

CCCM Cluster & HLP Sub-Cluster Iraq

Question & Answer note on Housing, Land, and Property (HLP) concerns for CCCM organizations working in informal sites in Iraq | v1.1

Version history:

v.1 August 2020

v.1.1 January 2021 | update to contact details

This Q&A note is the result of a discussion between CCCM partners (ACTED, Blumont, IOM, REACH) and the HLP Sub-Cluster Coordinator (Muslim Qazimi, UN-Habitat) under the Informal Sites Technical Working Group (TWiG) of the CCCM Cluster. The note summarizes discussions held in an online meeting of the TWiG on 18 August 2020, with additional details being added after. The note was drafted at the request of and for CCCM partners, but has relevance to organizations implementing other sectoral interventions.

CCCM & HLP activities overview

The HLP Sub-Cluster and its partners are engaged in informal sites work providing HLP support and legal assistance. During the discussion the HLP SC clarified that it is not part of their mandate to deal and address the general issue of illegal construction, building permissions and other urban related issues in informal sites. HLP Sub-Cluster and its partners do provide, on regular basis, support and updates on the humanitarian needs that IDPs are facing related to HLP. As IDPs are living in informal sites, the HLP SC and its partners provide HLP support to them with regards to identification and resolution of HLP issues, provision of legal assistance, counselling and guidance, carry out HLP awareness raising, restoration of HLP documentation, support on tenure agreements between owners and tenants, receive referrals on HLP from non-HLP partners, etc., but is limited to HLP issues related to the humanitarian context. Any activity related to development (including settlement and legalization of buildings) and upgrade of the informal sites is not part of their mandate. UN-Habitat has been more actively engaged on urban planning, informal settlement and relevant issues, and limited to some governorates.

The CCCM Cluster and its partners provide core CCCM activities in informal sites through Mobile Teams for a maximum continued period of 12 months across the governorates where people affected by the conflict are displaced. The main focus are on establishment of community level structures, communication with communities and capacity building, physical site risk reduction, data collection and information sharing, including needs assessments, and advocacy for identified gaps with a specific focus on HLP issues. Cluster and partners have implemented activities in Informal Sites since 2014 and developed in 2016 the CCCM Mobile Response for the Informal Sites approach. There is a resurgence of interest on informal sites due to sudden closure and consolidation of the most populated camps in Ninewa and Salah al-Din governorates in summer 2019 which decreased in-camp population by almost 50 percent but inversely increased the presence of secondary displaced persons in urban and peri-urban areas.

Q0: What are the most common concerns related to HLP that CCCM actors face in informal sites in Iraq?

This question was raised at the first meeting of the Informal Sites TWiG on 6 August 2020. It has been included in this document for introductory purposes to the discussion.

The main identified concerns raised by CCCM partners when planning and/or implementing activities, mainly on site risk reduction activities for the improvement of the infrastructures, in informal sites are:

- Level of involvement of the CCCM actor when there is threat of eviction by a private landowner;
- How to mitigate risk of increasing eviction threat because of CCCM interventions in the site.
- CCCM actors in the field are unaware of the referral mechanism and official procedures when involved in eviction or land dispute;
- Relation between CCCM actors and government entities;
- Projection of needs and gaps due to the rapid changed of the camp closure and consolidation context and the movement of returnees and secondary displaced persons.

The following questions intend to address the questions raised by the CCCM partners. It is not an exhaustive list of all the constraints and concerns that could arise while implementing CCCM activities in IDP informal sites. At the end of the present note, relevant documents are listed for consultation, including other relevant thematics, e.g: treatment of new arrival cases or the impact of HLP in the most vulnerable groups residing in the site, as well as lesson learn from other countries and regions.

Q1: What are the most appropriate ways for CCCM partners to inform HLP SC when there are (threats of -) evictions?

The HLP SC recommends CCCM partners to **not engage directly** with the local authorities on the matter, without prior consultation to the HLP partners working in the area or directly with the HLP Sub-Cluster.

