



**Secondary Occupants /  
Enforcement**

**الشاعل الثانوي للعقار/التنفيز**

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## I. Lessons Learned الدروس المستخلصة

- **If not successfully tackled, secondary occupants hamper return and restitution efforts**

• **إذا لم يتم التعامل بنجاح مع مسألة الشاغليين الثانويين للعقار فإن أي عملية عودة يمكن أن تفشل.**

## II. Assessments – Confirmation of housing occupied

### 2. التقييم: التأكد من اشغال المنزل

- **UNHCR / IOM:**  
confirmation that abandoned or lost property is occupied
- **Who are the secondary occupants?**
  - Militia (Baghdad, Diyala and Ninewa)
  - ISF
  - MNF-I
  - Government officials
  - Other IDPs or/other IDPs/refugees who returned into internal displacement
  - Friends/relatives/neighbours
- مفوضية اللاجئين والمنظمة الدولية للهجرة: التأكد على أن الملكية المتروكة أو المفقودة مغتصبة حالياً.
- من هم الشاغلون الثانويون؟
- الميليشيات (بغداد، ديالى ونيوى).
- القوات الامنية العراقية.
- القوات متعددة الجنسيات.
- مسؤولون حكوميون.
- نازحون اخرون، أو لاجئون عائدون الى حالة نزوح داخلي.
- أصدقاء، أقارب أو جيران.

### III. Status of occupants

#### التكليف القانوني للشاغلين

- With permission (based on verbal / written agreements) • برخصة من المالك (شفوية أو تحريرية).
- Without permission • بدون رخصة من المالك.

## IV. Motivation for occupancy

### الدوافع وراء شغل العقار

- **Occupation for humanitarian reasons (displaced and nowhere else to go)**
  - **Occupation of empty housing in order to enhance own housing situation (movement from poorer to richer areas)**
  - **Occupation after having forced owner/lawful tenant from their homes**
  - **Occupation after houses were cleared by others (some were given homes as reward for loyalty; others were encouraged or even forced to live there as part of a plan of ensuring that certain areas are controlled by the same group)**
  - **Occupation after taking advantage of circumstances (initially asked to protect homes, bought or exchanged home for less than value or under questionable circumstances)**
- **دوافع أنسانية.**
  - **لغرض تحسين مستوى المعيشة.**
  - **بسبب الإخلاء القسري.**
  - **كمنحة من الميليشيات.**
  - **الاستيلاء على المنزل بعد القيام بحراسته.**

# V. Issues to be looked into

## قضايا للمناقشة

- Issue of balancing rights between those who have a valid claim to the property and those currently legally/illegally occupying the property – secondary occupants also have rights
- الموازنة بين حق المالك وحق الشاغل الثانوي.
- من الحيوي أن نعلم:
- أطار أستعادة الملكية يجب أن يراعي الشاغلين الثانويين.
- What is vital:
  - Restitution framework needs to equally outline the process for dealing with secondary occupants
  - Adequate measures need to be taken to ensure that secondary occupants will be protected against homelessness, unreasonable relocation or any other human rights violations
- يجب ان تكون هناك إجراءات لحماية الشاغل الثانوي من أي انتهاكات لحقوق الانسان.

## V. Cont'd

- Secondary occupants may have to be compensated (eg. costs associated with protecting and maintaining homes, consideration paid); payment of compensation should not delay the restoration of property rights.
- Finding interim housing and land solutions for secondary occupants who have no other means to access alternative housing or land (interim solutions; long-term solutions for those who have no place to go) - Provision of alternative housing to a secondary occupant should not be used to justify the denial of the right to restoration of housing or property for the legitimate original resident.

- يمكن للشاغل الثانوي أن يستحق تعويض للمصروفات التي صرفها على العقار.
- إيجاد مساكن بديلة للشاغلين الثانويين. على أن لا يؤثر هذا على حقوق الشاغلين الثانويين الأخرى.

## V. Cont'd

– Procedural mechanisms must be in place to ensure that evictions are lawful – guidance provided in General Comment No. 7 (1997) from the UN Committee on Economic, Social and Cultural Rights (procedural safeguards include: adequate and reasonable notice)

– Equality before the law: secondary occupants wherever they are should be treated the same and mechanisms/measures should be equally capacited throughout Iraq

- يجب ان تكون هناك اجراءات لضمان أن عملية اخلاء الشاغل الثانوي تتم بصوره قانونيه وحسب المعايير الدولييه.
- المساواة أمام القانون بين المالك والشاغل الثانوي.



- **The Pinheiro Principles (UN Principles on Housing and Property Restitution for Refugees and Displaced Persons)**

### **Chapter on Secondary occupants**

- 17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner that is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.
- 17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.
- 17.3 In cases where evictions of secondary occupants are justifiable and unavoidable, States should take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means of facilitating the timely restitution of refugee and displaced persons' housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.
- 17.4 In cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, States may consider establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases.

