

Restoring Values

Institutional Challenges to Providing Restitution and Compensation for Iraqi Housing and Land Rights Victims



**Housing and Land Rights Network
Habitat International Coalition
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***Restoring Values: Institutional Challenges to Providing Restitution
and Compensation for Iraqi Housing and Land Rights Victims***

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Cover photo: Eric Stover. Arabs from the al-Shummar tribe show "official" eviction notices they have received from Kurds who plan to repossess their homes in April 2003. As their dispossession was not carried out by Ba`thist operatives within the time frame of violations covered that the Coalition Provisional Authority established, these evictees are ineligible for remedy under the Iraq Property Compensation Commission.

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Introduction

This preliminary report concerns the continuing victimization and eventual remedy for Iraqis forcibly evicted, displaced and dispossessed of their homes, lands and other properties. The victims of these acts include the over 800,000 Kurds, Turkomens, Assyrians and others subject to the brutal “Anfal” campaigns, demographic-manipulation policies and other victims of housing and property dispossession during the Ba`thist regime. Estimates of the Iraqi displaced have risen since the 2003 war and occupation, now exceeding one million.¹

The remedy for these losses has yet to be determined in most cases. However, the Coalition Provisional Authority (CPA) initiated the Iraq Property Compensation Commission (IPCC) to manage the task, albeit with imbedded restrictions. Those inheriting the IPCC mandate are now challenged to ensure that justice is done, and that justice is seen to be done in the very near future.

The slow processing of compensation claims and the ongoing displacements during—including those directly attributed to—the occupation are combining to create a brand of instability greater

¹ Global IDP Project, “Iraq: continued insecurity adds to vulnerability of over 1 million IDPs” (24 November 2004), <http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wCountries/Iraq>.

than that which the insurgency has caused to date.² Without proper adjustments, the IPCC mechanism actually could generate new problems or reach unsatisfactory settlements to old conflicts, causing further setbacks in efforts to reconstitute the State of Iraq.

This report began with an inquiry into the methodology that the IPCC is using to document restitution and compensation cases. It was hoped that such an initiative could contribute in practical ways to the remedy of Iraqi victims by offering the expertise that Habitat International Coalition (HIC) and its Housing and Land Rights Network (HLRN) have acquired through the long experience of its specialized global network. In particular, HLRN has applied the guidance in its [Housing and Land Rights Toolkit](#) in order to determine whether or not the IPCC criteria for compensation embodied all the housing and land rights to which victims are entitled.

Not long into the process did it become clear that the founding of the IPCC omitted any reference to the minimum norms guaranteeing the human right to adequate housing that have been developed over decades of international monitoring and jurisprudence. Nor did the IPCC founders, headed by U.S. Ambassador Paul Bremer, apply the principal lessons of analogous antecedents (e.g., Bosnia, Kosovo, Timor l'Este).

Two more contradictions are notable so far. The first is a matter of legal form and legitimacy. Even in the unlikely scenario in which an objective legal authority were to deem the CPA presence and function to be consistent with international law, it still would have to comply with obligatory conventions. The relevant body of law governing war and occupation includes The Hague Convention and Regulations. Article 43 of this seminal instrument prohibits an occupying Power from modifying the indigenous laws and legal system in an occupied territory.³ However, the CPA claims that its Regulations and Orders, in general, alter and replace indigenous

² See Jennie Matthew, "Iraqi Property Commission Failing, 167,400 Displaced Persons Since March," *Agence France-Presse*, 3 (September 2004), available at <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/679980ae6343d55849256f040021bdec>. The article quotes US Major General John R. S. Batiste to say that the crisis caused by displacement is the biggest problem facing the 1st Infantry Division, outweighing the threats of foreign fighters and insurgents in Sunni Muslim trouble spots north of Baghdad).

³ Convention (IV) respecting the Laws and Customs of War on Land, signed at The Hague, 18 October 1907, entered into force 26 January 1910. Section III, "Military Authority over the Territory of a Hostile State," Article 43 states: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

law and institutions.⁴ Moreover, the statute founding the IPCC effectively disregards and replaces existing Iraqi law,⁵ including the codes that would facilitate the restitution and/or compensation of rights and properties violated. It meanwhile claims “exclusive jurisdiction,” foreclosing other options to claimants seeking a more-adequate basis of law to attain justice.

