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SPECIAL REPORT

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ABOUT THE REPORT

The crisis of displacement in Iraq has created an array of challenges related to land and property that must be addressed if return is to be sustainable. This report analyzes the nature of these land and property issues and the measures thus far taken by the Iraqi government to address them. It concludes with recommendations on how these policies can be improved and broadened to have a more durable impact.

The report draws on the extensive efforts of both the United States Institute of Peace and the International Organization for Migration (IOM) to assist the Iraqi government in the design of displacement-related land and property policies, including a July 2008 conference in Amman sponsored by the Institute and the World Bank and a November 2008 conference in Baghdad sponsored by the Institute, IOM, and the Office of the United Nations High Commissioner for Refugees (UNHCR).

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Land, Property, and the Challenge of Return for Iraq's Displaced

Summary

- Iraq has experienced several waves of mass displacement over the last forty years that have left complex land and property crises in their wake. As security has improved and some of the nearly five million displaced Iraqis have begun to come home, resolution of these issues are at the fore of sustainable return.
- The land and property challenges faced by returnees include claims of ownership and usage rights by the current occupants of their homes, destroyed and damaged property, business infrastructure that has fallen into disrepair, and a general lack of affordable housing units.
- Such land and property challenges are made all the more complex by the combination of short- and long-term displacement within the country and by the multiple causes of property loss, including expropriation by the Ba'ath regime, terrorism, sectarian violence, military operations, economic hardship, and a general climate of fear.
- Iraqi government property-recovery policies make a distinction between those who were displaced in the Ba'ath period (pre-March 2003) and those who were displaced in the post-Ba'ath period (post-March 2003).
- The Commission on the Resolution of Real Property Disputes provides recourse to victims of the Ba'ath regime through a quasijudicial process, and the Council of Ministers Decree 262 and Prime Minister Order 101 facilitate property recovery through an interagency administrative process for those who were displaced in 2006 and 2007.
- Although Decree 262 and Order 101 represent, in principle, a pragmatic and efficient process for property recovery, the process should be made accessible to a broader section of the displaced by expanding its temporal scope and allowing alternative means of proving one's displacement and property rights. Implementation of Decree 262 and Order 101 should also be improved by clarifying the roles of

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the various agencies involved in the process and by providing a dedicated capacity for administration and oversight.

- Ultimately, the Iraqi government needs to adopt a holistic strategy that goes beyond property recovery and the limited categories of displaced targeted today. It will need to grapple with the aftermath of sectarian cleansing and the fact that many displaced will choose not to go home. Its policies must also reflect the realities of the housing shortage, the humanitarian needs of returnees, the changing security conditions, and the economic crisis affecting all Iraqis.

Introduction

Iraq today is faced with a multilayered displacement crisis that is massive in both size and complexity. It is estimated that 3.8 million Iraqis were displaced from their homes from 2003 to 2008, with the majority of them becoming displaced in 2006 and the first half of 2007. This figure, which includes both internally displaced persons (IDPs) and refugees, is in addition to the one million Iraqis who had already been displaced as a result of the policies of the former Ba'ath Party regime.

The intricacy of the crisis stems from the three waves of displacement in Iraq over the past half century, with each wave having its own distinct causes and consequences. As a result, the crisis combines the complications of short-term displacement with the problems of protracted displacement. The crisis is complicated further still by the sheer number of refugees and its attendant regional implications: an estimated 1.2 million Iraqi refugees live in Syria, five hundred thousand in Jordan, two hundred thousand in the Gulf States, and tens of thousands in Egypt and Lebanon. Finally, the strong sectarian angle to the recent displacement serves only to compound the complexity of the crisis and to render a resolution to the crisis that much more difficult.

Against the background of this crisis, the Iraqi government has made it a priority to encourage the return of the displaced, especially those who are abroad, and has made use of public awareness campaigns, financial grants, and short-term subsidies for returning families. Although this has led to a modest return movement over the past eighteen months, international actors have tended to be more cautious in encouraging return. The Office of the United Nations High Commissioner for Refugees (UNHCR), for example, takes the position that while it is committed to supporting the Iraqi government in assisting those who return voluntarily, it does not consider the situation in Iraq sufficiently safe and stable to promote return.

Indeed, there have been reports of violence against returnee families in certain areas, causing them to flee again. Such reports underscore the fragility of the overall situation and point toward the possible risks a larger-scale return could pose. The small size of the return movement to date also suggests that many displaced persons remain cautious about the situation in Iraq and, for now, prefer to wait and see no matter how difficult their current situation is.

Among the most serious obstacles Iraqis face in their quest to return is their ability to either regain access to their homes and land or find alternative durable housing solutions. As in other countries that have experienced mass displacement and subsequent return, conflicts over property can not only hinder the process of return but can also reignite violence, instability, and grievances.

The Three Waves of Displacement

The major waves of forced displacement in modern Iraq can be divided into three periods: the period of Ba'ath Party rule from July 1968 to March 2003, the period from

March 2003 to the bombing of the Al-Askaria Mosque in Samarra in February 2006, and the period from February 2006 to the present, which can itself be subdivided into “pre-surge” and “post-surge” periods.

The Ba’ath Period

The Ba’ath Party made use of forced displacement as a regular tool to expand and maintain political power and as a form of collective punishment against dissenters. With his formal ascent to power in 1979, Saddam Hussein significantly increased the scope, violence, and frequency of forced displacement in Iraq. Political aims fused with personal interest, as the officially sanctioned seizure of homes, land, and businesses became a prime opportunity for personal enrichment of Ba’ath Party loyalists. The principal patterns of forced displacement in this period include those caused by

- the “Arabization” policies aimed at strengthening the regime’s control over the oil fields and vast stretches of fertile land in Kirkuk and the surrounding areas. These policies involved forcing out the non-Arab inhabitants (mostly Kurds, Turkmen, and Assyrians) and replacing them with Arabs from other parts of Iraq, sometimes through grants and subsidized access, sometimes through force;
- the expulsion policy toward so-called Tabai-ya during the Iran-Iraq war in the 1980s, when thousands of mostly Iraqi Shias suspected of disloyalty were expelled from Iraq because of their supposed Persian origins;
- the “Al-Anfal” campaign against the Kurds, which intensified after the end of the Iran-Iraq war in 1988 and led to the deaths of more than a hundred thousand people and the destruction of up to four thousand Kurdish villages; and
- the draining of the marshes in southern Iraq as a way of facilitating military movement during the Iran-Iraq war and, later, as a punishment to the Marsh Arabs for their support of the Shia uprising after the first Gulf War in 1991.