## الشاغلون الثانويون

17-1 ينبغي للدول ان تضمن حماية الشاغلين الثانويين من الطرد التعسفي او القسري غير المشروع. وفي الحالات التي يعتبر فيها الطرد مبرر ولا مفر منه، فعلى الدول التقييد بالقانون الدولي لحقوق الانسان ومعاييرها.

17-2 ينبغي للدول ان تضمن ان الاجراءات العادلة الممنوحة للشاغلين الثانويين لا تضر بحقوق المالكين والمستاجرين الشرعيين من استرجاع مساكنهم وممتلكاتهم على نحو عادل.

17-3 في الحالات التي تكون فيها عمليات طرد الشاغلين لاثانويين مبررة ولا مفر منها، فينبغي ان تتخذ الدول تدابير ايجابية لحماية الشاغلين الثانويين الذين لاسبيل لديهم لشغل اي سكن لائق اخر غير الذي يشغلونه حاليا.

17-4 في الحالات التي يقوم فيها الشاغلون الثانويون ببيع المساكن والممتلكات الى اطراف ثالثة بحسن نية، يجوز للدول النظر في وضع آليات لتعويض الطرف الثالث المتضرر.

## Pinheiro Principle 20. Enforcement of restitution decisions and judgements

- Principle 20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgments.

Example: The legal framework for the Bosnian Commission for Real Property Claims has not foreseen any enforcement mechanisms. Only with the adoption of a national enforcement mechanism could CRPC certificates be implemented.

• المبدأ 20-1 ينبغي للدول ان تعين وكالات عامة محددة يعهد اليها بتنفيذ القرارات والاحكام المتعلقة برد المساكن والاراضي والممتلكات.

مثال: ان الاطار القانوني لهيئة نزاعات الملكية في البوسنا لم يشهد اية آليات تنفيذية الا عند اعتماد آليات مديرية التنفيذ الوطنية.

## Pinheiro Principle 20.

- 20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgments made by relevant bodies regarding housing, land and property restitution.
- 20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgments. Threats or attacks against officials and agencies carrying out restitution programmes should be fully investigated and prosecuted.

- **20-2** ينبغي للدول ان تكفل بواسطة القانون، ان تكون السلطات المحلية والوطنية ملزمة قانونا بمراعاة القرارات والاحكام الصادرة عن الهيئات المعنية برد المساكن والاراضي والممتلكات وبتطبيق هذه القرارات وتنفيذها.
- **20-3** ينبغي للدول ان تعتمد تدابير محددة للحيلولة دون عرقلة تنفيذ القرارات والاحكام المتعلقة برد المساكن والاراضي والممتلكات.

## Pinheiro Principle 20.

### Challenges in the Bosnian context:

- Failure by the authorities to enforce positive decisions for lack of political will, especially in cases where properties were occupied by government officials, judges, prosecutors, police, war veterans, IDPs
- Higher protection of current user under the property legislation in one entity;
- Weak administrative structures (authorities claimed to be overworked, lack staff and resources);

- تحديات من الواقع البوسني
- فشل السلطات بتنفيذ قرارات ايجابية خاصة عندما شغلت الممتلكات من قبل موظفي الدول، وعناصر الشرطة، والنازحين داخليا.
- مستوى الحماية المرتفع للشاغل الحالي للممتلكات
- ضعف الهياكل الادارية (قلة الموارد البشرية)

## Pinheiro Principle 20.

- Lack of clarity of the provisions relating to alternative accommodation and insufficient efforts by the authorities to identify alternative accommodation, as well as a shortage of alternative accommodation for those who are unable to return to their own housing or have no place to go;
- Failure by the authorities to tackle effectively cases where the temporary occupant has accommodation but is still occupying another person's home (double or multiple occupancy)

- قلة التعديلات المتعلقة بالمساكن البديلة وقلة الجهود المبذولة من قبل السلطات لايجاد المساكن البديلة اضافة الى قلة هذه المساكن لأولئك الذين لايملكون سكن.
- فشل السلطات في معالجة بعض الحالات التي يمتلك فيها الساكن المؤقت مسكن اخر ومع ذلك يشغل مسكن يعود لشخص ثاني

## Pinheiro Principle 20.

- Attacks on housing officials
- Bombing/looting of homes after/immediately prior to repossession
- Restitution successful in some areas while not in other areas, leaving some evicted displaced unable to access their homes

- الاعتداءات على المساكن الرسمية
- سلب المنازل بعد استعادة الملكية
- نجاح استعادة الملكية في بعض المناطق وفشلها في البعض الآخر.

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## Pinheiro Principle 20.

