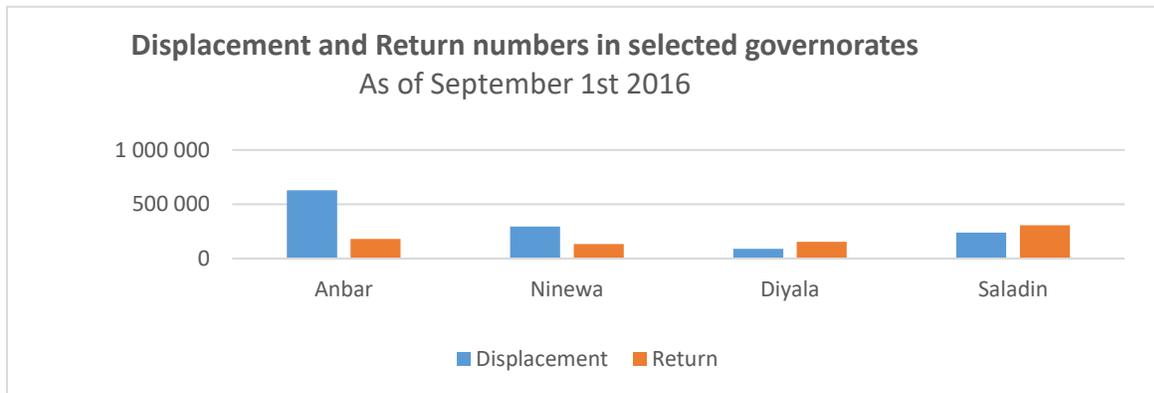
Returns have accelerated since coordinated efforts by the ISF/allied forces and Kurdish Peshmerga to retake territory controlled by Daesh began in December 2015. As of 1 September 2016, a total of 887,196 individuals from 8 different governorates have returned to retaken areas. By governorate, Salah al Din (38% of registered returns) experienced the most returns, followed by Anbar (30% of registered returns), Diyala (19% of registered returns) and Ninewah (17% of registered returns).¹²

¹⁰ IOM Iraq Displacement Tracking Matrix, 1st September 2016

¹¹ IOM DTM Emergency Tracking accessed 11th September 2016

¹² IOM Iraq Displacement Tracking Matrix, 1st September 2016

In addition to ongoing return, return intentions among those still in displacement are extremely high across all three Governorates assessed for this study. Almost 90% of IDPs in **Ninewah Governorate**, 81% of IDPs in **Salah al Din Governorate** and over 90% of IDPs in **Diyala Governorate** declared that they intend to return once the security situation stabilizes. Among IDPs originating from Ninewah but currently displaced to another governorate, 78% report that they wish to return home.¹³ Similarly, 91% of IDPs from Salah al Din and 90% from Diyala, displaced outside their respective Governorates, report they wish to return home.¹⁴



LEGAL PROVISIONS FOR PROPERTY RESTITUTION AND COMPENSATION IN IRAQ

Unresolved, crisis-induced HLP issues in Iraq are multi-layered and extremely complex. This stems from previous displacement waves related to land and property rights violations committed by the Saddam regime and post-2003 efforts to address those violations. Compounding this are earlier waves of mass displacement and return and inadequate housing and urbanization policies of the past.

The government's efforts to deal with the diverse, preexisting HLP issues can be grouped into legislative provisions addressing 1) the legacy of the Arabization policies under the Baath regime as well as 2) conflict-induced HLP issues that have arisen after the fall of the Saddam regime. Most mechanisms, however, pre-date 2014 and are hence not targeted at the current crisis. The following initiatives and institutions exist:

¹³ IOM Iraq. Ninewah Governorate Profile, May 2015

¹⁴ IOM Iraq. Salah Al Din Governorate Profile, May 2015

- **Iraqi Property Claims Commission:** The IPCC was established in 2003 to provide redress to victims of the land and property rights violations committed by the authoritarian Saddam regime between 17 July 1968 and 9 April 2003. By the deadline of June 2007, a total of 167,096 claims had been filed. According to data obtained from the Director of the IPCC in August 2015, more than 90% of claims have seen a final decision.¹⁵ The vast majority of remaining decisions are linked to claims regarding Kirkuk Governorate, an ethnically and historically very complex region. As of August 2015, 14,000 claims were approved for compensation payments, out of which 12,227 have been paid out. The enforcement of the remaining claims is hampered by the lack of necessary resources to pay out all compensation packages.¹⁶ It is doubtful that in the intervening period much has changed in this regard.
- **Council of Ministers Decree number 262 of 2008:** The decree catered for the immediate financial needs of returnees by granting 1 million Iraqi dinars (approx. US\$850¹⁷) to each displaced family returning to their place of origin, provided that their official displacement record was written-off. It also granted a six-month rent assistance of 300,000 Iraqi dinars (approx. US\$252) per month for displaced families occupying houses of returnees in Baghdad, provided that they vacate those houses.
- **Prime Minister Order 101 of 2008:** This order stipulated that secondary occupants of houses belonging to displaced population are considered as participants in such displacement and must hence vacate those houses and its contents within one month as of 1 August 2008. In accordance with the order, the Ministry of Migration and Displacement (MoMD) established three Return Assistance Centers (RACs) to facilitate the recovery of property of returning families in Baghdad (Khark and Resafa) and Diyala respectively. As of February 2011, 3,800 properties which had been subject to secondary occupancy had been restored to their original owners.¹⁸ However, it remains to be fully verified if these Centres are still active.
- **Cabinet Order 54 of 2009:** The order established committees¹⁹ in Diyala Governorate (particularly effected by post-2006 sectarian violence) to support 27,500 returnee families from Diyala through funding

¹⁵ Information obtained from Director of the IPCC Tara Qaradaghi, 9th of August 2015, Erbil.

¹⁶ Information obtained during meeting between HIJRA AMINA team and PCC in Baghdad on 25 March 2015.

