

A BRIEF GUIDE ON HOUSING, LAND AND PROPERTY (HLP) RIGHTS IN IRAQ AND THE LEGAL FRAMEWORK

1. Overview

More than five years after the official end of military operations against ISIL, establishing durable solutions for affected families remains critical. As of March 2022, Iraq has witnessed the return of 4.96 million internally displaced persons (IDPs) following the military defeat of the Islamic State of Iraq and the Levant (ISIL). This is a significant population and, while the movement to areas of origin is a first step toward returns, it is not necessarily an indication of longer-term sustainability. More than 1.18 million live mainly in informal settlements/sites and there is still a possibility of re-displacement.¹ Furthermore, upon returning to their area of origin, returnees often face barriers which challenge the sustainability of their return that are also shared by those who remained in their communities during the period of ISIL conflict.

As mentioned in the Inter-Agency Standing Committee (IASC) Framework for Internally Displaced Persons (the Framework) there are certain criteria and principles that need to be considered to determine if the durable solutions for IDPs has been achieved.² One of the principles is also to establish the “Effective and accessible mechanism to restoring housing, land and property” to ensure that “The right to access compensation and restitution and the “Existence of the mechanism; Availability of the mechanism; Accessibility of the mechanism; Affordability of the mechanism; Effectiveness of the mechanism” is functional. All IDPs whose property was affected in one or another way from the conflict or war should have access to above mentioned mechanism. Regardless of whether IDPs have returned or remain in the area of displacement, access to restitution and compensation should be available to exercise their right to compensation entitlements. In Iraq, HLP is a key element to achieve durable solutions. Housing destruction and HLP remains one of the major obstacles that prevent many IDPs from returning to their areas of origin.³ Returning “home” may mean moving in with relatives, sometimes three or four families in the same house, or renting, secondary and illegal occupation, establishing temporary shelters in informal sites, or living in unfinished or empty buildings. Overall, 71% of displaced individuals (535,832) reportedly faced a return barrier relating to their pre-displacement houses being damaged or destroyed.⁴ Therefore, there is a risk that the displacement may become protracted if there are no durable solutions provided on

housing and restitution of HLP rights.

The current applicable compensation scheme in Iraq, provides restitution of damaged/destroyed housing, land and property to the war affected households and it is considered by humanitarian actors to be one of the main enablers to sustainable return, reconciliation and peace-building and plays a vital role for durable solutions. The financial entitlements for compensation are often used by returnees to rehabilitate their houses or re-establish their life in their area of origin.

However, the lack of valid ownership documentation and lack of access to compensation for the destroyed properties have had a significant impact and prevented many IDPs from returning to their area of origin. Under the principle of “Do No Harm”, beneficiaries need to prove ownership of the house before the rehabilitation effort can commence. Often, owners have lost HLP documentation and face challenges to prove the legal ownership of the house, hence works cannot start till the beneficiary can provide such documentation. Moreover, missing or lack of ownership documentation, lack of access to the compensation scheme, secondary/illegal occupation, forced evictions, confiscation and illegal sales of the properties are major barriers for the official owner to return to their property and rehabilitate it (on his/her own or with external support) to accommodate their families. Bureaucratic complexity, delays in disbursement of compensation mechanisms are the main barriers to accessing property compensation.⁵ Additionally, lack of awareness on compensation mechanisms are the main barriers to accessing property compensation.⁶ Subsequently, limited number of compensation claims have been recorded by the Compensation Committee. Moreover, ethnic and religious minorities have been often subjected to discriminatory policy and practices which prevents them from obtaining ownership

¹IOM, Returns Index, <http://iraqdtm.iom.int/ReturnIndex>

²A durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement – IASC Framework on Durable Solutions.

³Difficulties in accessing compensation for damaged housing assets prevent IDPs returning. Protracted Displacement in Iraq: Revisiting Categories of Return Barriers, IOM IRAQ, January 2021

⁴IOM Returns surveys 2020.

⁵Humanitarian Needs Overview, 2022.

⁶Humanitarian Needs Overview, 2022.

documentation and directly affecting their tenure security and rights to compensation. Supporting marginalized groups to submit property compensation claims will improve victims of conflict's access to justice and contribute to the restoration of their human rights.⁷

Inefficient compensation mechanisms due to complex bureaucratic procedures and lengthy delays, and limited financial disbursements for successful claimants, continue to negatively impact the living conditions of IDPs and returnees, and weaken the attainment of durable solutions.⁸

Almost all IDPs in camps (90 per cent) report that their housing, land or property was damaged or destroyed during the ISIL crisis and only 1 per cent of them have received property compensation to date.