The March 2003–February 2006 Period

As was expected, the fall of the Ba’ath regime led to a large-scale return of displaced individuals. The International Organization for Migration (IOM) and UNHCR estimate that from March 2003 to the end of 2005, nearly five hundred thousand people returned to their places of origin. But the dramatic change in power relations resulting from the U.S.-led invasion caused a new wave of forced evictions, often perpetrated by those who had been the victims of Ba’ath forced-displacement policies.

In the area of Kirkuk, for example, returning Kurds forced Arab settlers out of the homes and land that they had been occupying and using for decades, sometimes with the help of the Peshmerga (the Kurdish militia). Others fled in the anticipation of violence. These dynamics between “old” and “new” victims remain unresolved and contribute to the volatility of Kirkuk today. Similarly, Diyala province experienced an influx of Kurds into areas from which they claim to have been ousted during the Arabization campaigns. In Baghdad, meanwhile, there were incidents of mobs forcing out suspected Ba’athists, and in some provinces local governments are reported to have taken an active part in chasing out accused collaborators of the former regime.

At the same time, a significant number of returnees had to find temporary shelter because their houses were either occupied or destroyed. Throughout this period, ongoing military operations and fighting between the U.S.-led forces and insurgents caused further displacement. Although such fighting tended to be temporary, it was nevertheless a cause of significant human suffering.

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The Present Period

The February 2006 bombing of the Al-Askaria Mosque in Samarra was a watershed moment for post-Saddam Iraq. Following the attack, violence, mostly on a sectarian basis, spread rapidly out of control, with suicide bombings, death squads, and abductions becoming a daily occurrence. According to the Iraq Body Count Project, the average daily number of Iraqis killed from gunfire, executions, and vehicle-borne and suicide bombs doubled in 2006, from thirty-six to seventy-two. Armed groups of all stripes operated with virtual impunity, especially in Baghdad and other major cities. According to UN estimates, 80 percent of the sectarian violence in 2006 took place within a fifty-five-kilometer radius of Baghdad. Attempts to “cleanse” mixed Sunni-Shia Arab areas and neighborhoods increased dramatically, with Christians, Turkmen, Farsi Kurds, Shabaks, Palestinians, and other small minorities also being targeted for persecution. As a result of the violence, a staggering 1.6 million Iraqis became newly displaced from February 2006 to December 2007.

Only in the fall of 2007 did both sectarian violence and displacement begin to decline. Most observers credit three simultaneous—and related—developments for the improvement in the overall security situation in Iraq: the U.S. military surge and change of strategy and the strengthening of the Iraqi security forces; the formation of the so-called Awakening Councils by Sunni tribal leaders; and the series of cease-fires declared by Muqtada al-Sadr’s Mahdi Army. The drop-off in displacement was not only due to decreased violence, however. In 2008, Iraq’s governorates and neighboring countries imposed increased restrictions on the entry of newly displaced persons and refugees, making it more difficult for Iraqis to move. Despite this drop-off, forced displacement continues to occur, and Iraq’s small minorities remain especially at risk of persecution and violence. In October 2008, for example, some two thousand Christian families were forced to flee the city of Mosul—where many of them had moved to escape more dangerous areas in Iraq—following violence and intimidation.

In late 2007, the first of the post-2006 displaced began to return. Figures from IOM and the Iraqi Ministry for Displacement and Migration (MoDM) indicate that by August 2008 close to 17,000 families—approximately 100,000 individuals—had returned to their neighborhoods of origin. More recent figures from UNHCR suggest that by the end of December 2008, an additional 120,000 refugees had returned to Iraq. It is important to remember that these returnees represent only a small portion of the estimated total displaced population. There are four noteworthy features of this return movement:

- Individuals returned mostly from nearby places of displacement: 84 percent returned from internal displacement (65 percent of whom returned from within the same governorate); only 16 percent returned from abroad.
- Most of the returnees had been displaced for a relatively short period: 74 percent of the returnees assessed by IOM and MoDM were displaced in 2006 and returned in 2007; 46 percent were displaced for six months or less.
- The return movement has been, in absolute numbers, the strongest in Baghdad, reflecting the fact that that the largest displacement during the 2006 crisis took place in Baghdad.
- The return movement almost exclusively involves Iraq’s Shia and Sunni Arab communities, with very few, if any, returnees coming from members of Iraq’s small minorities.

Returnees often find their homes badly damaged or destroyed, their livelihoods gone, and their savings depleted.

As also evidenced by this return movement, the humanitarian crisis of the displaced does not simply end as individuals and families return. Rather, the crisis takes on a new dimension in the areas to which they have returned. Returnees often find their homes badly damaged or destroyed, their livelihoods gone, and their savings depleted. They continue to suffer from a lack of access to food, fuel, and basic services, such as health

care (only 51 percent of the returnees assessed by IOM reported access to health services). The needed humanitarian aid often is lacking in Iraq both because the capacity of the relevant Iraqi institutions is severely limited and because security conditions prevent international actors from operating at the required scale.

It is becoming increasingly clear that Iraqi displacement will not be short term and that in all likelihood it will have some permanent features. Anecdotal evidence from Iraqi refugees in Jordan, for example, suggests that many of those who returned did so only because they could no longer afford to remain in Jordan, where Iraqi refugees are not allowed to work. As long as they are able to do so, Iraqi refugees will likely choose to remain in their current locations. Moreover, displaced individuals belonging to a minority community in formerly mixed areas that have now become homogenized also have little reason to return to their original homes. In fact, observers are increasingly worried that refugees belonging to Iraq's smaller minorities will never return to Iraq unless the Iraqi government takes specific measures to protect these groups.

These and other elements of the displacement crisis render finding the right policy mix to end displacement a great challenge. But the current situation—with a small-scale return movement just starting and a large-scale movement unlikely in the near term—provides an ideal window of opportunity for the Iraqi government to design and implement policies to facilitate the return and reintegration of the displaced.

