



ADVOCACY NOTE ON PROPERTY COMPENSATION SCHEME IN IRAQ

CHALLENGES AND RECOMMENDATIONS

OVERVIEW

Iraq has recently experienced a massive wave of displacement that has caused an intricate housing, land and property situation. During the conflict, many Iraqi citizens had their property rights violated, such as having lost possession of their property or have had their property damaged or destroyed by different actors¹. Approximately 5.8 million² Iraqis were forced to abandon their homes and leave their areas of origin as a consequence of fear of violence, lack of freedom of movement, lack of access to basic services. In conflict-affected areas, unlawful seizure, sale, systematic looting, and destruction of properties were highly common, and are consequently unable to return to their areas of origin or rebuild their homes and lives at the present day.

Enjoying tenure security and access to housing is a fundamental human right, and humanitarian and governmental actors have a responsibility in ensuring that the rights of people are restored and respected

The aim of this document is to highlight the challenges related to the structure of, and access to, the current compensation scheme in Iraq, as well as recommendations on how to overcome these obstacles.

COMPENSATION LAW IN IRAQ

In 1991, the United Nations (UN) Security Council set up the UN Compensation Commission to provide reparations to some victims of Iraq's invasion of Kuwait. Subsequently, after Saddam Hussein was removed from power, the Iraq Property Claims Commission (later renamed the Commission for the Resolution of Real Property Disputes) was created to deal with land-related violations committed under his regime. Finally, a more recent effort in Iraq is Law No. 20 of 2009 on Compensating Victims of Military Operations, Military Mistakes and Terrorist Actions (amended in 2015), which provides redress to victims who have suffered violations since 2003.³

Property-related compensation has been, and continues to be a topic of discussion in Iraq. However, the latest wave of claims resulting from the war against extremist groups is governed exclusively by Law No. 20 of 2009.

It is evident that the Iraqi government considers

¹According to assessment of January 2018, conducted by UN Habitat and Ministry of Planning, there are approximately 60,000 houses destroyed during the armed conflict. The damage/destruction assessment is based on satellite imagery and covers only category 3 and 4 of house destructions. According to the Government of Iraq's Damage and Needs Assessment of Affected Governorates, out of 138,051 houses that have been damaged or destroyed, the district of Mosul, which is located in the governorate of Ninewa, holds the largest share of recorded number of damaged housing, compared to districts in other affected governorates, IRAQ RECONSTRUCTION and INVESTMENT, Damage and Needs Assessment of Affected Governorates, Part 2, January 2018.

² Displacement Tracking Matrix (DTM), <https://www.iom.int/countries/iraq>

³ Reparations for the Victims of Conflict in Iraq Lessons learned from comparative practice, page 4. Ceasefire Centre for Civilian Rights and Minority Rights Group International, Clara Sandoval and Miriam Puttick, 2017.

compensation as an integral step toward reconciliation, nevertheless, there are several challenges related to the application, ease of access, and functionality of the current mechanism. It is thus imperative that the authorities ensure that the right measures are deployed and that appropriate solutions are provided in order to enable conflict-affected households to be rightfully compensated for their losses.

Accordingly, below is a list of the main challenges and recommended actions identified by the HLP Sub-Cluster that would strengthen the efficiency and effectiveness of the current compensation scheme.

CHALLENGES AND RECOMMENDATIONS

I. Lack of clear guidance on how to file a claim for compensation

The Law on compensation does not offer clear guidance on the procedures for filing a claim for compensation. The Council of Ministers' Secretariat (COMSEC) Guidebook on compensation appears to be written for judges, lawyers, and legal experts, rather than the claimants themselves. This is evident due to the complicated language and legal terminology used in the COMSEC's Guidebook on compensation.

Recommendation: The Central Compensation Committee or other relevant authorities should seek to develop a guidance on the current compensation scheme, with the aim of simplifying terminology and providing concrete information for potential claimants on procedures, locations, eligibility, and timeliness of the process.

II. Cost and Timeliness

The current process is considered costly and lengthy. The claimant bears the cost of an evaluation expert's assessment, along with their transportation costs, while a successfully filed claim could take up to one year to be processed.

Recommendation: The Central Compensation Committee and its sub-committees should consider covering the costs of the evaluation expert with regard to professional fees and transportation, as the costliness is often a deterrent to initiating the process and filing claims.