To support the realization of the overall objective of the Iraq Durable Solutions Strategy and Operational Framework, IDPs, returnees and other displacement-affected populations need to be supported to pursue, and ultimately achieve, a voluntary, safe and dignified durable solution to their displacement through return, local integration or settlement elsewhere in Iraq.

In this regard, provision of legal assistance and counselling and awareness raising on compensation scheme should be provided to IDPs and returnees to inform them on the issues that affect their compensation entitlements such as: their rights to compensation; what is the current compensation scheme available in Iraq; what are the procedures to submit the claim; and how to access the compensation scheme to receive their financial entitlements.

There is a risk that the continued lack of awareness and lack of access to compensation will contribute to protracted displacement, will negatively impact IDPs' ability to secure durable solutions, including return to their areas of origin, and undermine the peacebuilding process and co-existence within the communities.

This brief guideline⁹ will therefore focus on providing brief information on the compensation scheme for the property in Iraq and aims to familiarize the partners with the process of submitting compensation claims "in the Court and in the Compensation Sub-committee" for the affected households whose properties were

damaged or destroyed during the war against ISIL.

2. Purpose of the Compensation Guidelines

These guidelines intend to support durable solution actors who are working on compensation and HLP legal related issues, to better understand the compensation scheme as set out in Iraq's Law 20 of 2009¹⁰, Law 57 of 2015¹¹ and Law 2 of 2020¹² which govern the compensation of all Iraqi citizens affected by damage or destruction of their properties caused by war operations, military errors and terrorist actions in Iraq. The guidelines will assist those who provide HLP, legal assistance and services for the IDPs and returnees who need legal assistance on compensation, to submit their compensation claims to respective compensation committees to receive their financial entitlements. In addition, the guidelines will assist those who disseminate outreach materials and raise the awareness of the community to better understand the procedures with regards to compensation scheme.

The below guidelines only focuses on the category of compensation of housing, land and property and not any of the other categories eligible for compensation by above mentioned laws.

⁷ Emerging Land Tenure Issues Among Displaced Yazidis from Sinjar, Iraq, UN-Habitat, November 2015.

⁸ Humanitarian Needs Overview, 2022.

⁹ For more detailed guidelines on compensation, you can refer to the "Property Compensation guidelines" developed for the HLP Sub-cluster Iraq.

¹⁰ Law number 20 of 2009 on Compensating People Affected by War Operations, Military Errors, and Terrorist Actions, Iraqi Gazette.

¹¹ Law 57 of 2015 (first amendment) of the Law 20, 2009 for Compensating people affected by War Operations, Military Accidental Errors, and Terrorist Actions, Iraqi Gazette.

¹² The Law on the Second Amendment to the Law No. (20) of 2009 for the Compensation of Victims of War Operations, Military Errors and Terrorist Actions, Iraqi Gazette.

3. Compensation scheme in Iraq

As per the Law on Compensation (Law 20 of 2009, Law 57 of 2015 and Law 2 of 2020), the Iraqi Government will compensate all citizens, including IDPs, whose properties were affected by war-related incidents.

Law 57 of 2015 stipulates that all Iraqis affected or harmed during military operations and terrorist actions are entitled to financial compensation.¹³

According to Article 2 of the Law 20, there are five categories eligible for compensation:

1. Martyrdom, missing in action, abduction, or injured persons;
2. Persons with disabilities as result of war;
3. Injuries that require medical treatment;
4. Damaged property;
5. Disadvantages relevant to job or education.

There are six sub-categories which focus on property damage.¹⁴ They are divided as follows: vehicles, houses, farming lands, furniture, shops, and businesses/companies.¹⁵ All claims are considered on a case by case basis and the compensation amount depends on the level of damage to each property.

4. Who is eligible for compensation?

Article 1 of Law 57 of 2015 stipulates that all Iraqi citizens who have been harmed, wounded or affected by military operations or errors, or terrorist acts are entitled for compensation. Accordingly, all individuals whose properties have been damaged or destroyed are eligible for compensation.

All or any type of property damage that has occurred during the military operations or by terrorist acts, is covered under Article 1 of Law 57 of 2015.