Key Land and Property Challenges

The experience of other post-conflict countries and the experience of Iraq itself in the immediate post-Saddam period demonstrate the particular urgency of developing policies that address the land and property challenges related to displacement. Failure to adopt such policies creates a major obstacle to return, which may prolong instability, hinder reconciliation and the return to normalcy, and nurture grievances, often along ethnic or sectarian lines. Moreover, it may force returnees and/or those who may be occupying their homes to resort to threats and violence, fostering reliance on militias and other nonstate power structures.

Appropriate policies will only follow from a comprehensive understanding of the particular nature of the land and property challenges being faced. Iraq today faces an almost bewildering array of different but often overlapping land and property challenges that, in one way or another, all impact the possibility of finding a durable solution that will end the issue of displacement.

Competing Property Claims

More than 150,000 claims for property restitution have been filed by those who were displaced prior to March 2003. Claims to recover property from the current occupants or the Iraqi state have been made across Iraq but are an especially burning issue in the area of Kirkuk, where more than 50,000 such claims have been filed, an important number of which remain unresolved. The high number of cases reflects the fact that forced displacement under the former regime was often accompanied by the expropriation of homes, land, and businesses by the Iraqi state. These properties would then often be sold to third parties. Given the length of time that has elapsed since the displacement, current occupants may be fourth- or fifth-party buyers and may have been there for decades, rendering restitution much more challenging.

According to IOM needs assessment reports, 28 percent of those who have been internally displaced since March 2003 report that their property is currently occupied by someone else without their permission and more than 40 percent do not know the status of their property. No similar assessments have been done of refugees, but there is no reason to assume that their situation would, on the whole, be very different. A

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conservative estimate would thus indicate that the homes and land of several hundreds of thousands of displaced families are subject to occupation or use by strangers.

This involves multiple scenarios of competing claims and a broad range of individuals occupying these properties, including militants who took the properties of those they forced out (and in some cases third parties to whom the militants subsequently rented the property); squatters who seized the opportunity to improve upon their previous—often substandard—housing conditions, frequently with the encouragement of (and in some cases with pressure from) armed groups carrying out sectarian cleansing; displaced persons who sought refuge after fleeing their own homes; and, in a limited number of cases, the Iraqi Army or state.

One particularly complex type of competing claims is that involving forced or illegal sales—that is, where the displaced were forced to sell their property for a price far below the actual market value or where the property was sold in the displaced owner's absence without his or her consent. In such cases, the titleholder of the property may have been formally changed in the property registry, making the buyer the legal owner. The abandonment of property by fleeing Iraqis also created prime opportunities for shady real estate dealers who would purportedly sell or lease the properties to third parties, who sometimes entered the transaction as bona fide purchasers. The Property Registration Department in the Ministry of Justice has indicated that, on its own initiative, it blocked registration changes in cases where it suspected irregularities. However, it is unclear how many property transfers were frozen as a consequence of this initiative and what proportion of forced and illegal sales may have been recorded despite the initiative.

Competing claims are not just a problem for displaced owners of property; they affect displaced tenants as well. Many Iraqis, particularly in the cities, hold long-term leases, sometimes over generations, that are often not officially registered. Some landlords took advantage of their tenants' absence to re-lease the properties at higher rents. Depending on the circumstances, this may legally invalidate the claim of the displaced to the tenancy or create a situation of competing rights. This further complicates return in the context of a soaring real estate market that has made finding affordable housing difficult for anyone, let alone for destitute returnees.

Finally, competing claims over properties also affect those who have been displaced from rural areas. There are numerous reports that farmers who had long-term usage rights over certain plots of land are now unable to reclaim their rights because of a lack of documentation. This includes cases where the farmers had been working on those same plots for forty or fifty years. The inability of a sizeable group of farmers and their families to return to their agricultural plots will create further demographic and economic pressures on Iraq's already overwhelmed urban centers

Damaged and Destroyed Houses

Of the post-March 2003 IDPs assessed by IOM, 18 percent report that their house has been destroyed or damaged. In many cases damage took place at the hands of the armed groups that sought to force them out in the first place. Looters and squatters often inflicted considerable damage as well. Many displaced have also sustained serious losses of personal property, business stock, and farming equipment, with obvious consequences for their ability to return and continue their livelihoods. Destruction of property is also a problem faced by many of those displaced in the pre-March 2003 period, especially those who were residents of villages that were razed by the Ba'ath regime. Unfortunately, the difficult security situation in Iraq continues to prevent international actors from carrying out a comprehensive assessment of the situation and providing the needed assistance.

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Insufficient Housing

Resolving the issues related to competing claims and damaged property are made all the more challenging by the severe housing crisis that has held the country in its grip since the 1980s. A needs assessment carried out by the World Bank and the United Nations Human Settlements Programme (UN-Habitat) in 2003 found that the international sanctions imposed on Iraq, the impact of two wars, and the overcentralization of Iraqi public administration had led to a shortage of an estimated 1.4 million housing units. It also found a decline in the quality of the existing housing stock due to insufficient investment, overcrowding, and inadequate basic services, such as water, sanitation, electricity, and road infrastructure. The result, the World Bank and UN-Habitat found, was a deterioration in middle-class housing and the rise of substandard neighborhoods and unplanned settlements. In the five years that have passed since this assessment was carried out, the situation has undoubtedly gotten worse.

As a consequence of the housing crisis, and in the aftermath of the U.S.-led invasion of Iraq, hundreds of homeless families have scrambled to find somewhere to live. Many moved into government-owned property, especially buildings damaged by attacks by coalition forces or vacated by officials of the former regime. A residential complex in the Salihyah area of central Baghdad, which used to house senior military officers of Saddam's elite Republican Guards, for example, is now occupied primarily by homeless families and individuals. Similarly, some public lands are being used for makeshift settlements. More recently, IDPs fleeing unsafe neighborhoods have also turned to public buildings and land in their quest for shelter.

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Current Framework for Addressing Key Challenges

The Iraqi government has recognized the potential for destabilization stemming from unresolved property disputes and has proactively sought to address this through two separate sets of policies: the first is aimed at victims of property rights violations that took place during the Ba'ath era (pre-March 2003) and the second is aimed at those who have been displaced in the post-Ba'ath era (post-March 2003).