Recommended steps to follow (in order of priority):

A. Inform the HLP SC:

1. Compile relevant information on the case that includes:
 - i. geographical information details,
 - ii. actors involved specifying if it is civilian or military character, and
 - iii. detailed description of the situation.
2. Share the information directly with the HLP SC coordinator.
3. The HLP SC coordinator will link HLP partners at district level with the CCCM actor raising the alert for treatment of the case, if no HLP actor present, protection partners could be asked for support.

B. Through the Iraq Information Center (IIC):

1. Compile relevant information on the case:
 - i. geographical information details,
 - ii. actors involved specifying if it is civilian or military character, and
 - iii. description of the situation.
2. Call the IIC (+964 800 6 9999) for track and referral of the case
3. IIC will coordinate according to their referral system, agreed with the HLP SC.
4. HLP SC to link HLP partners at district level with CCCM actor raising the alert for treatment of the case, if no HLP actor present, protection partners could be asked for support.

HLP and Protection partners can be reached directly at the location level, if the CCCM partner is aware of their active presence, but for a regular track of the cases, it is recommended to go through the two options mentioned above.

Q2: What are the steps to follow when construction (site risk reduction work) or WASH infrastructures are planned in a plot of land or buildings that are privately owned?

Follow up question: How to proceed with the intervention? Any administrative procedure to do? When the intervention or at what scale is not recommended?

The details of the answer to this question can be found on the “HLP Due Diligence on Shelter” and “[Property Compensation Guidelines. Based on Iraq Law 20, 2009](#)” issued by the HLP SC. Here there is a short summary of the main recommendations.

The ownership situation over the land must be addressed and clarified before any work can begin. The priority is to identify the type of land tenure and land ownership.

Recommended steps to follow:

1. **Identify the tenure history of land** in the area of intervention by inquiring mukhtars, local authorities, community and religious leaders or neighbours.
2. **Identify the level of tenure rights** according to Iraqi law on the matter:
 - a. Types of land tenure and characteristics:
 1. **Ameriya/Miri**-State land, owned by governorate generally administered by: Real Estate Registration Office which is under Ministry of Justice. The land is owned by governorates but can be possessed by an individual, through (Tasarruf rights) right of use/exploit and transfer the land.
 2. **Mulk**-Privately owned gained through TAPU title allowing various degrees of freedom in the use of the property.
 3. **Land rights use for a fixed term**-Property rights used for fixed term (right of use and benefit for fixed term of years) during which the land and property is still owned to grantor.
 4. **Unit/plot**-User residence ownership rights. This is a form of residence right that are close to ownership rights.
 5. **Leases**-Lease rights of use and benefit for specific amount and period. This is a form of tenure rights in Iraq but it varies in terms and time.
 6. **Waqf**-Religious endowment. Translation of private ownership within endowed land governed and regulated by Islamic law.
 7. **Musha** - Communal land. Lands that are around village that are commonly used by village member for grazing, firewood collection etc. This was used to denote either common undivided land or communal grazing land.
3. **Verify land ownership**, if the abandoned property has an owner, before starting the works. If the works are done without authorization/permission it is a risk that interventions without owner's permission can be considered as illegal works under the responsibility of the implementing actor. It is recommended to have the authorization/permission in writing from the owner.
 - a. In the case that the owner cannot be identified, there are two options to follow, in both cases a document tracking all the efforts that the humanitarian organization made to contact and find the owner is absolutely recommended, to avoid future confrontations with the owner.
 1. Consult the Real-State Registration Office at district level.
 2. Alternative tenure verification documents of ownership. Request support to community leaders and mukhtars for verification, other key members of the host community can be reached, in order to avoid any potential conflict or property disputes.

**Consult the HLP Due Diligence Guidelines template issued by HLP SC on the document "[Property Compensation Guidelines. Based on Iraq Law 20, 2009, Law 57 of 2015 and Law 2 of 2020](#)", section: "ANNEX 7: WRITTEN STATEMENT TO BE USED BY PARTNERS WHEN PLANNING TO INTERVENE IN THE PROPERTY"*

4. **Discuss with the owner** (and tenant/s if the land is rented) **or the community leaders and mukhtars** in the absence of the owner for the intervention. If it is not possible to verify the ownership through Mukhtars, community leaders or neighbours, then consider to reach out to Real Estate Registration Office which is in charge of registraion of ownership rights and to verify the ownership over a property.