The Guidebook on Compensation states that “If damages occurred include multiple segments that belong to the citizens’ property, it is possible to combine them all in one dossier without being segmented, for example, damages that affect

the house, the furniture, and vehicles, this is to spend less time at processing such claims.”¹⁶

5. Who can submit a claim for compensation?

In principle, all property owners can submit a claim for compensation. If an owner is not able to submit the claim in person (absent, disabled, ill or unfit to travel), they can authorize another individual through a power of attorney, to collect the documentation and submit the claim on their behalf. If the owner is deceased, the inherited persons can submit the claim after they have legally inherited the property.

6. What are the required documents for submitting a compensation claim?

To prove their identity, a claimant must attach a copy of any one of the following valid documents: ¹⁷

- National Identification Card (Civil ID Card),
- Passport,
- Residency Card,
- Unified Card,
- Civil Status Card,
- Heirs Deed certificate,
- Pension Document,
- Displacement Confirmation Letter,
- Housing Card,
- Ration Card,
- Unified Identification,
- A copy of the power of attorney in cases where it is compensation claimer’s representative, and

¹³ Article 1 of the Law 57, (first amendment), Law for the Compensation of Persons Affected by Military Operations, Military Mistakes and Terrorism Acts (No. 20 of 2009).

¹⁴ Secretariat General of the Council of Ministers. The central Committee for compensating people affected by war operations, military mistakes and terrorism. Guidebook for compensating people affected by war operations, military mistakes and terrorism, paragraph 2, Page 5, second edition, Arabic version.

¹⁵ Guidebook for Compensating People affected by War Operations, Military Mistakes and Terrorism, chapter four. Secretariat General of the Council of Ministers, The Central Committee for compensating people affected by war operations, military mistakes and terrorism.

¹⁶ The Law on the Second Amendment to the Law No. (20) of 2009 for the Compensation of Victims of War Operations, Military Errors and Terrorist Actions, Iraqi Gazette.

¹⁷ The copy of any ID document which is required to attach to the sets of documents is for information only.

- Include the inheritance allotment,
- Custodianship deed,
- Guardianship deed in the case of minors or missing persons, as well as
- Attaching the representative's or inheritors' assignment,
- As well as all relevant deeds and documents.¹⁸

To submit a claim, a claimant has to provide a proof of ownership or property title deed (tapoo)¹⁹ of the property which shows that he/she is the rightful owner of the property (proof of ownership). Title deeds are issued by the Real Estate Registration Office at the respective district or sub-district level. In case owners have lost any of their property documents, they will have to obtain a replacement from the Real Estate Registration Offices in their respective governorates. In case the Real Estate Registration Office is not in possession of the Title Deeds/Tapoos due to destruction of records, they may obtain the tapoo from the Central Real Estate Registration Office in Baghdad.

Should an owner not be in possession of his ownership documents, they must file a request to the compensation office at the respective district where the property is/was located, to obtain an Ownership Proof Form (an official document issued by the specialized authority, submitted by the claimant to prove his/her ownership of the damaged possessions).²⁰ This form should be endorsed by all four of the following authorities; Mukhtar, community leaders, municipal council, local authorities, and two witnesses in their own respective district/governorate. All of them would have to validate that the property truly belongs to the said claimant.²¹

Claimants should submit high-quality pictures and the exact address of the property, as evidence of the damage that has occurred to their properties as a consequence of the military operations and terrorist acts during the conflict.²² In cases where IDPs who have not yet returned are filing a claim and are not in possession of pictures of their damaged properties, they should seek alternatives such as written claims by all four of the following: Mukhtar, Mayor, neighbours, and community leaders in validating the level of damage.

7. Where should a compensation claim be submitted?

It should be emphasized that claimants should ensure that they have compiled all necessary documents required prior to filing a compensation claim. Durable solutions actors and legal assistance providers working on HLP are highly encouraged to support beneficiaries to complete all required documentation.

Claims are to be filed at the office of the sub-committee at the claimants' respective district/sub-district/governorate. Several offices have been opened so far in different governorates, districts, and sub-districts level mandated to receive compensation claims.

8. What are the procedures for submitting a claim for compensation?

Based on the Law for compensation, there are certain procedures that any claimant will need to go through in order to successfully submit his/her claim. Notwithstanding some variances in procedures between governorates, the followings are the broad procedures for submitting a compensation claim for the property in Iraq

¹⁸ Guidebook for Compensating People affected by War Operations, Military Mistakes and Terrorism, General principles, chapter one, point 3. Secretariat General of the Council of Ministers, The Central Committee for compensating people affected by war operations, military mistakes and terrorism.