The second contradiction arises from the narrow class of victims and unique respondents considered under the IPCC’s “exclusive” mandate. It admits only cases from victims of Ba`thist violations, not others. Meanwhile, the multinational Coalition forces of occupation reportedly have been among the principal protagonists of expulsion, eviction and demolitions/destruction of Iraqi homes since the 2003 invasion.⁶ Formally, the CPA has issued and, through the multinational forces (MNF), has implemented Order No. 6, “Eviction of Persons Illegally Occupying Public Buildings,” without the safeguards required under international law⁷ and,

⁴ Supra, note 2. Regulations – are instruments that define the institutions and authorities of the Coalition Provisional Authority (CPA). Orders – are binding instructions or directives to the Iraqi people that create penal consequences or have a direct bearing on the way Iraqis are regulated, including changes to Iraqi law.” Coalition Provisional Authority Regulation No. 1, at <http://www.iraqcoalition.org/regulations/index.html#Regulations>.

⁵ CPA Regulation No. 1 claims, in Section 1, “The Coalition Provisional Authority,” Articles 2 and 3, that “The CPA is vested with all executive, legislative and judicial authority necessary to achieve its objectives, to be exercised under relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war. This authority shall be exercised by the CPA Administrator.” Further, it asserts that “As the Commander of Coalition Forces, the Commander of U.S. Central Command shall directly support the CPA by deterring hostilities; maintaining Iraq’s territorial integrity and security; searching for, securing and destroying weapons of mass destruction; and assisting in carrying out Coalition policy generally.” Section 2, “The Applicable Law,” states that: “Unless suspended or replaced by the CPA or superseded by legislation issued by democratic institutions of Iraq, laws in force in Iraq as of April 16, 2003 shall continue to apply in Iraq insofar as the laws do not prevent the CPA from exercising its rights and fulfilling its obligations, or conflict with the present or any other Regulation or Order issued by the CPA....” At: http://www.iraqcoalition.org/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pdf.

⁶ HLRN has received numerous testimonies from Iraqi civil society representatives recounting the practices of the multinational forces in shelling, evicting and punitively burning Iraqi family homes not only during the sieges of Najaf and Faluja, but across the country throughout the period of occupation. The reports have been numerous and consistent in their details of Dutch, Polish, British and US military personnel carrying out such clear violations of the laws of war and their own country’s human rights obligations. The consequences of that behavior can only lead to further suffering and, therefore, breed justifiable grievances against the occupiers that, from the specific field of housing and land rights violations, only add to the existing grievances against the hated regime they replaced.

⁷ UN Committee on Economic, Social and Cultural Rights General Comment No. 7 (1997) on forced evictions states: “Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive lands, as the case may be, is available” (Paragraph 16).

again, without any reference to the indigenous law of the country in which the CPA was operating. Moreover, the MNF are credited with regular destruction of civilian habitat without military

Property restitution is central to the successful return and reintegration of both refugees and IDPs. Without it, perceptions of injustice are perpetuated and underlying conflicts remain unresolved.

Property restitution touches on all aspects related to successful return: protection, law and order, reconciliation and peace building, restoration of livelihoods, strengthening of local institutional capacity and, ultimately, the chance to bury past conflict and working toward a peaceful future.

Annie Davies, "Restitution of Land and Property Rights," *FMR* (September 2004)

necessity. The offences by other opportunistic violators are also left out of the IPCC's mandate. For their part, the multinational forces have elsewhere claimed immunity from prosecution before Iraqi courts⁸ and the International Criminal Court.⁹

Nonetheless, as recognized in UN Security Council

resolutions 1483 and 1511, foreign forces in Iraq, as occupying powers, are bound to comply with The Hague Regulations and the four Geneva Conventions. Because of the human deprivation they cause, the practices of grand-scale eviction, wanton property destruction and population transfer¹⁰ are codified among the grave breaches of humanitarian law, violations of human rights treaty provisions, and/or criminally indictable as "grave breaches," "war crimes" and "crimes against" humanity.¹¹

⁸ "Unless provided otherwise herein, the MNF, the CPA, Foreign Liaison Missions, their Personnel, property, funds and assets, and all International Consultants shall be immune from Iraqi legal process." CPA Order No. 17, "Status of the Coalition Provisional Authority, MNF - Iraq, Certain Missions and Personnel in Iraq, 27 June 2004, Section 2, "Iraqi Legal Process," para. 1.