III. Inconsistent procedures across different governorates

A survey conducted by the HLP Sub-Cluster on the procedures for submitting a claim highlighted a lack of uniformity within the processes across different governorates. This is creating a sense of confusion for displaced and non-displaced claimants, lawyers, and is consequently impeding the efficiency of the process.

Recommendation: The Central Compensation Committee should seek to harmonize the procedures for filing a claim across governorates, with respect to documents required, timeliness, entities involved, and fees.

IV. Insufficient number of investigation judges serving at the Compensation Sub-Committees

There is only one serving investigation judge per compensation sub-committee, who is solely responsible for adjudicating or processing claims for compensation. Moreover, Compensation sub-committees only function twice a week. This is creating a backlog of unprocessed claims, while the volume claims is anticipated to rise with the increase in returns.

Recommendation: The Central Compensation Committee and the High Judicial Council should seek to employ additional investigation judges at each sub-committee, while focusing on sub-committee's that are located in high-density areas and who receive the largest volume of claims. Additionally, it is highly encouraged that sub-committees operate more often in order to reduce the backlog of unprocessed claims.

V. Scarcity of Sub-Committees across governorates

The large geographical coverage of the recent conflict has resulted in a high number of damaged/destroyed properties scattered across the country, and in many hard-to-reach areas. However, the low number of sub-committees and their small geographic coverage has created a burden on potential claimants with regards to transportation. This includes security checkpoints, transportation fees, and the long duration of the journey, which have all been observed as deterrents for potential claimants in exercising their right for compensation.

Recommendation: The Central Compensation Committee should consider establishing more functioning sub-committees at district and sub-district levels, in order to ease the burden on potential claimants with regards to transportation. This could include establishing roving mobile teams that would operate at district and sub-district levels, and in hard-to-reach areas.

VI. Weak coordination between Central and Sub-Committees

The lack of coordination between the Central Compensation Committee and its sub-committees has led to a gap in the flow of information, and has thus created a bottleneck of issues and challenges that the sub-committee offices are facing with no support, while the Central Compensation Committee are unable to provide solutions due to the weak coordination structure. The lack of coordination could undermine the efficiency of the

process, and create additional challenges for potential claimants.

Recommendation: The Central Compensation Committee and its sub-committees should enhance their coordination, with the aim of jointly addressing the needs and challenges related to the compensation process.

VII. Inexperienced administrative staff operating at the Compensation Sub-Committees

Despite the explicit staffing requirements and criteria defined by the law on compensation, it has been observed that there are instances in which administrative staff operating at the sub-committees, and are tasked with providing accurate information to potential claimants, do not have the required level of knowledge about the process. This includes misguided information on document requirements and filing procedures.

Recommendation: The Central Compensation Committee and its sub-committees should provide comprehensive trainings and capacity-building exercises to staff operating at the sub-committees on the compensation mechanism. This includes information on required documents, procedures, locations, and timeliness.

VIII. Lack of financial and logistical support

A number of sub-committees have financial and logistical deficits that are impeding their ability to continue operating, or in providing timely support. In rare instances, it has been reported that potential claimants are supporting the sub-committees logistically in order for their claims to be successfully filed. Any support provided by potential claimants to the sub-committees constitutes a conflict of interest and undermines the government service as a whole.

Recommendation: The Central Compensation Committee should seek additional sources of funding in order to enable proper service delivery by the sub-committees, and to avoid undermining the efficiency and transparency of the compensation process.

IX. Shortage of allocated budget for compensation

The allocated budget for compensation⁴ under the government's budget plan does not meet the amount needed to compensate all affected households. It is also unclear what type of damages the allocated budget for compensation covers.⁵

Recommendation: The Central Compensation Committee should advocate for the need to allocate

⁴ In 2019, 100 billion Iraqi dinars (approximately \$ 85 million) have been allocated. Lack of clarity on what amount is allocated to compensate for property-related damages.
⁵ *ibid*

sufficient funds to compensate for property-related damages under Law 20 of 2009.

X. Data is not being digitalized

A number of sub-committees do not possess the necessary IT and/or equipment needed to protect filed claims and the documents pertaining to each claim, which could include documents related to civil identity and inheritance. This possesses a risk in terms of protection of data and privacy. Additionally, there is an absence of a centralized database to store and digitally record claims, neither at the Central nor sub-committee level. Paper files could potentially be exposed to physical hazards, including looting or damage.