¹⁷ UNHCR Factsheet Iraq, August 2010. <http://www.refworld.org/docid/4ca992a12.html>

¹⁸ UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin : addendum : high-level conference on "Ten years of the Guiding Principles on Internal Displacement - achievements and future challenges" (Oslo, 16 and 17 October 2008): summary of the Conference Chair*, 11 February 2009, A/HRC/10/13/Add.3, available at: <http://www.refworld.org/docid/49abc00d2.html>, p.8

¹⁹ Under the chairmanship of the Head of the Implementation and Follow-up Committee for National Reconciliation

reconstruction and provision of basic services, including compensation grants for damaged houses and provisions of legal aid to obtain identity documents and recover property.²⁰ A total of 3,000 housing units were built in 2009 and 20,000 temporary jobs in Diyala were provided for IDPs. In addition, UNHCR and the GoI established “Protection and Assistance Centres” which included mobile teams providing services throughout the country, and seven “Return, Integration and Community Centres” in Baghdad and Diyala²¹, which are however no longer operational.

- **Law No. 20 of 2009: Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions:** The law applies retroactively from 2003²² and foresees Compensation payments for death, disability, and temporary injuries to victims of military operations, including compensation for property rights violations. The Central Committee to Compensate Victims of Combat Operations and Military Mistakes and Terrorist Operations (CCCV), was formed by the Iraqi government to accept applications from beneficiaries, and subsequently opened branches in most provinces, including the KRG.^{23 24} The total amount paid in compensation to victims of terrorist acts until January 2013 was 370 billion Iraqi dinars USD \$259 million.²⁵
- **Current crisis:** To prevent the loss of ownership of properties usurped by Daesh, the Iraq Ministry of Justice “locked the land registry and suspended all transfers and registration of property ownership in cities and areas under Daesh control, particularly in Ninewah and Salah al Din Governorates”²⁶ in August 2014. They further declared all new transfers of ownership and registration of real estate in Anbar, Salah al Din and Ninewah areas under Daesh control as void.

²⁰ UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin : addendum : high-level conference on "Ten years of the Guiding Principles on Internal Displacement - achievements and future challenges" (Oslo, 16 and 17 October 2008): summary of the Conference Chair*, 11 February 2009, A/HRC/10/13/Add.3, available at: <http://www.refworld.org/docid/49abc00d2.html>, p.8

²¹ *ibid*

²² UN Commission on Human Rights, *The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.*, 27 March 1998, E/CN.4/RES/1998/6, available at: <http://www.refworld.org/docid/3b00f0c64.html>, p18

²³ ICRC. July 2013. “ICRC and the Missing file in Iraq - Questions and Answers For Families of Missing Persons”, available online at http://familylinks.icrc.org/en/Pages/Countries/Country%20pages%20ressources/Missing%20Persons_Q%20and%20A_%20Final%20update_24.07.13.pdf.

²⁴ Al-Monitor. 17th April 2013. “Iraq pays \$300 million to Terror Victims”, available online at <http://www.al-monitor.com/pulse/originals/2013/04/iraq-terrorism-compensation-victims.html#ixzz4GkGpb2ri>

²⁵ *ibid*

²⁶ Al Shorfa. 29th August 2014. ‘Iraq clamps down on ISIL's illegal land grab’, available online at http://mawtani.al-shorfa.com/en_GB/articles/iii/features/2014/08/29/feature-02

Anecdotal evidence further suggests that Committees implementing Order 262 and 101 are active in several Governorates, including Ninewah and Diyala. In addition, several Committees are reported to be up and running to implement the 2009 Law No. 20 (the “Compensation Law”) in Diyala and Salah al Din. However, no data exists on number of claims, decisions, and enforcement and it is unclear whether any substantial enforcement is taking place. In addition, the Baghdad-steered Committees have limited influence in the KRI.

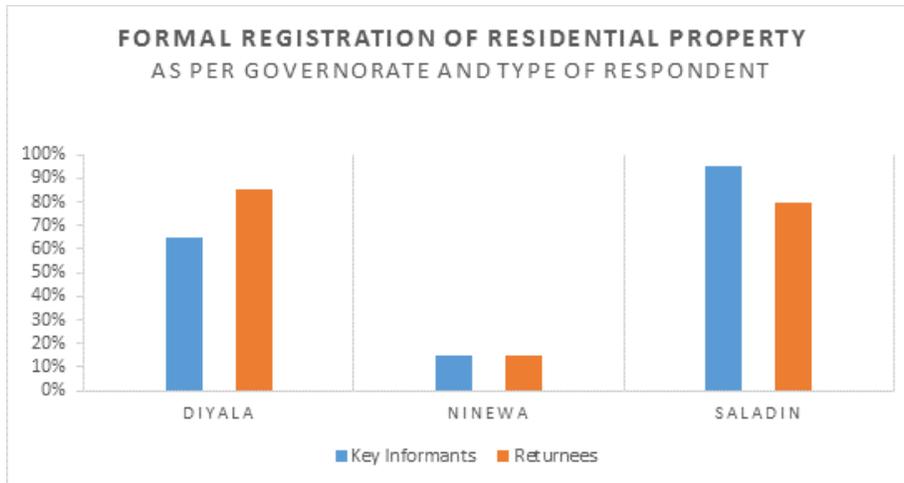
ASSESSMENT RESULTS

In what follows, the main findings of the preliminary assessment will be presented. Throughout the assessment, there was a high-degree of similarity in the responses of both returnee-respondents and key informants. This level of agreement adds reliability to findings and suggests that both individuals and communities are experiencing the same pressures. Where relevant, it is indicated whether data comes from returnees or key informants.