Policies Addressing Pre-March 2003 Displacement

Before the U.S.-led invasion of Iraq, it was already expected that the victims of the Ba'ath Party's forced displacement policies would be eager to repossess the lands, homes, and businesses that they had lost, sometimes decades earlier. There was also a clear understanding that simple repossession would rarely be an option as more often than not those properties were being occupied or used by others. Hence, there was the perceived danger that the disputes over those properties would quickly become a principal source of post-invasion instability and conflict unless a mechanism could be found to resolve them peacefully. In this context, Kirkuk stood out as a particular problem. With its huge oilfield—the largest oilfield in northern Iraq—its traditional role as the country's "breadbasket," its multiethnic and multireligious makeup, and its legacy of mass forced displacement, Kirkuk was seen as a potential flashpoint for conflict in the event of uncontrolled return.

It was against this backdrop that the Coalition Provisional Authority (CPA) decided in January 2004 to establish the Iraq Property Claims Commission, which was replaced with the Commission for the Resolution of Real Property Disputes (CRRPD) by the Iraqi Transitional National Assembly in 2006. The CRRPD's temporal competence is strictly limited to land and property issues that arose during the Ba'ath Party era. It allows victims whose property was confiscated or seized for "political, religious or ethnic reasons" or because of "ethnic, sectarian or nationalistic displacement policies" to make

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Number of claims filed with the CRRPD by region, March 2004–January 2009

Region	Number of Claims
Baghdad	17,988
Kurdistan region	26,013
Kirkuk	41,512
Ninawa, Salaheddine, and Diyala	37,341
Central Furat and Anbar	16,279
Southern region	14,063
All regions	153,196

The mandate of the CRRPD does not provide any redress for destroyed or damaged property.

This has turned out to be particularly problematic in the Kirkuk and Marsh Arab areas, where whole villages were razed by Saddam Hussein's regime.

a claim—at their discretion—for either restitution of the property or compensation for the property. In the event that a property is returned to its original owner, the current occupier can, under certain circumstances, receive compensation up to the value of the property at the time the claim was filed. The mandate of the CRRPD does not provide any redress for destroyed or damaged property. This has turned out to be particularly problematic in the Kirkuk and Marsh Arab areas, where whole villages were razed by Saddam Hussein's regime.

As of January 2009, approximately 153,000 claims had been filed with the CRRPD (see table 1), and the CRRPD had made decisions on roughly 67,000 of those claims. While that number is impressive in light of the sectarian violence and political instability that has plagued Iraq, the CRPPD process is not without its problems. The choice to use a quasijudicial rather than administrative model, for example, is not well adapted to the nature and size of the case load. The result is a cumbersome process that sometimes breaks down absent the necessary support and coordination of several state institutions and that renders final decisions only after considerable delays. Because of the right of appeal to the Cassation Committee and the re-review as required by the transition from the IPCC to the CRRPD, only about 30,000 of those decisions are deemed to be final and enforceable, and compensation has been paid in only about 1,000 cases. Further, the enforcement of restitution decisions has been difficult due to the unstable security situation. While hard figures do not exist, anecdotal evidence suggests that many claimants have been unable to reoccupy their houses or land despite CRRPD decisions in their favor. The CRRPD itself has also been targeted and several of its staff have been assassinated, including the head of the Cassation Commission, who was killed in a drive-by shooting in late 2007.

Policies Addressing Post-March 2003 Displacement

The Iraqi government was initially not convinced that the establishment of a special mechanism for post-2003 land and property rights violations was required. Distinct from the Ba'ath-era violations, for which the then-Iraqi regime was largely responsible, the post-2003 violations were principally the fault of terrorists and criminal elements. Also, in contrast to the pre-2003 displacement, the post-2003 displacement was not accompanied by an officially sanctioned expropriation, meaning that those occupying the homes of the more recently displaced mostly did so without acquiring legal title. Iraqi officials thus generally viewed the question of property restitution for the more recently displaced largely as a problem of law enforcement. Those who occupied the property of others were considered criminal offenders under the Iraqi Penal Code and Revolutionary Command Council Decision 36 (1994). Officials saw enforcement of these criminal laws as the solution to the problem of secondary occupancy, because it would allow the displaced to return to their homes.

In mid-2008, Iraqi policymakers began to develop a more nuanced understanding of the land and property dimensions of displacement and return.

In mid-2008, however, Iraqi policymakers began to develop a more nuanced understanding of the land and property dimensions of displacement and return. Especially in Baghdad, the returns that had taken place had shown quite quickly that a pure law enforcement approach was unlikely to work given the scale and complexity of the issues. Moreover, the authorities realized that a heavy-handed law-and-order approach risked endangering the fragile and relative calm that had started to reign over much of the city, especially as some of those occupying the apartments and houses of the displaced had nowhere else to go. The new approach came as part of a renewed push by the Iraqi government to encourage return of the displaced population, particularly from abroad. It also came upon the heels of the adoption of the National Policy on Displacement.

Decree 262 and Order 101. In the summer of 2008, the Council of Ministers and the prime minister developed a two-pronged package that offers limited financial incentives for returning families and an administrative mechanism to facilitate recovery of property for returnees. Specifically, Council of Ministers Decree 262 (July 13, 2008) provides a grant of one million Iraqi dinars (approximately US\$800) for returnees, provided that their displacement record is “written-off”—which effectively means that they relinquish the right to receive any humanitarian assistance provided to displaced people and refugees. The decree further allows a grant of rental assistance at three hundred thousand Iraqi dinars per month for six months for displaced families that have been occupying the homes of the returnees, provided that they vacate the home.

Prime Minister’s Order No. 101 (August 3, 2008) reiterates that anyone who occupies the home of a displaced person will be considered a participant in that person’s forcible displacement under the country’s Anti-Terrorism Law. It further provides a grace period of one month (as of August 1, 2008) for such occupants to voluntarily leave those homes. The order calls for the MoDM to establish return centers to assist returnees with the recovery of their property and charges the MoDM, Ministry of Justice, the Reconciliation Committee, and the Baghdad governorate and Baghdad Operations Command to participate in its implementation.

At the time of writing, two return centers had been established, both in Baghdad. A number of internal memoranda and instructions set out what amounts to a two-step process for returnees: registering to receive the return grant under Decree 262 and securing assistance in property recovery pursuant to Order 101. In practice, the first step involves an extensive process of verification of the various documents that the returnee is required to submit. The names of those deemed eligible for the returnee grant are provided to the finance unit in the return center, which in turn is supposed to ensure that a check is delivered to the returnee family. Once the returnee is registered, he or she may then apply for a return of his or her property by submitting documentation, including proof of ownership or a valid tenancy. If the property committee of the return center determines that the documents are authentic, then the case is passed on to the Baghdad Operations Command for implementation. A soldier is dispatched to the home in question to determine the status of the property and the current occupant. If the occupant is able to provide some evidence that he or she is a legal occupant (for example, a deed, lease agreement, or contract with the owner), the case will be referred to court. Otherwise, the occupant is told to leave or be forcibly evicted within twenty-four hours. An allowance of seventy-two hours can be made for humanitarian purposes. If the occupants are displaced themselves, there will be an effort to assist them to return to their own home, or, if they cannot return, to provide them with six-months rental assistance.