To be considered:

- a. Remember to protect the interest of both the IDPs and owners during the discussion.
 - b. Do not negotiate anything that it is out of the mandate/responsibility/capacity of the organization and could compromised the situation of the IDPs. Liaise with local authorities in district level or Mayors office directly, if needed.
 - c. Create a case file for each plot in which the CCCM actors is planning to intervene.
 1. Record all steps of tenure verification process and link these to case file: requests to authorities, meetings with mukhtars, information from neighbors, documents obtained, claims by alledged owners, and any other relevant document.
 - d. Keep the case file, including all the records of the negotiation and final agreement, to avoid any claims in the future by the land owner.
 - e. In the case of secondary occupation (tenant) or government land concession, it is important to involve all the parties on the agreement and look for the laisse/concession agreements between the other parties.
 - f. If the land is under dispute, do not start any negotiation to resolve the dispute without involving all the parties and without making sure the organization has access to all the relevant documentation.
 - g. If the owner has submitted a compensation claim for the war damage on his property, make sure you have a copy of the claim, and you take visual proofs and testimony of the status of the property before proceeding with any type of intervention.
5. Once **agreement is reached**, keep a signed copied by all the parties in Arabic and English for the IDPs and the organizations safety. It should include:
 - a. Modality and timeframe of the intervention,
 - b. parties involve and their responsibilities, rights and obligations,
 - c. duration in time of the arregments agreed
 6. **Works can start.**

In light of the information obtained, the CCCM actor should then determine whether there is enough legal certainty to carry out the project as planned. Intervention should not be considered at any scale when there are HLP disputes, concerns, no verified ownership, secondary or illegal occupation of the property, property rented but there are no documentation or lease agreement. It is suggested to avoid any intervention prior resolution of the concern, as this might increase the disputes between community. And humanitarian actors should categorically refrain from renting and buying land.

Q.3. Type of messages for awareness campaigns at the site to inform the IDPs about the risk of residing in a place that it is privately-owned or have been squattered by the IDPs.

The HLP SC does not recommend CCCM actors to directly engage on HLP awareness campaigns (unless CCCM actors has HLP capacity) due to the technicalities and level of legal expertise needed. As a last resort and in case there are no HLP or Protection partners in the area, the HLP SC recommends looking for the following relevant information prior to engage in the activities:

1. Learn about the specific HLP issues occurring in the area through FGD and KII, reach HLP/protection actors that may have knowledge on the situation even if they are not implementing activities at the moment, they may keep relevant documentation.
2. Conduct a mapping exercise of government entities in the location
3. Identification of the most vulnerable/marginalized groups affected by HLP issues.
4. Request information about the compensation claims for damage properties status in the area, visit the HLP government office if there is any.

Q.4. At which governmental level is the HLP SC engaged in discussions with?

Follow up question: Have the HLP SC started discussions about the grabbing/occupation of government-owned lands by IDPs in informal settlements? Is it a topic which often was discussed and government rejected to discuss as this being illegal with no further perspective of evolution in the coming months?

This work it is not part of the HLP SC mandate directly. UN-Habitat is engaged on this issue out of the humanitarian architecture, UN-Habitat is on direct contact with the central government in Iraq for discussion of the legal situation and future alternatives of the informal settlements.

UN-Habitat submitted in 2017 a draft of law on “*Law of Addressing Residential Encroachments*” to the Iraqi Parliament to encroachments on land owned by the State or Municipalities within the boundaries of Master Plans. Important points highlighted on the draft:

- Leasing the residential land
- Prevention and Removal of Encroachment on State Property

An example that was reported by HLP partners include some level of tolerance (not reacting) to the occupation of public land in Sinjar, apparently for humanitarian purposes, due to high number of IDP returns and the high number of damaged houses and housing needs. However, they have expressed concerns about it.