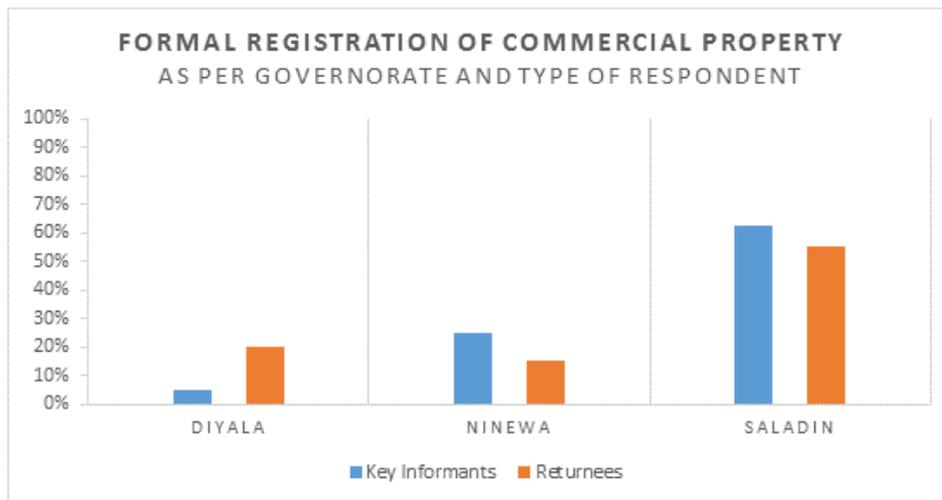
1. HIGH DEGREE OF INFORMAL PROPERTY RIGHTS BEFORE 2014

In order to understand which documents returnees in the assessed areas were likely to have possessed before their displacement, respondents were asked to indicate the main type of registration for 1) residential, 2) commercial and 3) agricultural properties before the 2014 displacement crisis. Returnees answered as to their own situation (i.e. their own properties and how they had been registered), while key informants answered on behalf of their community (i.e. most prevalent registration types per type of property).

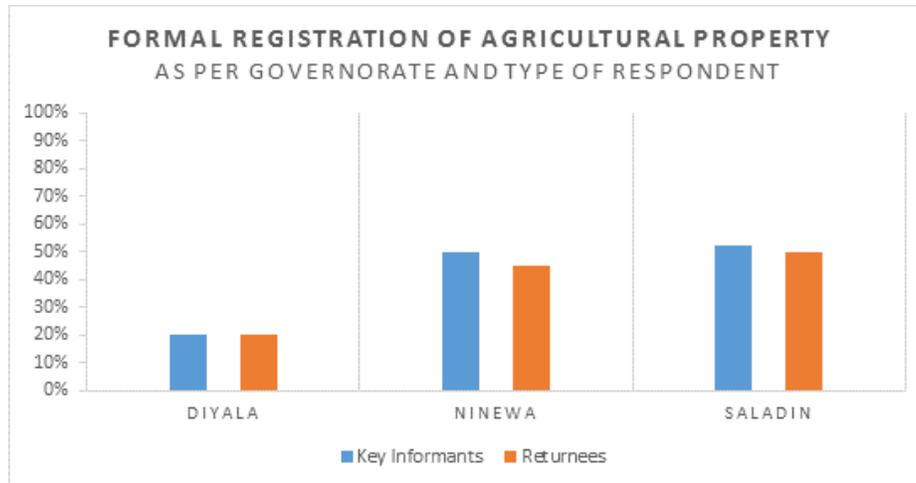
Findings suggest that the percentage of people who formally registered their residential property with the government varies depending on the region. While a majority of returnees in Diyala (65%) and Salah al Din (85%) reported to have formally registered their residential property with the Real Estate Registry, only **10%** did so in Ninewah. Instead, the vast majority (85%) of respondents from Ninewah indicated having opted for informal alternatives with regards to registering residential property, predominantly making use of informal buyer-seller contracts.



Overall, formal registration of commercial property was reported as being less common than formal registration of residential property. While the findings suggest that most people officially registered commercial property in Salah al Din (60%), only a small minority seem to have done so in Ninewah (20%) and Diyala (12.5%) prior to the 2014 displacement crisis.



Likewise, formal registration through state institutions of agricultural property was reported at only 50% and 45% in Salah al Din and Ninewah respectively, and as particularly uncommon in Diyala (20% of returnee respondents and 5% of key informants). In all other cases, property registration was reported to be informal, using only a contract between buyer and seller, or under the supervision of local community leaders.



This prevalent informality needs to be clearly considered in designing any potential intervention to reestablish HLP rights in areas of return. Importantly, policy makers must take into consideration that informal registration processes based on community validation might, in certain cases, be of greater importance than formalized property rights validated by the Real Estate Registry. Therefore, a restitution scheme based only upon the possession of formal documents *before* the 2014 crisis would not provide a solution to those who never formally registered their land and/or property.

2. WIDESPREAD PROPERTY DAMAGE AND DESTRUCTION

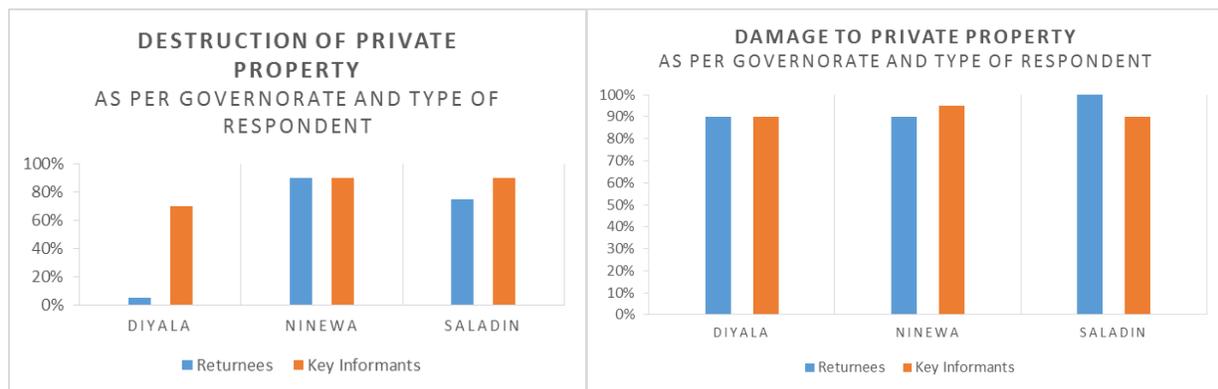
Findings clearly show that damage and destruction to private, public and religious/cultural property in the wake of the 2014 displacement crisis is pervasive and profound in all three of the assessed governorates. Secondary sources confirm that Anbar, Salah al Din, Ninewah and Diyala Governorates have experienced the most widespread destruction and looting of private as well as public property since the beginning of the current displacement crisis.²⁷ In spite of this, 93% of returnee respondents stated that their return movement was intended to be permanent.