⁹ SC/RES/1422 (2002), 12 July 2002, and SC/RES/1487, 12 June 2003, each established a 12-month requirement of Security Council approval for any prosecution by the International Criminal Court (ICC) of any person engaged in a "UN established or authorized operation" who is a national of a country that has not ratified the Rome Statute. However, facing international opposition, the United States withdrew its bid to renew SC/RES/1487 in June 2004.

¹⁰ See report of the UN Special Rapporteurs on the human rights dimensions of population transfer, including the implantation of settlers and settlements, E/CN.4/Sub.2/1993/17, June 1993.

¹¹ On the US military's conduct of house demolitions, see "Iraq: US house demolitions could be illegal" [Amnesty International press release MDE 14/177/2003 on letter to U.S. Secretary of Defence Donald Rumsfeld, 20 November 2003], at:

<http://web.amnesty.org/library/Index/ENGMDE141772003?open&of=ENG-366>; Jeff Wilkinson, "U.S. Tactics in Iraq May Backfire, Critics Say," *Knight-Ridder* (23 November 2003), at <http://www.commondreams.org/headlines03/1123-04.htm>; James Bovard, "Should the U.S. Military in Iraq Adopt Israeli Methods?" *Freedom Daily* [Future of Freedom Foundation] (November 2003), at: <http://www.fff.org/freedom/fd0311c.asp>; Joanne Laurier, "Human rights groups: US may be guilty of 'collective punishment' war crime in Iraq" (17 January 2004), at: http://www.wsws.org/articles/2004/jan2004/hrww-17_prn.shtml; "Iraq: U.S. Demolitions May Violate Laws of War," *Human Rights Watch News* (13 January 2004), at <http://hrw.org/english/docs/2004/01/12/usint6924.htm>;

Thus, the internationally recognized gravity of the practices invokes a measure of global responsibility to apply lessons and tools developed to remedy and prevent such housing and land rights violations. It is in this spirit that the Housing and Land Rights Network (HLRN) of Habitat International Coalition is proffering the present form of assistance to the field.

The implementation of housing and land rights alone may not be sufficient to resolve complex disputes and repair the damage done by decades of tyranny. However, lessons from the field on every continent instruct us that formally implementing those rights provides a basis upon which to rationalize the resolution of disputes, even if not all parties realize their optimum interests in the end. Property restitution is organic and essential to the successful return, rehabilitation and reintegration of cross-border refugees and internally displaced persons (IDPs). Conversely, it has been proved that denial of those same rights is sufficient to complicate and/or prolong conflict. The failure to restore property rights, in particular housing and land, perpetuates deprivation and the perception of injustice that lies at the root of armed struggles.

For refugees, IDPs and other dispossessed claimants, property restitution is the basis of sustainable livelihoods, restoration of law and order, protection, capacity building, reconciliation among communities and the return of a revitalizing sense of a future necessary to achieve a much-deserved measure of hope, reconciliation and restoration of civilization in Iraq. Applying neutral law in a truly national effort at restitution would not only correct the IPCC statute's narrow ideological focus on claims exclusively against the former Ba`thist leadership and allow all legitimate claimants to seek remedy. That also would contribute to the rule of law, in general, rather than perpetuating favoritism and double standards as the rule in Iraqi public life. For these and other reasons, the IPCC will need revamping before it can promise to achieve a meaningful measure of justice for the country. It will surely be more economical to accomplish that sooner, rather than later.

This HLRN report reviews the IPCC's present system for evaluating victims' losses subject to restitution and/or compensation. It concludes with a series of recommendations that seek to complement the current criteria and procedures for addressing property claims. Specifically, it identifies additional and

Human Rights Watch, "Letter to Defense Secretary Donald Rumsfeld," 12 January 2004, at: <http://hrw.org/english/docs/2004/01/12/usint6921.htm>;
"IDF-style home demolitions in Iraq?" *Salt of the Earth* (January 2004), at: <http://salt.claretianpubs.org/sjnews/2004/01/sjn0401b.html>.

alternative categories of data required to address losses, and practical guidance arising from human rights norms and jurisprudence. That is the original objective of this inquiry. In its course, however, the structural problems have become ominously clear, and make it possible also to identify the larger tasks required to correct the reparation process, to depart from the past, present and continuing state of lawlessness and, ultimately, restore justice for the peoples of Iraq.