¹⁹ Title deed should be original one and should be authenticated by current year's stamp (e.g 2022).

²⁰ Guidebook for Compensating People affected by War Operations, Military Mistakes and Terrorism, General principles, General Principles, chapter one, point 4. Secretariat General of the Council of Ministers, The Central Committee for compensating people affected by war operations, military mistakes and terrorism.

²¹ In some governorates this is not practice anymore.

²² There are no clear guidelines on compensation if property is destroyed after Explosive Hazards clearance by Iraqi Security Forces (ISF), but such procedures are reflected by the text of the law which include military mistakes and should be legally binding. However, humanitarian MA partners include third party liability insurance that supports the damage claims for any potential damage during their clearance operations.

THE PROCESS OF FILING THE COMPENSATION CLAIM FOR THE PROPERTY

Compensation Claim in Court



1. Preparation of the Case

Claimant need to prepare the following documents:
Identification documents;
official deed or/and Ownership Proof; power of attorney (in case claimant is not the owner, to legally represent the claimant); the compensation claim form; pictures of the property and list of furnitures/assets

2. Court

Claimant will need to file the claim with the request to the assigned judge. A fee will need to be paid while the claim is submitted. The judge will refer the case to civil defense and police office.
(Claimant will need legal support to fill in the claim form)

3. Civil Defense And Police Office

The case will be transferred to the administrative office for incident/damages report, location and map checks. Claimant will be called for site visits. The reports will be submitted to the Court.

By that claimant had completed the case in the Court

6. After Closure of the Case

After closing the case in Court, claimant must scan and print all the file and stamp it. The Referral Request will be forwarded by the judge to the compensation sub-committee. It's preferable that claimant keeps his/her own copy of the file in case of lost.

5. Closure of the Case– in Court

The court will review the case, and will request from claimant to officially confirm that claimant didn't or will not file another compensation claim under the same compensation scheme. After this process, the case will be referred to prosecutor for final review and then will be referred to the judge to provide the reference number/code.

4. Summons to Court With Witnesses

The judge will review the case, the reports, the testimony of the witnesses, and after this process, claimant will be asked to submit the written pledge to court.

Compensation Claim in Compensation sub-Committee



1. To Compensation Sub-committee

Once the referral arrives to sub-committee, claimant will be asked to fill in the Security. The form will be referred to Security related directories for security/background checks. This will take from 3 – 6 months (depends on the governorate). After completion of the security check, the case will be forwarded to the sub-committee. In case of names similarities, it's recommended to have site visit and security inspections.

2. To Related Offices

During this process, claimant will be asked to submit confirmation letters for all the documents in the file, including recent official property deed from the real estate, residency confirmation by Mukhtar, two witnesses, 6 photos of the damaged property.

5. To Compensation Judge

After the case is finalized by the expert and the reports are issued, the case will be submitted to the Compensation Judge for review. Once the review is completed, claimant will be informed by the committee.

4. Damages Legal Expert/Evaluator

Sub-committee will assign a damages expert evaluator to review the list of damages and draft priced BoQ (the expert will visit the property with surveyor to draft Legal and Technical reports)

3. Following and Monitor Sub-committee Facebook Official Page

After submission of the documents, claimant can follow the Facebook page to check the status of his/her case. Once the name is published, claimant must submit the file to the sub-committee, where will receive a Ticket with the Case Number and the date of issuance.

6. The Decision

The Judge and 6 members of the committee from relevant ministries will review the case and the expert will provide the recommendation for the amount that claimant is entitled. Claimant will be asked if he/she is satisfied with the recommendation of the Expert. Once the claimant agrees, the committee will decide on the case and will forward the case for the payment.

7. The Payment

In regard to the payment mechanism, the sub-committee will send the file for confirmation to the central compensation committee in Baghdad if the amount is higher than 30 million IQD. If it is less than 30 million IQD, the case will be referred to prosecutor and discriminatory board in the Appealing Court in the respective governorate to release the payment.

FOR MORE INFORMATION

Muslim Qazimi

Programme Manager & Chair,

Housing-HLP Subgroup,

Durable Solutions, Iraq

UN-Habitat Iraq Programme

muslim.qazimi@un.org

THE BRIEF GUIDE ON HLP IS DEVELOPED BY UN-HABITAT FOR THE HOUSING-HLP SUB-GROUP, DURABLE SOLUTIONS IN IRAQ