Damage and destruction of private property

²⁷ See, inter alia, UNDP's Recovery and Stabilisation Needs Assessment Reports for Amerli (Salah Al Din), Tikrit (Salah Al Din), Newly Liberated Areas in Ninewah, Sinjar District (Ninewah), Al Sa'adiyah (Diyala) and Ramadi (Anbar), published in 2015 and 2016.

Concretely, 90% of respondents declared that private properties had been **damaged**, while another 74% reported the **total destruction** of private property. Total destruction of private property was more frequently reported by key informants (86%), who reported on community dynamics, than by returnee respondents (63%), who reported on the destruction of their own private property.

Returnee-respondents reported high levels of total destruction of private property in Ninewah (90%) and Salah al Din (78%) but markedly less so (5%) in Diyala. In all three governorates both damage and destruction was mainly attributed to Daesh however, a significant number of respondents in Diyala (34%) also explained this to be a consequence of fighting between various armed groups (especially between the ISF/allied forces and Daesh).



An overwhelming majority of returnees (96%) reported that they were initially unable to re-access and use reside their private property upon their return. Key informants exactly mirrored this number across all three Governorates, with 96% of them reporting that returnees in their communities had been unable to re-access their private property without additional support from community members and security forces.

Across governorates, all returnee respondents from Diyala and 80% of returnees from Ninewah indicated that they returned to their home communities. However in Salah al Din, only 52.5% of returnee respondents reported being able to do so.

Damage and destruction of public property

Looting of public property was reported at an overall rate of 77% across all three Governorates and was almost exclusively attributed to Daesh. Similarly, close to 80% of both returnees and key informants reported damage to public property and almost as many, 73% and 74% respectively, stated that public property had been totally destroyed for which, once again, Daesh was ascribed as the main perpetrator. As a consequence of high levels of

damage and destruction across the board, all respondents Salah al Din and Diyala and more than 80% from Ninewah reported that they had no access to public properties in their respective areas of return.

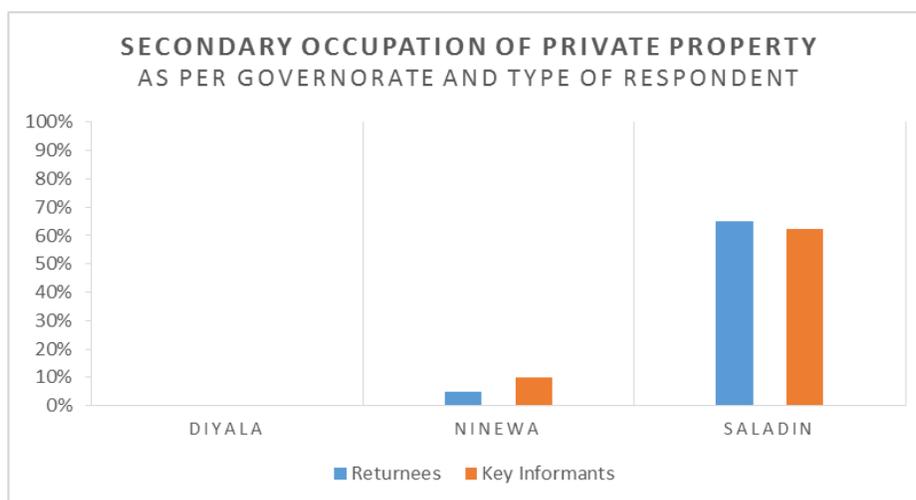
Damage and destruction of cultural / religious property

Similar to private and public property, cultural and religious facilities have also been affected by looting, damage and wholesale destruction. In Salah al Din, 75% reported the total destruction of cultural/religious property, followed by 50% in Diyala and 22% in Ninewah. Across all governorates, this was reportedly caused by Daesh and, to a lesser extent, as a consequence of fighting between various armed groups. Overall, 72% of respondents reported that they had not been able to access cultural/religious property in their area of return.

3. HIGH PREVALENCE OF SECONDARY OCCUPATION

Secondary occupation of private property

According to IOM's 2015 assessment, secondary occupation in Daesh-held territory was extremely high, with as many as 89% of IDPs included in the study outlining how they their houses had been confiscated and new occupants had moved in. **During this assessment, however, secondary occupation of private property was only reported by respondents from Salah al Din, where it was indicated to be a major problem.** Indeed, nearly 2 in 3 (64%) of respondents from Salah al Din declared that secondary occupation of private property was taking place (62.5% of key informants and 60% of returnees). Generally, secondary occupation was attributed to either armed groups (45%), or other IDPs/Returnees (55%). In stark contrast, secondary occupation of private property was reported as virtually non-existent in Ninewah, reported by only 1 key informant, and not at all in Diyala (0%).



Occupation of public property

Occupation of public property in return areas was reported by about half (48%) of all respondents, most commonly taking place in Salah al Din (58%) followed by Diyala (50%) and Ninewah (22, 5%). The occupation of public properties was almost entirely attributed to armed groups across all three governorates.