Unlike the CRRPD, Order 101 is not an adjudicative process and does not supplant the regular court system. Returnees are free to pursue their claims in court in lieu of the Order 101 process—for example, if they do not meet the eligibility requirements or lack the documentation required by Order 101. The courts also remain available for

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claims outside of the scope of Order 101, such as for personal damages or business property loss.

According to MoDM figures, by the end of 2008, approximately ten thousand returnee families had registered to receive the grant under Decree 262, but only a fraction of them had actually received it. Beginning in January 2009, the volume of new cases dropped significantly. Some attribute this to the low rate of actual payment of the return grant. No accurate figure of property recovery claims is available, but estimates from the returnee centers suggest that from September 2008 to December 2008, between 400 and 500 applications had been filed, and approximately 250 of those had been resolved in favor of the returnee. The low number of property recovery claims is surprising, but there are three likely explanations for this. First, the early returnees represented the easiest cases. That is, they had no need to submit claims because they resolved the cases on their own. Second, many returnees may not have availed themselves of the Order 101 process simply because they are unaware of the procedures or lack the required documentation. And third, thus far Order 101 has only been implemented in Baghdad.

Local assistance programs. A number of more localized and, to some extent, ad hoc programs have also been developed to assist returnees with property issues. The Baghdad governorate, for example, has recently established a program through which returnee families can apply for financial support for the repair or reconstruction of their damaged or destroyed houses. According to the governorate, more than four thousand families and one thousand business owners have already benefited from this program. The program is intended for repair of buildings only and does not cover the loss or damage of household goods, personal belongings, or business stock.

In the southern province of Najaf, the MoDM and the Najaf provincial council decided to offer five million Iraqi Dinars (US\$4,250) to each of the 213 displaced families living in the al-Manathira camp to help them return to their homes or find new places to live. Free transportation was also offered to those families wishing to return to their homes, mainly in the Sunni-dominated areas surrounding Baghdad. At the time of writing, no information was available as to how many beneficiaries of this program successfully returned to their homes. There are anecdotal reports of governmental initiatives in other places as well, but in the absence of systematic mapping of central or provincial government support programs, it is impossible to assess their scope and impact.

A different type of local assistance program, which is typified by the local support council in the Baghdad neighborhood of Saidiyah, is also worth mentioning. The Saidiyah Support Council was established in 2007 by representatives of the Shia and Sunni communities who sought to stem the influence of sectarian militias and improve basic services for the residents. Acknowledged and supported by the Implementation and Follow-Up Committee for National Reconciliation (IFCNR), the council put in place a system to assist returning families to reenter their property. A precursor to Order 101, which in fact seems to be modeled on Saidiya's approach, the council consulted with the Ministry of Justice Property Registration Department to verify ownership documents submitted by returnees and then worked with the local branch of the security forces to help facilitate the return of the property. The council also used tribal elders to help resolve disputes and negotiate amicable arrangements between owners and occupants, such as through the drafting of rental agreements. Saidiyah's success was largely due to two factors: first, it enjoyed a high level of security, and second, it remained a mixed neighborhood, providing an incentive for cooperation between influential Sunni and Shia, who were able to come up with and oversee peaceful solutions within the community. This case demonstrates the critical role of local reconciliation and support in making return sustainable.

Decisions on public land and buildings. The Iraqi government has struggled with finding an appropriate policy aimed specifically at recovering public buildings and land. On

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a number of occasions, the Iraqi government has announced its intention to evict all illegal occupants from public buildings and land. In response to these announcements, occupants of such properties have held a number of demonstrations in Baghdad and other parts of Iraq, demanding that the government either regularize their situation or provide them with support for access to housing elsewhere. Despite such protests, on December 17, 2008, the Council of Ministers issued Decision 440, which called upon all illegal occupants to vacate public buildings and land immediately. The decision provided that those who vacated on their own within sixty days of the order would be entitled to between one and five million Iraqi dinars and assistance in finding alternative housing. In the absence of progress on alternative housing solutions, and in response to demands by the Iraqi Parliament's Displacement and Migration Committee, the government has delayed implementation of the decision. While there is no data on how many displaced families would be affected by the decision, it is clear that mass evictions would render many in need of suitable housing homeless and could result in social unrest.

Recommendations for Improving the Current Framework

The current framework to address post-March 2003 return and property recovery contains a number of positive elements. Overall, it reflects a certain needs-oriented pragmatism and flexibility on the part of the Iraqi government. In fact, the government is trying to balance the needs and the rights of the returnees with those of the individuals currently occupying their properties and has rightfully moved away from its initial strictly law enforcement-centered approach. Moreover, the fact that both the central and some provincial governments are taking initiatives to assist returnees with property recovery is at least in principle a positive development: given the size and scope of the problem and the fact that displacement differs considerably from province to province, a combination of central and local government measures is certainly the way to go. The recourse to relatively simple, administrative procedures for property recovery appear well adapted to the caseload at hand, even though the tendency to "overbureaucratize" them will need to be kept in check. Finally, the very fact that the Iraqi government recognizes its responsibility to provide support and assistance to returnees in need is in itself a positive step.

That said, there is significant room for improvement to make the existing policies more efficient, effective, and accessible to a broader section of returnees. In particular, as the Iraqi government considers expanding Decree 262 and Order 101 beyond Baghdad to provinces such as Diyala and al-Anbar, it should remedy the existing shortcomings of its policies by taking the following steps to improve their impact:

- **The temporal limitation should be reconsidered.** The assistance available under Decree 262 and Order 101 is currently only available to a subset of refugees—that is, those who were displaced between January 1, 2006, and January 1, 2008, remained in a neighboring country (Iran, Saudi Arabia, Kuwait, Jordan, Syria, Turkey, or Egypt), and stayed there for no less than eight months. This temporal limitation has clear disadvantages for certain communities. The period after January 2008 has been marked by the flight of Iraq's small minorities, who should not be excluded from the process. Moreover, UNHCR reports that 1.2 million Iraqis became refugees in the period between March 2003 and January 2006, constituting a disproportionate number of Sunnis (but also a significant number of Shias) who were ousted or fled out of fear of retaliation for their perceived association with the former regime. This figure also includes the sizeable group of Arabs who were driven out of their homes and farms by returning Kurds—mostly in the Kirkuk area—for whom no other specific remedies currently exist.

