Property and land

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The resolution of property and land disputes remains one of the key steps to establishing durable solutions for the displaced in Iraq and is also a crucial step in the prevention of further displacement. In addition to the inadequate housing situation in Iraq, many displaced cannot return because their properties were expropriated or confiscated or because their customary rights were not registered and they now face difficulty establishing these rights (Deutshlander, June 2005). Other displaced may be unable to return because their houses were deliberately damaged or destroyed by the former regime in the course of forcible displacement campaigns or during the current conflict or because their houses are illegally occupied (Leckie, 30 July 2003).

An Iraqi Property Claims Commission (IPCC) was established by the CPA with the approval of the Iraq Interim Governing Council in January 2004 to address some of the key property and land issues in Iraq. The IPCC is mandated to redress injustices resulting from the confiscation and distribution of properties due to actions or policies of the former governments between July 17, 1968 and April 9, 2003 (UNHCR, September 2004 and August 2004). In particular, the IPCC will address the property dilemmas caused by the confiscation of land and property belonging to thousands of Kurds and other non-Arabs mainly in areas below the green line under the “Arabisation” policy and reallocated to Arabs from central and southern Iraq. A revision of the IPCC mandate also ensures that the very mechanism that is intended to restore property rights for those displaced under the former regime will not result in further displacements (CPA Regulation 12). The June 2004 amendment ensures that Arab settlers may also make claims to the IPCC if the property they inhabit is claimed by individuals who had been previously dispossessed of their property as a result of the former Ba’athist governments’ policy of property confiscation between March 18, 2003 and June 30, 2005 (IPCC, June 2005; Deutschlander, June 2005).

The slowness of the IPCC process has raised concerns that land and property disputes might escalate into further conflict and more displacement. While formally established in January 2004, the IPCC was not functioning until July 2004 (HRW, August 2004). The fear was that the displaced would continue to forcibly push out people occupying their homes, in some cases accompanied by looting and violence as had occurred in April 2003 (HRW, August 2004; UNHCR, August 2004).
During this time period, UNHCR expressed concern about reports that Kurdish local authorities had in some cases re-distributed land as well as provided incentives for Kurds to return to claim land in the Kirkuk area (UNHCR, September 2004). As of end May 2005, the IPCC had received over 64,000 claims and adjudicated around 5,000 (Deutschlander, June 2005). The IPCC continues to face numerous challenges in carrying out its mandate, including technical and operational obstacles. Effective implementation of the property restitution process is also affected by the lack of alternative accommodation which poses an obstacle for people who may be asked to leave the property they are currently occupying (Deutschlander, June 2005). IPCC offices have received threats due to the contentiousness of property and land claims in some areas (IOM, April 2005; Deutschlander, June 2005).

One of the most urgent issues at hand is the extension of the 30 June 2005 deadline for filing property claims to ensure that all IDPs are informed of the process, able to exercise their property rights and are given adequate time to file a property claim (IOM, 8 June 2005; UNHCR June 2005). IDPs who are not able to file before the deadline will still be able file their claims to local courts, but the concern is that they will be deprived of making their claims to an independent compensation mechanism and that the delay in processing claims through local courts may be even more lengthy.

While the IPCC provides a mechanism to deal with mainly contentious property disputes, many property claims lie outside the scope of the IPCC statute. For instance, the IPCC statute does not address property disputes against the former government for expropriation of land used for national or regional projects as well as competing claims for state lands (IOM, April 2005). Habitat International Coalition (HIC) has underlined the need to create a mechanism for the prosecution, restitution and compensation of land and housing violations that are not covered by the IPCC mandate, including housing-related violations committed by the CPA and multinational forces (HIC, June 2005). HIC also recommends withdrawing legislation which provides immunity to multinational forces personnel from the jurisdiction of Iraqi courts in matters of liability for housing and land violations (CPA Order No.17; HIC, June 2005). In certain cases, special compensation mechanisms have been created. The Iraqi Central Committee for the Compensation of the People of Fallujah (CCCPF) was created to ensure compensation to Fallujah residents where an estimated 70 per cent of buildings were destroyed during the November 2004 offensive. While some compensation has been paid, reports by IRIN suggest a general delay in the compensation process and