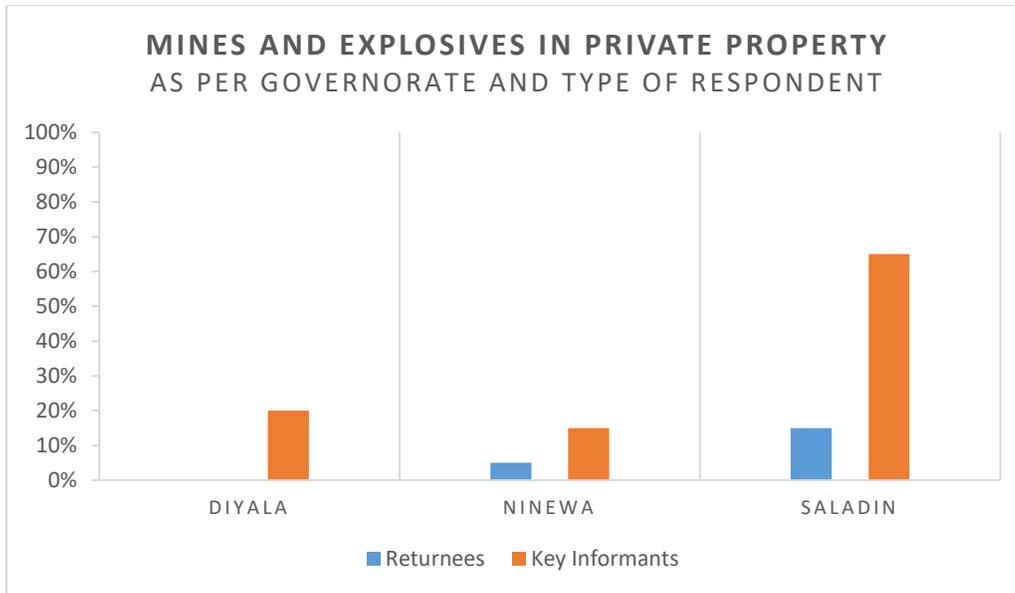
Occupation of Cultural and Religious property

Occupation of cultural and religious property in areas of return was reported by 33% of all respondents. In Diyala nearly half (48%) declared that cultural/religious property had been used by various military groups as a base from where to conduct operations. In Salah al Din, roughly 1 in 4 (26%) of respondents reported the occupation by cultural and religious property by other IDPs/returnees who had remained without access to any other housing solution.

4. PREVALENCE OF MINES AND IEDS IN PROPERTY

Despite indicating the support of local authorities and security forces, **22%** of all respondents reported that mines and IEDs still remain in either/and private, public as well as cultural and religious property across all three governorates.

Significantly, returnees reporting on whether or not their own private property had been affected by mines or explosives generally responded negatively. The figure was highest in Salah al Din with 15% and lowest in Diyala with 0%. Among key informants reporting on wider community dynamics, the problem was seen as more prevalent, with 65% of key informants from Salah al Din reporting that the presence of mines and explosives in private property was a serious concern (see table below).



With most of the planting of IEDs and explosives attributed to Daesh, findings confirm reports of the group’s tactic to systematically rig private and public property with IEDs before retreating.²⁸ This phenomenon of **pervasive IED cover** has been documented in nearly all cities Daesh has retreated from, including Ramadi²⁹ and Fallujah in Anbar Governorate and Tikrit in Salah al Din Governorate.³⁰ Indeed, the governorate reported to be most affected by mines and IEDs across private, public and cultural/religious property was reported to be Salah al Din (see table above). In Diyala however, all respondents reported that mines and explosives in public, cultural or religious property are not an issue. While respondents did not report the presence of mines and explosives in private properties as a major issue, secondary sources have preemptively flagged the extensive booby trapping as one of the many challenges to face Ninawa’s capital Mosul upon its liberation.³¹

5. DAMAGE AND DESTRUCTION OF PROPERTY RECORDS

²⁸ The National. 12th June 2016. “Thousands escape ISIL in Iraq and Syria”, available online at <http://www.thenational.ae/world/middle-east/thousands-escape-isil-in-iraq-and-syria>

²⁹ The National Post. 27th December 2016. “ISIL puts up heavy fight with suicide bombers, snipers and booby traps as Iraqi forces advance on Ramadi”, available online at <http://news.nationalpost.com/news/world/israel-middle-east/isil-puts-up-heavy-fight-with-suicide-bombers-snipers-and-booby-traps-as-iraqi-forces-advance-on-ramadi>

³⁰ PRI. 28th June 2016. “Iraqi security forces retake Fallujah from ISIS militants”, available online at <http://www.pri.org/stories/2016-06-28/photos-iraqi-security-forces-retake-fallujah-ISIL-militants>

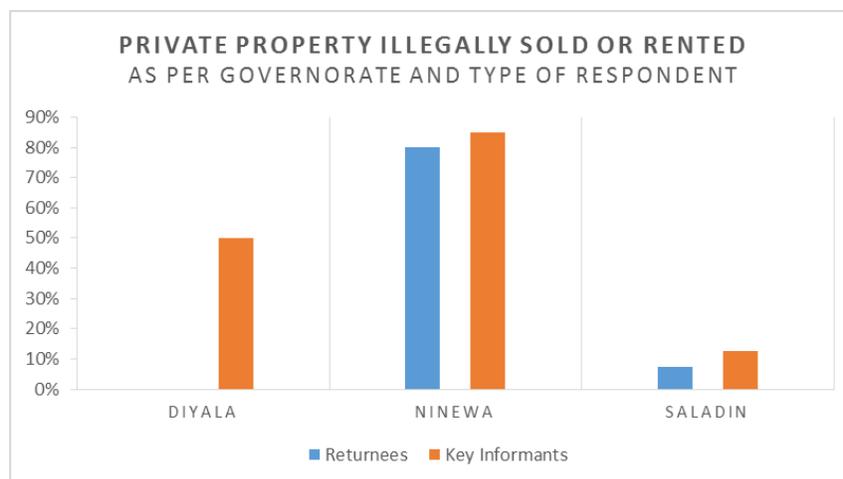
³¹ Assyrian International News Agency (AINA). 31st July 2016. “Driving ISIS Out of Iraq”, available online at <http://www.aina.org/news/20160731110910.htm>

Around a third (36 %) of all respondents reported that property records and/or the official property registration process had been damaged since the beginning of the 2014 crisis.

In total, about 35% of all respondents indicated that property records had been damaged, dispersed or completely destroyed as a deliberate act of various armed groups, predominantly Daesh. Damage and destruction of property records was reported most extensively from Diyala (reported by 50% of respondents), closely followed by Ninewah (reported by 35%) and least prevalent in Salah al Din (reported by 10%).

6. ILLEGAL SALES OF PROPERTY

Respondents also indicated that confiscated private property has been illegally sold and rented to other parties across all three Governorates. This was reported by 82.5% of respondents in Ninewah, with the vast majority reportedly carried out by Daesh. 50% of key informants in Diyala declared that illegal sales had taken place, while only 10% of respondents from Salah al Din stated that this was the case. All respondents across Governorates unequivocally pointed to Daesh as the group behind these activities.