Recommendation: The Central Compensation Committee should seek to establish a centralized database that would link sub-committees to a common server equipped with a backup system that would ensure the protection of data submitted by claimants. Furthermore, having access to a centralized digital database would enable authorities to conduct statistical analysis and generate reports on the on-going compensation process (e.g. number of filed, pending, and successful cases – gender breakdown - geographical breakdown - amounts disbursed per governorate).

XI. Multiple claims for the same property

A survey conducted by the HLP Sub-Cluster on the compensation process in different governorates has highlighted that in some instances, multiple claims for compensation have been filed for the same property – leaving such cases unresolved could undermine the legitimacy and credibility of the compensation process.

Recommendation: The Central Compensation Committee should seek the creation of a centralized database to enable the recording of names, plot number, location, property-title owner, and household members. This will help the sub-committees in identifying duplicate claims or illegitimate/forged claims.

XII. Forged ownership documents and false claims

Due to the large-scale of damaged/destroyed, lost or non-issued HLP documents, the number of forged ownership documents or illegitimate claims is alarmingly high. This is particularly evident in areas with a high number of denied returns and secondary occupation.

Recommendation: The Compensation sub-committees should collectively adhere to a centralized ownership verification process, set by the Central Compensation Committee, to enable accurate screening of documents and identification of false/duplicate claims.

XIII. Missing, outdated or damaged/destroyed HLP

documents

Land Registry Offices⁶ in various governorates were destroyed during the recent conflict, either intentionally by extremist groups or during the military operation to liberate the areas. This essentially left households with no HLP documents, including property-title deeds, lease agreements, and occupancy certificates; all of which are required documents when filing a compensation claim.

Recommendation: The Central Compensation Committee and other relevant authorities should provide the Land Registry Offices in conflict-affected governorates with digitalized copies of property-title deeds (tapoos)⁷, to enable the Land Registry Offices to restore missing, outdated or destroyed HLP documents in their respective governorates. These documents are prerequisites when filing a claim for compensation.

XIV. Low quality of filed claims

A survey conducted by the HLP Sub-Cluster has highlighted that a large number of filed claims are being returned to claimants due to missing documents and procedural mistakes. This is due to a generally low level of knowledge about the procedures by claimants. This creates an additional delay in the processing of claims and their transfer to the Central Compensation Committee.

Recommendation: The Central Compensation Committee should seek to harmonize the procedures for filing a claim across governorates, with respect to documents required, timeliness, entities involved, and fees.

XV. Lack of criteria for the damage evaluation

Neither Law number 20 of 2009 on compensation nor the COMSEC Guidebook on compensation provide any set criteria for evaluators on the level, type⁸ or cost of a damaged property. This creates room for evaluators to be influenced by different sources, and leaves little room for a claimant to dispute an evaluator's report due to the subjectivity of the task.

Recommendation: The Central Compensation Committee should draft additional guidelines specifying the evaluation criteria and how to assess property damages. Additionally, the Committee should seek to deploy a team of specialists rather than an individual, in order to maintain a high level of transparency.

⁶ Land Registry Office in Nineveh governorate has been demolished and destroyed by ISIL. All property documents have been destroyed also. Many citizens who face missing, damaged or destroyed HLP documents may not be able to obtain their documents and not to submit compensation claims

⁷ Under the auspices of the Ministry of Justice, the Central Land Registry Office in Baghdad has digitalized all property-title deeds up till 2014, and then froze all property ownership transfers in areas under the control of extremist groups.

⁸ Law number 20 of 2009 on compensation only covers damaged that occurred due to military operations, mistakes, or terrorist acts.

KEY ISSUES

1. Women's HLP rights

Due to traditional and cultural norms, women are relatively more vulnerable with respect to tenure security. This is particularly true for widowed women and female-headed households. In many cases, only men or their male children are listed on the property-title deed (tapoo) – as a result, women face additional barriers in rightfully claiming ownership or inheritance, which in-turn impedes their right to file for compensation.

2. IDPs in camp settings

IDPs residing in camp settings face additional barriers in filing for compensation. This includes restrictions on movement outside camps, difficulty in returning to their areas of origin, transportation costs, and issues related to civil documentation. As a result of the complexities, in-camp IDPs are often deterred from filing a claim for compensation.

3. Individuals with perceived affiliation to extremist groups

Accessing the government compensation scheme is a right to all citizens who have been affected by the recent conflict. Nevertheless, all claimants are subject to security screening processes, many of which are inconclusive. In practice, any perceived affiliation, regardless of the degree, would result in an automatic exclusion from all government services, including compensation.

FOR MORE INFORMATION

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