- **Lack of enforcement of CRPC decisions:** Human Rights Chamber in Bosnia and Herzegovina took various decisions indicating that the Federation not only pass legislation but ensure that the legislation was being implemented in order to be effective. In the case at hand, the CRPC decision has not been enforced for 15 months despite the deadline of 30 days of the date of the request for such enforcements.

ضعف تطبيق قرارات هيئة نزاعات الملكية:

مجلس حقوق الانسان في البوسنا والهيرسك اتخذ قرارات عديدة تشير بان الحكومة الفيدرالية ليست ملزمة بتشريع القوانين بل وانما تطبيق هذه التشريعات ايضا



## Pinheiro Principle 20.

- **Non-enforcement of evictions orders:** Court ordered the eviction of current occupants – several attempts were made to execute the Court’s decision, but without success, since the police did not take action to assist the court officials. In one case, a crowd of some 80 people gathered at the scene and obstructed in carrying out the eviction by court officials – the police undertook no action under the terms of the eviction order.

عدم تطبيق القوانين  
فشلت العديد من المحاولات لتنفيذ  
قرارات المحكمة بشأن اخلاء  
شاغلي الممتلكات، وذلك بسبب  
ان افراد الشرطة لم يقوموا  
بمساعدة موظفي الحكومة لتنفيذ  
هذه القرارات.

## Pinheiro Principle 20.

- Chamber stated that public authorities had to take effective, reasonable and appropriate measures to deal with the difficulties posed by the assembly of people obstructing the applicant's return to his home. Since there was neither evidence that the police had taken any action at all to assist the court officials nor to prevent the systematic obstruction of their work over a period of almost two years nor any attempt to prosecute those responsible for obstructing the execution of the court order, the Chamber found that such a situation was incompatible with the rule of law.

يجب على الدول اتخاذ مؤشرات  
مناسبة للتعامل مع الصعوبات  
المفرضة مع حالات رد المساكن  
لاصحابها.

## Approaches to address problems

- **Amendment of legislation relating to alternative accommodation**
- Clarification of who is entitled to which type of alternative accommodation;
- Clarification of who has to provide alternative accommodation;
- Streamlining of vacating deadlines for current users (differentiating between legal and illegal occupation and other housing available)

تعديل التشريع المتعلق بالمساكن البديلة.

- توضيح من المؤهل لاي نوع من المساكن البديلة
- توضيح من الذي يقوم بتوفير المساكن البديلة
- التمييز بين الاشغال القانوني وغير القانوني والمساكن الاخرى المتوفرة

## Approaches to address problems مناهج تحديد المشكلات

- **Penalties** for administrative bodies and their officials have been included for non-compliance with certain provisions
- **Cancellation** of provisions overly protecting current occupants
- Unclaimed apartments or apartments where the occupancy right was cancelled were placed under municipal administration for **use of alternative accommodation** for a certain period of time

- تحديد غرامات على الهيئات الادارية وموظفيها الذين لا ينصاعون للتعديلات
- الغاء التعديلات التي تحمي الشاغلين الحاليين
- استخدام المساكن البديلة لفترة محددة من الزمن

## Principle 20

- **20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programmes.**

**4-20** ينبغي للدول ان تعتمد تدابير محددة لمنع تدمير او نهب المساكن والاراضي والممتلكات المتنازع عليها او المهجورة. وتقليلًا لخطر التدمير والنهب ينبغي للدول ان تضع اجراءات لجرد محتويات المساكن والاراضي والممتلكات المطالب بردها في اطار برامج رد المساكن والاراضي والممتلكات

## Principle 20

- **20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgments, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.**

• **20-5** ينبغي للدول ان تقوم بحملات اعلامية عامة تهدف الى توعية الشاغلين الثانويين والاطراف المعنية الاخرى بحقوقهم والنتائج المترتبة على عدم الامتثال للقرارات والاحكام المتعلقة برد المساكن والاراضي والممتلكات بما في ذلك الامتناع عن اخلاء المساكن او الاراضي او الممتلكات طوعا وتخييبها او نهبها او كلاهما.

## Principle 20

### Examples:

- Legal eviction of secondary occupants may have the result of inciting local resistance to these evictions (in the Bosnian context this was overcome through targeted PI campaigns – I respect your right, you respect my right)
- Other PI campaign / information material clearly outlined the rights and responsibilities of secondary occupants

### امثلة:

- الاخلاء القانوني للشاغلين الثانويين ربما ينتج عنه عدم امتثال من قبل الشاغلين (في التجربة البوسنية تم التغلب على هذه الحالة ضمن حملات توعية مستهدفة. انت تحترم حقوقي وانا احترم حقوقك)
- في حملات اخرى تم الاعلان صراحة عن حقوق ومسؤوليات الشاغلين الثانويين