7. CREATION OF NEW PROPERTY AND LAND INSTITUTIONS

Findings indicate the emergence of new property/land management institutions since the beginning of the 2014 displacement crisis. A notable 70% of respondents in Diyala highlighted that Daesh had created religious institutions to manage land and property issues in occupied areas, operating on the basis of group's interpretation

of Sharia. Daesh has been reported to run property registration and administration departments in areas under their control, including the issuance of property documentation.³²

Respondents from Salah al Din and Ninewah further highlighted the increased importance of informal and community channels to register and manage property. The resulting reliance on informal structures is likely to have consequences in the assessed areas of return, in spite of their utility as intermediate conflict prevention mechanisms.

8. CHANGES TO PROPERTY DISPUTE RESOLUTION MECHANISMS

Findings also show that dispute resolution dynamics throughout the assessed areas have significantly changed post-2014 as the Iraqi government's weakened institutional capacity has led to the emergence of a number of new dispute resolution bodies at the local level - from political and religious to informal.

Prior to the 2014 crisis, **58%** of respondents indicated that it was official bodies of the GoI who were mainly facilitating property dispute resolution across the three assessed Governorates. A notable exception in this regard was Diyala where religious bodies were identified as a commonly used alternative to official channels even before 2014. In a few cases, notably in Salah al Din, informal/tribal dispute resolution mechanisms were also highlighted as a complementary forum for dispute resolution.

Emergence of new dispute resolution mechanisms

Dispute resolution dynamics throughout the investigated areas have significantly changed post-2014. In Ninewah, all respondents expressed that the GoI had been the main channels to solve property disputes prior to the 2014 conflict, however now 25% (1 in 4) report that the KRG had taken over this role. Another 25% emphasized the new primary importance of religious bodies for dispute resolution. Likewise, in both Salah al Din and Diyala, there was a significant increase – compared to pre-2014 - in the number of people turning to tribal leaders to settle their disputes.

Ineffective HLP-dispute resolution mechanisms

³² IOM. 2015. "A preliminary assessment into housing, land and property issues caused by the 2014 displacement crisis in Iraq".

Overall, the general trend suggests an increased fragmentation of legitimacy leading to the creation of a multitude of actors engaging in dispute resolution. 52% of the Ninewah respondents said that they were not happy with newly established alternatives to the GoI as a provider of dispute resolution mechanisms. The same was reported by 37% and 27% of respondents in Diyala and Salah al Din respectively. Overall, about half of the respondents in all three governorates declared that the current property dispute resolution mechanisms, i.e. those established in the absence of formal alternatives, were ineffective. Discontent with current mechanisms was most pronounced in Ninewah (52.5%), followed by Diyala at 37.5% and Salah al Din at 27.5%.

Responding to why such shifts have taken place, a majority of respondents from all three governorates pointed to the damage to the formal land and property administration system. This was reiterated by respondents from Salah al Din, explaining that the closure of property registration offices had made it difficult, if not impossible, to seek dispute resolution via state/institutional formal channels (civil courts).

Lack of awareness about the IPCC / Committees amongst respondents

Overall, respondents were unaware of the work of the **Iraqi Property Claims Commission**. In Salah al Din, 17.5% of returnee respondents and 27.5% of key informants said that they are aware of community members having pending claims before the IPCC. In Diyala, this the figure rises to 50% of returnees and 50% of key informants. However, not a single respondent in Ninewah knew of a community member with a pending claim at the IPCC.

Across all governorates, respondents had no knowledge of the Order 262 committee, the order 101 committee or the 2009 Law No.20 Committee. Responses varied from “we are unaware of these committees actively working in our area” to “we have never heard of these committees before”. Respondents also strongly voiced the complaint that no law has been established to address issues post 2014.

This finding indicates that returnees and other populations have limited access to information, and thus limited access to redress and justice. It further highlights the need for efforts to improve the access to information as well as the provision of compensation/restitution to those affected by displacement-induced HLP rights violations.

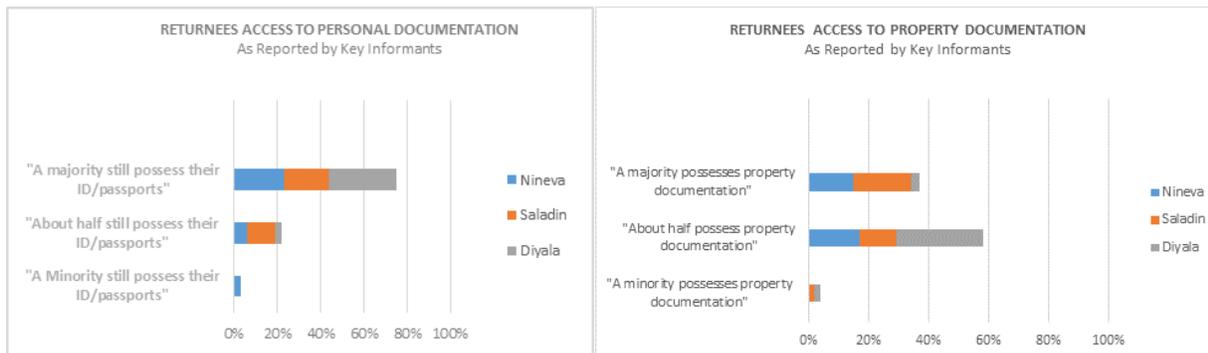
9. INCREASE IN PROPERTY DISPUTES

Several respondents indicated that property disputes occurred following return to retaken areas. In particular, 32% of respondents from Diyala Governorate reported such an increase to be the case. Most pointed to the lack of established and trusted institutional channels to settle property disputes as the main cause for this increase. Further, attention was drawn to the fact that the Daesh-occupation and the the subsequent military campaign to

re-take territory had caused a new wave of property disputes. This included secondary occupation and damage and loss of previous demarcation lines between properties. As a key informant from Balad district explained, “disputes between individuals have increased and the main reason is because Daesh has used the lands, especially agricultural lands, for making and building trenches, so many former agricultural land borders have been lost.”³³

10. LOSS OF PERSONAL AND PROPERTY DOCUMENTATION

All returnees (100%) covered by the assessment indicated that they still had their property documentation and ID/passports in possession. However, the impressions of key informants differed starkly: While 75% of key informants were confident that returnees in their communities still had access to their national documentation, this figured dropped to an alarming 38% when asked the same question about continued possession of property documentation. This finding indicates that lack of documentation among the displaced seems much more of a problem in the context of property documentation than national ID/passports.