The government is trying to balance the needs and the rights of the returnees with those of the individuals currently occupying their properties and has rightfully moved away from its initial strictly law enforcement-centered approach.

This latter group presents a particular challenge. While they are excluded from making claims to recover their property, they may be the subject of others' claims for eviction before the CRRPD. In reality, the land and property issues in the area of Kirkuk are part and parcel of the larger political questions around the disputed territories, and thus a political solution is needed.

- **Evidentiary standards should be eased.** Citing concerns of “fraud, misrepresentation, and forgery,” the MoDM set a very high burden of proof for individuals attempting to register for the return grant. Refugees, for example, are asked to provide their legal travel documents that bear exit and entry stamps to prove that they were outside Iraq for the needed period of time. In practice, however, many Iraqis left either without documents or with false passports, which they are reluctant to show to the Iraqi authorities. Moreover, the requirement that they prove their residence in a neighboring country through either a residence permit or a document from the Iraqi embassy is also problematic; many refugees did not receive residence permits or avoided registering with the embassy for fear of being repatriated. Finally, many returnees became aware of these requirements only after they had already returned from abroad: it is virtually impossible for them to return to their country of displacement to obtain the necessary documentation.

Similarly, IDPs are asked to produce a letter from the MoDM branch office in their place of displacement confirming their IDP registration, which automatically excludes the significant number of individuals who never registered as IDPs. In addition, they must submit multiple letters confirming their displacement and departure from the place of displacement and their return. These requirements place a heavy burden on the displaced and risks excluding the most vulnerable—that is, those who cannot produce documentary proof of their displacement. Moreover, anecdotal evidence suggests that female-headed returnee households are at a particular disadvantage, as the necessary documents may be in the husband's name only.

While concerns of fraud are legitimate and care should be taken to not evict people on the basis of shaky evidence, it is very important to ensure the right balance between the need for fraud control measures and the need for the process to be sensitive to the victims and attuned to the actual conditions of displacement and the difficulties many returnees face in obtaining the required documents. Making evidentiary standards more flexible and increasing assistance for returnees to help them meet the requirements would represent two important steps in addressing this problem. For example, refugees might be allowed to use registration documents from UNHCR and other humanitarian organizations to prove the period of their stay abroad in lieu of official travel documents. In fact, an amnesty might be issued for those who fled on false passports to allay their fears of punishment should they approach the authorities for assistance. The relevant issuing authorities should also consider ways to ease the process of obtaining or replacing key documentation, such as ration cards and death certificates. Additionally, administrative and legal assistance sponsored by both civil society and the government should be made available to returnees.

Iraq has a very strong administrative culture, which sometimes tends to err on the side of bureaucratic formalism. The traumatizing events that many displaced persons went through and the potential size of the return movement are both strong arguments in favor of a victim-centered approach rather than an “ordinary” administrative process.

- **Capacity, coordination, and awareness need to be increased.** Decree 262 and Order 101 are, as they should be, multiagency operations. So far, however, the process has suffered from a lack of coordination and excessive bureaucratization among the different agencies involved. This is, in part, responsible for the fact that

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only a small fraction of registered returnees have actually received the return grant. Some have suggested that this, in turn, accounts for the drop-off in the case load, as the failure of the government to deliver on its promises has cost it credibility. In short, returnees see little advantage to registering if they believe that the grant will not be forthcoming. Order 101 establishes the High Committee for IDPs and Refugees, consisting of the minister of displacement and migration, the minister of justice, the head of the Reconciliation Committee, the Baghdad governor, and the head of the Baghdad Operations Command, which, in principle, could play an important role in interinstitutional coordination, oversight, and policy development but which has yet to be a functional body.

In terms of capacity, there is a need for more staff training and for an expansion of the number of returnee registration centers, including mobile teams that can reach returnee families living away from the cities. The current process is dependent on the displaced returning to their place of origin before they request assistance. This raises a conundrum for those whose properties are occupied by others and who will require temporary shelter in their place of origin in order to be able to request property recovery assistance. A mechanism that allows families intending to return a chance to begin the process before returning would make the process much more victim friendly.

Similarly, an outreach campaign is necessary to inform returnees and potential returnees about available remedies and assistance and the process for accessing them. There is some evidence that returnees fail to turn to the return centers because they do not know of their existence. Without detailed information, refugees and those who remain displaced cannot make informed decisions about their return or prepare the necessary documentation for it. Information should be broadly disseminated through official channels using a variety of media and an easily available information hotline—both at places of displacement and places of return. Civil society organizations can play a critical role in spreading awareness and offering procedural assistance. A female volunteer corps would be especially useful in reaching out to vulnerable female-headed households.

- **An improved mechanism for postreturn follow-up needs to be designed.** The property recovery process under Order 101 currently ends with an eviction notice, or, in the rare cases that this does not suffice for the current occupants to leave, actual eviction by the Iraqi Army. There have been a number of reports of occupants inflicting serious damage to property—cutting electric lines and water pipes, for example—prior to vacating. More worryingly, returnees have been threatened or physically harmed by the former occupants or neighbors after they moved back into their homes, which in some cases has forced them to flee again. The role of the Baghdad Operations Command, in coordination with the neighborhood *mukhtar* (representative) and support councils, could be expanded to examine and record the condition of the home when the occupant is given an eviction notice and again when he or she vacates. They might further assist the actual physical reentry of the returnees and monitor their security in the immediate period following return. On the other hand, some returnees have found that those who were responsible for their displacement in the first place are now in charge of security in their neighborhoods, whether as members of the police, army, or Awakening Councils. These are complex issues that require careful consideration at the moment the returnee expresses a willingness to return home.
- **The court system needs to be prepared for a potential influx of complex cases.** As noted earlier, disputed cases are not resolved by Order 101 but referred to court. This is entirely appropriate, because the Baghdad Operations Command and the return centers lack adjudicative power. Additionally, Order 101 does not preclude a returnee who is not eligible for the process (for example, does not meet the temporal limita-

Iraq has a long-standing, sophisticated civil code that can address many of the disputes that may arise. However, for some of the more complex disputes, amendments to the current laws and procedures should be considered.

tion or lacks the necessary documentation) from filing a case in the regular court system. Iraq has a long-standing, sophisticated civil code that can address many of the disputes that may arise. However, for some of the more complex disputes, amendments to the current laws and procedures should be considered to address two potential problems.