It must be noted that under a transition/development context, IDPs living in public land are sheltering illegal and are at risk of evictions with serious HLP implications and raise many HLP related issues.

Iraq is a rich country in terms of legislation (Housing, Land and Property laws). Below is summary of the most important laws, relevant to the work of the CCCM actors:

- Iraqi Constitution, Article 23,
- The Civil Code of Iraq, Article 125, 127, 1157, 1154, 1165, 1158
- Lease law
- Real estate registration law
- Municipality management law
- Correcting classification of State lands law, 51 of 1959
- Law of Acquisition
- Law No. 2 of 1983 on pastureland
- Standardizing classification of State lands law, 53 of 1976

- Law on Compensation, Law 20 of 2009, Law 57 of 2015 and Law 2 of 2020
- Resolution No. 333 Promulgating Law No. 42 of 1987

Mention to the work of the Returnees Working Group (RWG) and the Governorate Returnees Committees (GRC) has been made during the discussion as a follow up question (*Q.4.b: Considering the upcoming camp closure and the fact that some IDPs will not be able to return to their areas of origin, there are chances that we experience waves of IDPs going to informal sites. Has the government started to think of ways to relocate the IDPs who cannot return? Resettlement and local integration, how to regularize land property?*). CCCM Cluster reached separately from the call the RWG and the GRC secretariat for more information on their current work on HLP:

- RWG as GRC Secretariat in the six governorates of returns (Baghdad, Diyala, Anbar, Salah al-Din, Kirkuk and Ninewa) is assisting triangulating the obstacles to return in cooperation with the relevant sub-national ICCG members through OCHA and bring them to local governments' attention. Additionally, RWG is committed to develop key advocacy notes in coordination with the relevant sub-national clusters to push the concerned authorities to address the needs of returnees in Areas of Origin (especially those related to housing, access to public services, freedom of movement, etc), including promoting acceptance of other durable solutions e.g. local integration.
- RWG can form links between the humanitarian and stabilization partners on HLP related issues

Q.5. Does the HLP SC have lessons learnt and best practices on how to engage with landlords?

The HLP SC do not have lessons learnt and best practices documentation due to the legal and technical level of the interventions as HLP partners are skilled and trained on liaising with owners, they are always referring to technical guidelines and laws.

Annex 1. Contact list of HLP focal points/partners per governorate

Governorate	Organization	Contact
Ninewa and Salah al-Din	Justice Center	Adnan Gorani, adnan.gorani87@outlook.com
Anbar and Ninewa	Mercy Hands	Mohammed Al Ataei mohammed.ataei@mercyhands.org
Anbar, Kirkuk and Ninewa	NRC	Obaida Ibrahim, obaida.ibraheem@nrc.no
Kirkuk and Ninewa	IRC	Brwa Othman Brwa.Othman@rescue.org
Ninewa and Dohuk	Dorcas Aid International	Sargon Orahah, s.oraha@iraq.dorcas.org
Conflict affected governorates	Legal Clinic Network	Director of LCN, director@lcniq.org

Annex 2. Relevant documentation of the HLP SC for the CCCM partners

Recommended literature:

Iraq Context:

- [Housing Land and Property \(HLP\) Rights in Shelter. Due Diligence](#)
- [Property Compensation Guidelines. Based on Iraq Law 20, 2009](#)
- Iraq HLP SC website under Humanitarian Response:
<https://www.humanitarianresponse.info/en/operations/iraq/housing-land-and-property-hlp/documents>

Regional Context: Turkey and Syria Context

- [Supporting HLP-Sensitive CCCM interventions in informal sites IN NW SYRIA HLP. Due diligence guidance](#)
- [Informal Settlements in the Arab Region.”Towards Arab cities without Informal Areas” Analysis and Prospect. February 2020. UN Habitat](#)

Other contexts:

- [Key Housing, Land and Property \(HLP\) Issues in Urban Areas of South Sudan](#)