The lack of property documentation could complicate durable solutions to displacement as IDPs cannot prove official claims to what property they left behind. Even if returnees are able to access their property, the lack of documentation renders them vulnerable to property claims from others and/or forced eviction. This adds to the situation of IDPs who had no formal documentation to begin with. The loss of property documents poses particular challenges to subgroups of IDPs, such as single women and minorities, whose civil status or rights were not recorded to the same extent as other citizens' even prior to displacement.³⁴

³³ Key informant in Balad, Salah al Din

³⁴ Brookings Institute and University of Bern. October 2008. "Protecting Internally Displaced Persons: A Manual for Law and Policymakers", <http://www.unhcr.org/50f955599.pdf>, p.158

However, while many complained about local property offices being temporary closed, an overwhelming majority of both key informants and returnees believed that the recovery of personal documentation through institutional channels is possible.

11. LACK OF DEDICATED HLP SERVICES AND SUPPORT IN RETURN AREAS

To various extents, returnees in all areas declared that they had received some assistance from local authorities and security forces upon return, primarily in terms of mine clearance and rubble removal. Any property reconstruction efforts, however, have mainly been undertaken by the returnees themselves and most were unaware of any support services being provided in their areas of return. Consequently, a high number of respondents highlighted the need for increased government efforts to address HLP-issues and many negatively noted the lack of any long-term assistance strategy and the absence of compensation schemes. As expressed by a key informant from Baiji district, *“In my case, my properties have been looted and burned. My house has been totally destroyed. To this moment nobody has compensated me or supported me to recover what I have lost.”*³⁵

Lack of dedicated HLP support services

Indeed, only 7.5% of all respondents were aware of any dedicated housing, land and property services provided to returnees in their communities (such as property registration campaigns or legal counselling). Among returnees, only 5 respondents – all from Salah al Din- were aware of HLP services (in all instances instructional support to recover property documentation). Among key informants, knowledge of HLP services in retaken areas was more pronounced –35% of key informants in Salah al Din and 5% of key informants in Ninewah, in particular highlighting services offered by Real Estate Registries to replace lost property documentation.

Claims to re-access property

Among returnee respondents, only one respondent from Ninewah indicated that he had filed a complaint to re-access his original property. Reasons as to why no more complaints have been filed were given as a) most disputes are solved through family/community networks; b) absence of state infrastructure discourages the use of formal channels for complaints and c) the fact that many respondents recognized the fact that occupiers were frequently also victims of conflict and displacement. In the absence of official complaints it is likely that meant most property disputes between returnees and secondary occupants in return areas are solved within the family/community or

³⁵ Key informant in Baiji, Salah al Din

by turning to community leaders.

Among key informants, 12.5% in Salah al Din and 5% in Ninewah knew of community members having filed claims to re-access their private property. Generally, key informants indicated that most complaints, the majority of which had been filed with the local police, had been successfully resolved in cooperation with local community leaders. A Key Informant from Salah al Din remarked that generally, *“if the claimer has documents proving his/her ownership, the security forces will support him/her to let the occupants out of the property.”*³⁶

Anticipated consequences of continued lack of HLP support

In Diyala, more than half of both key informants and returnees maintained that if there are no further efforts to address HLP-related issues, people are likely to return to clans and informal systems as an alternative to weak government institutions. The most common answer of both groups in Ninewah was that people would likely do nothing and wait for the government to provide assistance while, in Salah al Din, many respondents warned that inaction would lead to anarchy and chaos: *“Without any help returnees might use illegal methods like bribery to get their properties, which will cause more damage and crisis.”*³⁷ Findings hence clearly highlight the need for sustained support to returnees in re-accessing their properties in areas of return beyond the services currently on offer.

12. RESPONDENTS’ RECOMMENDATIONS AND EXPECTATIONS

Asked for their own suggestions regarding possible solutions to property issues in areas of return, the received responses can be grouped as follows:

Compensation and Restitution for loss of HLP resources

The need for financial compensation for suffered damage or loss of housing, land and property and/or land and housing restitution was highlighted almost invariably by both groups in all three governorates. As expressed by a returnee in Tel Afar district of Ninewah, there is need to *“help people to rebuild their houses, give compensation for people who have been affected by the conflict and start rebuilding public property in the area”*.³⁸

³⁶ Key Informant in Tikrit, Salah al Din

³⁷ Returnee from Balad, Salah al Din

³⁸ Returnee from Tal Afar, Ninewah

Respondents from Salah al Din also expressed the need for government authorities to initiate a formal process to redistribute land among returnees. As a returnee respondent from Al Muhazeem district maintained: *“The best solution is for the government to allocate land to returnees and people in the area, and make sure to provide them with a secure environment for them to slowly construct and build houses.”*³⁹

Investment in physical reconstruction

Returnees and key informants from all three Governorates also made a strong case for the physical reconstruction of housing in retaken areas. However, they also cautioned against rehabilitation measures of private property without first duly identifying the original owner to avoid subsequent, competing ownership claims and/or conflict. This is an important fact to consider in the current context as more towns and villages are being retaken in the Mosul operation, and rehabilitation of infrastructure becomes part of the humanitarian response to facilitate returns.

Capacitating relevant state institutions

Secondary to calls for compensation and restitution, many respondents highlighted the need to reopen Land and Property registration offices in retaken areas. The most vocal respondents in this regard came from returnees in Salah al Din who bemoaned that the *“property registration process has completely stopped! They need to resume their work and new Offices need to be opened...this is the most important issue to be considered now”*.⁴⁰

Key informants from Salah al Din also confirmed the pressing need of re-establishing official channels to which people can turn: *“There are many property claims to be filed by the people. The reason they haven't filed is that the offices are closed.”*⁴¹ In addition, several respondents called for reducing fees in processing paperwork, for example when applying for re-issuance of property documentation.