The first problem relates to the existing legal framework, which may be inadequate to fairly resolve some cases exhibiting complexities related to the exceptional circumstances of displacement. The phenomenon of coerced transfers is a particular problem, as Iraqi law allows for the invalidation of recorded property transfers only under very limited circumstances. Unrecorded leases may also be problematic, demanding a policy to determine who should prevail in the event of a dispute. Policies adopted by other countries that faced these problems can be helpful to finding appropriate solutions. For example, Bosnia adopted a presumption of illegality for transfers conducted in a certain period in certain areas. The civil law concept of lesion also introduces the possibility of rescission when there are clear indicators of unfairness, such as a very low purchase price.

The second problem relates to the potential number of cases that may hit the courts. If returns begin to occur en masse, it is conceivable that tens of thousands of cases could be filed at once, creating a huge backlog and a large population in need of temporary shelter pending resolution of their cases. Streamlining court procedures or introducing an administrative process of dispute resolution may be necessary to deal with the caseload effectively.

Recommendations for Moving beyond the Current Framework

Ultimately, the improvements proposed in the previous section offer only a partial solution to the land and property issues of the displaced. While facilitating property recovery is essential, it does not address the needs of the many who do not have property or for whom return is otherwise not an option. Nor does it promise sustainability for returnees, who may require extensive humanitarian and development assistance. What is needed is a more strategic and integrated policy that addresses the wider range of factors that inhibit durable solutions for the displaced. With this goal in mind, the following recommendations are made:

- **Resolving land and property issues should form part of a wide political agreement to address the fundamental causes of displacement.** Order 101, Decree 262, and the initiatives taken by certain governorates do not form part of an overall political vision of how Iraqi displacement should be resolved. Rather, they are driven by the government's strong desire to see refugees return home and need to react to a number of concrete problems that have emerged from the recent return movement. This insistence on return can be explained by a number of different factors, but one important point to note is that Iraqi policymakers tend to equate improved security with an end to displacement. While it is true that the lack of security was the major cause of displacement and that many of the displaced cite insecurity as the biggest obstacle to return, it does not simply follow that a drop in violence will lead Iraqis to return home.

An important characteristic of Iraq's displacement is that those who were part of the minority in their respective neighborhoods—whether Sunni, Shia, or one of the small minority groups—have been disproportionately affected. In many cases, they were forced out of their homes by violence committed by neighbors or local armed groups. In addition to creating severe rifts within communities and further deepening sectarian identities, this type of violence also created a culture of distrust

and fear: if those with whom you coexisted peacefully for decades suddenly turned against you, how could you suddenly return to normalcy?

One of the most difficult political decisions the Iraqi government will have to take in its response to the post-March 2003 displacement crisis—and which it so far has avoided—is to what extent it will, or will not, try to reverse the sectarian cleansing that has taken place in Iraq. As Elizabeth Ferris of the Brookings Institution has pointed out, the future of Iraq will to some extent depend on how it deals with the question of minority return, including the return of Shia and Sunni to mixed communities and the return of the small minority groups. Experiences in other countries show that reversing ethnic or sectarian cleansing is very difficult to do, even if the general security situation is significantly improved. Simply facilitating property recovery or providing financial assistance to returnees is unlikely to suffice in this respect.

Tackling the fundamental causes of displacement will require serious efforts to address national reconciliation in Iraq, both at the national and the local levels. While it goes well beyond this report to outline what such national reconciliation policies should entail, it is possible to point to some general criteria. First, the development of a national reconciliation policy should be done through a consultative process that involves civil society and community organizations, including those that represent Iraq's small minority groups. Second, such a reconciliation policy should include measures aimed at both "horizontal" trust building among citizens and "vertical" trust building between citizens and their institutions. Third, it should provide space and funds for communities to design their own reconciliation projects at the very local level. Finally, and undoubtedly the most difficult to achieve, it should involve the sustained demobilization of the armed groups that have created so much havoc over the past few years. It may well be the case that the time is not right for a grand reconciliation effort—but if that is so, then many of the displaced are likely to remain where they are for the foreseeable future, which itself has important policy implications for both Iraq and neighboring countries.

- **Remedies for the displaced should be integrated into a broader transitional justice framework.** The financial grants available under Decree 262 are set amounts that represent only a limited monetary incentive and, in most cases, do not correspond to the actual needs of the returnees. In addition, there is a variety of sometimes ad hoc schemes administered by ministries, provincial governments, and municipalities to provide other forms of financial assistance and other specific funds for houses damaged pursuant to particular military operations, and there are a variety of victims and martyrs commissions that provide other sorts of compensation. So far, there has been no systematic mapping of the various programs or analysis of their gaps, overlap, or impact.

Given the sheer scope of need and regional economic variations, it is wholly appropriate to have a variety of assistance programs administered at different levels. Nevertheless, coordination, planning, and deliberate policy decisions are necessary to ensure that resources are allocated in a rational and fair manner that correspond to need and apply to victims of the same category across the board. Today's ad hoc approach has led some displaced to accuse the government of unfairness and neglect of certain groups. Indeed, with the emphasis on return and property recovery, there is a great concern that the most vulnerable victims will have little access to any type of remedy at all. Aside from the basic questions of justice and equity, it also casts doubt on whether a narrow and ad hoc approach can contribute to reconciliation and durable solutions.

Considering restitution and other forms of assistance as part of an overall transitional justice framework can help increase the legitimacy, coherence, and impact

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of the program. This will require the Iraqi government to develop a more systematic analysis of the violations and losses that occurred during the conflict, to determine appropriate remedies and mechanisms, and to take into account available resources. Finally, it will require the government to work out how to integrate the transitional justice efforts related to the post-2003 violence with the unfinished business of dealing with the legacy of Saddam Hussein and Ba'ath rule.

