

Return-Related Property Issues in Iraq - Informal Mechanisms and Durable Solutions

Introductory Remarks

Peter Van der Auweraert
Senior Legal Advisor, Reparations Programmes, International Organization for Migration

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In addition to moderating this panel, the organizers also asked me to spend a little bit of time on explaining why this panel was included in a workshop that, so far, has mostly looked at return-related property issues as a problem of legal norms and the institutions that are supposed to apply and enforce those legal norms. Let me do this by briefly looking at each of the two parts of the title of this panel in turn: (1) informal mechanisms and (2) durable solutions.

Informal Mechanisms

The inclusion of a session on informal mechanisms reflects, first of all, the reality on the ground in Iraq today where informal and non-state mechanisms are playing a role in addressing return-related property issues. Local councils, tribal and religious leaders as well as local authorities are already, and sometimes heavily, engaged in finding ways to resolve conflicts between returnees and secondary occupants or address other return-related property issues, often outside any explicit legal framework or mandate. In a moment, we will hear from Mr. Ali Al-Ameri how for example the Saydiya Council is working hard to avoid that the return of the displaced creates new conflicts and tensions in their area and what they have so far learned from their engagement with return-related property issues.

But the inclusion of informal mechanisms is not simply a product of the situation on the ground. It also responds to the concern that, given the likely scope and size of return-related property issues in Iraq, it is probably unlikely that all those issues can be resolved through the ordinary court system or even a (yet to be established) special-purpose commission or body, at least within a time-frame that corresponds to the needs of the displaced. Moreover, from a wider peace building perspective it may be preferable to try resolving as many disputes as possible through, voluntary, mediated outcomes and solutions rather than through “imposed” judicial or administrative decisions. Finally, also the likely difficulties involved with enforcing judicial or administrative decisions against losing parties plead in favor of foreseeing an important role for informal mechanisms in addressing return-related property disputes.

Informal mechanisms are of course unlikely to be the sole answer to what is a very complex problem. For one, a proportion of the disputes will probably have to be resolved through formal administrative or judicial means because they are simply “too hard” for informal, voluntary mechanisms to tackle. Examples of such hard cases may include situations where the parties to the dispute have committed violence against each other in the past or where one of the parties perceives itself as being so powerful to engage in mediation. In addition, it may be necessary to think through how the State could monitor that “voluntary settlements” are not, in fact, euphemisms for the strong imposing their will on the weak. How this can be done without either undermining the informal mechanisms’ legitimate outcomes

or reducing their efficiency and effectiveness is maybe something that could be explored in the question and answer session after the panel.

Durable Solutions

International experience has shown that returning property to the displaced or providing them with compensation in case restitution is not possible or not wanted, is only one part of effectively addressing the aftermath of large-scale forced displacement. While the current workshop is about “return-related property issues” it is important not to lose sight of the fact that the restitution or compensation of property in and by that self will not ensure a peaceful and durable return or resettlement of the displaced. Let me briefly highlight three (out of many more) issues that are relevant here, in addition to the inevitable issue of overall security improvement and consolidation which are, of course, absolute conditions for a durable end to displacement in Iraq.

The first issue is that a restoration of property rights and the payment of compensation for the loss of rights by the displaced does not address the chronic and massive housing shortage that Iraq has faced now for a decade or more. This shortage will remain and may well worsen if displacement comes to an end. In this respect it may be important to assess what effect a large-scale return of Iraqis currently displaced outside Iraq would have on the housing situation in Iraq. A continued scarcity of housing may well mean that squatting in public buildings and State land will persist even if the conditions for a large-scale return of the displaced would be there. It may thus be necessary to ensure that a national policy for ending displacement in Iraq contains an important housing component. Such component could, for example, foresee the allocation of public land to the displaced who have no land or home to return to and the provision of assistance with the funding of housing construction to those with little or no access to private credit markets.

A second issue is that other experiences have shown that it may be wise to combine support packages for returning and resettling displaced persons with support to the communities that (are likely to) receive them in significant numbers. This can be done in different ways including, for example, through the targeting and prioritization of those communities for public housing schemes, investment in basic public services such as health and education and the renewal or upgrading of infrastructure. Doing so may help to avoid the emergence of return or resettlement related tensions and conflicts and facilitate the (re-)integration of returning and resettling displaced persons in their communities. Also this type of measures are best foreseen within the framework of an overall policy to promote the end of displacement and carried out in an integrated and coordinated fashion that allows sufficient flexibility to quickly respond to the situation on the ground.

A third and, for the purpose of these introductory remarks, final issue concerns the question on how to approach the homogenization of areas and neighborhoods that to an important extent has been cause and effect of the recent large-scale displacement and what impact policy choices in this area will have on what is needed to end displacement. Will the goal be to, as much as possible, encourage and support the re-emergence of mixed areas or will official policy remain neutral in this respect? The former approach would probably require the development of explicit reconciliation initiatives aimed at rebuilding trust between and amongst the different communities, the individuals and families belonging to these communities and the State. In turn, this sort of initiatives may require the development of a coherent and widely supported transitional justice policy, which is a whole new, and very complex area in itself but one that may hold a lot of potential for durably ending displacement in Iraq.

But now it is time for me to hand over the floor to the panelists. Thank you for your kind attention.