In Diyala, key informants and returnees echoed each other in calling for cooperation between central/local-level authorities and clan-members/informal leadership as a viable way to address unresolved property issues. In contrast, in Salah al Din key informant's suggestions mainly took the form of calls to reopen Land and Property registration offices and for measures to strengthen the rule of law through the involvement of central courts in property-dispute settlement.

³⁹ Returnee respondent from Al-Muhazeem, Salah al Din

⁴⁰ Returnee from Haj-Al Shuhada, Salah al Din

⁴¹ Key informant in Alarbaen, Salah al Din

Legislative reform

Furthermore, many respondents emphasized that legal and administrative reform is a necessary step to provide the much needed redress to those who have suffered crisis and displacement-induced HLP issues in an integrated and transparent manner. With regards to improving the existing laws, suggestions included amending the law to abolish the overtaking of property shares between partners of the same property and amending existing laws such as the law 1198 of 1977, which a respondent maintained “*would solve 90% of the property issues.*”⁴²

RECOMMENDATIONS

Accessibility and availability of housing, land and property is and will be one of the key criteria for safe and orderly return as well as durable solutions. Furthermore the way in which housing land and property challenges are addressed will also have an impact on peace and stability in the affected governorates in the future.

The preliminary assessment findings point towards the need for policymakers to carefully consider the key challenges ahead and, where necessary, either revise existing policies and mechanisms for addressing HLP issues or adopt new ones to fill gaps. As such, the recommendations are as follows:

Recommendation 1: Conduct a comprehensive mapping and cataloging exercise of the extent and type of HLP issues inhibiting sustainable returns, social cohesion and stabilization in the retaken areas to inform policy response

The preliminary assessment has raised sufficient concerns to warrant a further follow-up mapping and cataloging exercise of the extent and type of HLP issues in return areas to confirm and complement its findings. This will enable a detailed understanding of the number as well as type of HLP related issues faced by returnees in retaken areas, which is a prerequisite for an integrated policy response. This follow-up assessment should best be conducted by the government in collaboration with international partners.

Recommendation 2: Assess the functionality of Law 20 (“Compensation Law”) Committees in crisis-affected areas

⁴² Returnee respondent in Bezhkan, Salah al Din

As the body formally tasked with providing some redress for conflict-induced HLP rights violations without any temporal scope (applying retroactively from 2003), the existence and current functionality of Law 20 Committees in the crisis-affected should be urgently assessed when it comes to their functioning following the crisis that started in 2014. Reports suggest that at least one of these Committees is currently active in Ninewah and Salah al Din Governorate, although no respondent of this assessment was aware of this. The preliminary assessment results suggest that it may be useful to consider integrating the work of the Committees into a wider and integrated policy to provide returnees with redress for crisis-induced, suffered HLP rights violations, and/or to expand mandates and outreach activities. In this context it could also be worthwhile to consider the option of extending the temporal scope/mandate of Order 262 and Order 101.

Recommendation 3: Assess, and where necessary, capacitate the formal land and property administration in crisis-affected areas, including property dispute resolution mechanisms

For the state to fully regain its governance function in the return areas and to effectively counteract the move towards informal dispute settlement and emergence of non-state actors in land and property relations, the function of governmental land management institutions and dispute resolution mechanisms must be restored as quickly as possible. To this end, an institutional assessment should be conducted to establish 1) what has remained of the governmental land and property institutions in the crisis-affected areas and 2) what is required to re-establish and/or reinforce them quickly and efficiently.

The assessment would need to target and cover the following institutions: local administration, the central and local branches of the Real Estate Registry, the judiciary and the enforcement institutions responsible for property and land administration. This is crucial regardless of the prospective legal framework and institutional model chosen by policy makers to address HLP issues in areas of return.

Recommendation 4: Consider the establishment of Return Assistance Centers in return areas to assist with HLP-related issues

As increasing number of individuals and families continue to return to their areas of origin, they will be in need of immediate assistance in order to reconstruct and regain access to their homes, land and businesses. As such and echoing recommendations by respondents, the Government could usefully consider the **establishment of return assistance centers**, possibly modelled on what was done in Baghdad and Diyala to address the 2006/7

displacement. Pending an integrated policy, these centers could provide practical assistance to IDPs facing difficulties in accessing their homes, land and businesses. In an initial phase, these services could focus on providing assistance to IDPs with getting their personal and property documentation back in coordination with Ministry of Interior and Ministry of Justice. These services could potentially be expanded to provide specific support to asset recovery for those opting for other solutions than return, as well as offering mediation mechanisms between returnees and current occupants.

Recommendation 5: Consider the development of a unified legal/policy approach to address displacement and return related land and property violations

There currently is no comprehensive legal framework comprehensively addressing past and present displacement-induced HLP issues in Iraq. Instead, most of the existing legislation in this regard is limited to specific time periods, geographical areas or specific types of HLP violations. Indeed, several respondents strongly voiced the complaint that no law has been established to address displacement-related HLP issues post-2014. However, instead of establishing yet another separate mechanism to address property disputes related to the 2014 displacement crisis which could lead to conflicting decisions and institutional forum shopping, policy makers strongly consider moving towards a unified approach to displacement and return related land and property disputes / violations. Such an approach may well require the adjustments and/or adaption of new legal provisions. It is hence important conduct a thorough analysis of the existing legal frameworks to evaluate their applicability to existing displacement-related HLP-challenges. This review should form the basis for either amendments to existing legislative and executive provisions or for the development of a new comprehensive legal and institutional framework in this regard, based on extensive consultations with relevant political actors and affected communities. The scope of these consultations should cover all critical aspects of possible prospective comprehensive mechanisms such as the definition and categorization of land and property grievances, types of remedies (restitution, compensation, hybrid and innovative models), financing, and institutional responsibilities and enforcement. This process might involve expanding the mandate of existing institutions to include the HLP issues arising from the current conflict and displacement or the establishment of a dedicated institution.