- **The link between displacement and the need for affordable housing in Iraq needs to be recognized for an effective integrated response.** The housing crisis in Iraq and the lack of affordable housing for the middle class and the poor has a direct impact on how well the displacement crisis can be resolved. Some portion of those who currently occupy the houses of the displaced are families that were formerly living in overcrowded, substandard conditions and that used the opportunity to improve their living situation. Once the displaced return, those families will have to return to what in some cases may be unsustainable shelter. Others may have no place to go. The government grant of a six-month rental subsidy to displaced families living in the homes of other displaced, pursuant to Decree 262, is too little and too temporary and does not at all address occupants who are not technically displaced. A large-scale return movement will put further pressures on the housing market, particularly in urban areas where many displaced were renters rather than owners. Hard figures are unavailable, but conversations with Iraqi refugees indicate that most of those who were renters before fleeing are likely to have legally lost their tenancy rights. If the government starts to carry out evictions of public buildings and land, as it has declared it will, the number of homeless and destitute people in need of affordable shelter will only increase.

While the overall housing crisis is a much larger problem than displacement, it is crucial that policies regarding both are worked on in tandem. The development of the National Housing Policy and local housing policies need to factor in displacement and return, while measures to address displacement must take into account the shortage of affordable housing. To this end, the Iraqi government—with support from international agencies—should collect data about the number of displaced who cannot return because of a lack of access to affordable housing and assess the housing situation in areas where high rates of returns are likely to occur. This will help ensure that the increased pressure on the housing market in those areas does not squeeze out the most vulnerable and the poor. In January 2009, relevant ministries and technical experts met to develop an initial action plan, including low-cost housing construction and land allocation for IDPs and returnees. This is an important first step at developing an integrated strategy to meet immediate needs.

It is difficult to predict what portion of the displaced population will eventually return home.

- **Return is not for everyone: an array of remedies is needed.** It is difficult to predict what portion of the displaced population will eventually return home. IOM assessments have found that approximately 35 percent of IDPs do not intend to return: 20 percent prefer local integration and 15 percent want to settle in a third location. Moreover, as noted earlier in this report, return may not be a viable option for those without homes and for certain groups—in particular, the Arabs who were resettled in the Kirkuk area under Saddam's Arabization policy and who are now being pushed out, and small minorities. While intentions and options may change as the situation in Iraq evolves, it is clear that, as in other conflict-induced displacement situations, solutions other than return will need to be found for a significant number of the displaced.

Current Iraqi government policies have focused solely on return as the means of ending displacement. Indeed, actual return is a condition for access to assistance under Decree 262 and Order 101 and a number of other assistance programs. The Iraqi government, together with the governorates that have been most affected by displacement, should develop a range of remedies and measures that assist both

the displaced with local integration or resettlement elsewhere in Iraq and the local communities with absorption of the displaced in their midst. These measures could include compensation as an alternative to restitution; the allocation of alternative land or housing; preferential access to public housing; prioritization of state investment in public services in areas where large number of displaced will integrate or resettle; and the development of income-generating projects that target areas with high concentrations of displaced.

- **Resolving displacement is closely linked with economic development policies.**

One further complicating factor in addressing displacement in Iraq is that the country has seen drastic economic decline since the fall of the Ba'ath regime. Standards of living are generally thought to be lower now than before 2003 and the number of Iraqis living in absolute poverty has shot up—as much as 40 percent of the population, according to the Iraqi Ministry of Planning. Observers estimate that the current unemployment rate in Iraq is somewhere between 40 and 60 percent. Further, access to basic services, including water, health, and education, remains problematic in many areas of Iraq. Against this background, it is not surprising that IOM and MoDM assessments found that the humanitarian crisis of the displaced continues even after return.

The lack of economic opportunities is at once an obstacle to return and a problem that could be further aggravated by return, as the number of people in need of jobs and services increases with integration and resettlement. There are no easy solutions, but two things should be kept in mind. First, financial schemes that are adopted to assist returnees should help provide sustainable livelihoods. If not, the humanitarian situation of the returnees is unlikely to improve in a durable manner. Second, support for return and resettlement should include components directed at the greater community, not just the displaced. This is necessary both to prevent excessive pressure on the economic situation of the local communities and to avoid a sense of unfairness or anger directed against the displaced that could give rise to insecurity.

Conclusions

The Iraqi government can take credit for its early attention to the land and property dimension of displacement and return and to the development of policies and programs to address emerging challenges. But on the assumption that the current trickle of return will eventually turn into a flood, it will do well to bear in mind a number of lessons learned from conflict-related displacement experiences elsewhere.

First, existing legal codes are rarely capable of adequately addressing all of the myriad legal complexities that arise from the extraordinary circumstances of property abandonment and occupation during conflict. Certain cases, such as property transfers made under duress, claims for long-held but unwritten lease and usage rights, and competing claims between original owners and bona fide purchasers, may require policy decisions and corresponding legal amendments. The usual documentation and evidentiary requirements may need adjustment to account for the hardship faced by the displaced.

Similarly, regular civil courts are not designed to handle a surge of tens of thousands of property cases by returnees on top of their regular caseload. While new mechanisms such as claims commissions are not always an appropriate solution, streamlined procedures and increased capacity may need to be introduced to avoid a massive backlog.

Second, no matter how successful legal mechanisms to resolve land and property conflicts may be, this alone will not solve the issue of displacement or achieve societal reconciliation. Durable solutions require an integrated strategy that incorporates a variety of remedies—restitution, resettlement, compensation—with economic and

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social assistance. And this needs to be done with overall reconciliation objectives in mind that recognize that it is not just about turning back the clock but about forging a new social compact.

Third, there are no quick fixes. Millions of lives have been violently uprooted, some for decades and others for a shorter period but with no less trauma. A significant portion of those who have been displaced are likely to remain in their places of displacement for some time to come, and some may never return to their places of origin. This has important repercussions for Iraq and its neighboring countries. Policies will need to take this protracted timeframe into account, avoid unrealistic expectations, and ensure that the continuation of displacement does not undermine political stability in the region or thwart the real progress Iraq has made in the past year.

While the Iraqi government needs to strengthen its capacity to deal with this long-term challenge, the international community can assist in a variety of ways. In addition to sustained commitments of humanitarian aid, the international community can provide continued assessments to help ground truth policies; technical assistance to develop data management systems and claims procedures; training support for personnel capacity building, particularly in the MoDM; and backing to civil society organizations to help them perform complementary roles.

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