Justice on Its Face

For many Iraqis claiming their housing and land rights, their first contact with the Iraq Property Compensation Commission is through the official claim form.¹² This form, which outlines the compensation issues to be adjudicated, should be a cold warning for victims and their representatives. Anyone familiar with the process of documenting housing and land rights violations, like any victim recounting his own case, would notice gaps in the information required to determine terms for settlement of the material and nonmaterial losses arising from the commission of the crime and its aftermath.

This omission can be partly attributed to the IPCC designers' own preference of compensation terms for Iraqi victims. The IPCC statute¹³ is silent on compensation terms, except to assert the

¹² This analysis seeks to compare the criteria and type of information captured in the IPCC claim form with the existing human rights of affected claimants. HLRN does not yet benefit from access to, or review of any explanatory documents, applicable quantification methods, formal interpretations by the IPCC, or other official CPA or Iraqi government sources clarifying the purpose and scope of the prospective compensation due to the victims. If such documents exist, they would appear not to be widely available to victims through the customary sources and channels of information.

¹³ The legal term of art "statute," as in "IPCC statute," is used here to refer to, and is synonymous with CPA Regulation No. 12 that founded the IPCC. The term does not imply that decrees in the form of CPA Regulation or Order constitute formal legislation.

original purchase price, rather than replacement value, as a basic criterion for assessing a lost property's worth.¹⁴

The original purchase price cannot provide any rightful basis for evaluating losses, especially those endured over time. Such a criterion likely would produce many settlements in which an occupier resorts to an outdated and inferior valuation to pay off a claimant with a mere fraction of the proceeds s/he gained over time from the ill-gotten property. In such a scenario, the rightful owner likely would not be able to obtain a reasonable replacement of the usurped property without a substantial extra expenditure, while the offender benefits from a handsome profit at the victim's continuing expense. Such a settlement, therefore, falls far short of any of the ostensible purposes for establishing the IPCC, including return, restitution, rehabilitation, reconciliation and reintegration. Instead, it would provide a new and formalized basis for perpetuating old grievances, impoverishment and social unrest.

Other problems arising from the original-purchase-price criterion are discussed below. However, it deserves early mention that that shortcoming stands together with the omission of other material loss-assessment criteria, such as contents of the home and other structures, infrastructure and other investments, lost income, replacement housing, etc. The case claim form also makes no provision for, and offers no guidance in assessing nonmaterial costs and losses. While such matters as bodily harm, pain and suffering are always more difficult to quantify, they are no less felt, no less a value and no less lingering—and, thus, no less cumulative—than the material losses. The IPCC claim form does allow for claimants to attach additional information, but offers no guidance as to the content or purpose of such annexes to the form. These issues are left to a future process to establish national compensation guidelines.

While the time is late, especially for those awaiting remedy, as well as those costing out the process, the discussion of quantification criteria and related issues can only aid the process. To address the IPCC's case claim form's exclusion of basic data required, this report provides a "Loss Matrix" taken from the [HLRN Housing and Land Rights Toolkit](#). A summarized version is annexed here for the reader's consideration.

The apparent openness of the IPCC to receive the advice of other parties¹⁵ creates an opportunity for improvement and the

¹⁴ CPA Regulation 12, Annex A "Establishment of the Iraq Property Claims Commission (as Amended and Restated), Section Four, "General Principles," Article 8.L.

development of a proper loss-assessment methodology. However, optimism is tempered by the additional structural shortcomings of procedure, legality and scope afflicting the IPCC. These also must be remedied, lest the efforts toward reasonable data collection and quantification criteria be in vain.

IPCC Overview

The crisis arising from past dispossessions, ongoing counterdisplacements and general instability prompted the CPA, on 14 January 2004, to promulgate a regulation, or transitional administrative law (TAL), to establish a commission “for the purpose of collecting and resolving real property claims and to promulgate procedures for promptly resolving such claims in a fair and judicious manner....”¹⁶ The Iraq Property Compensation Commission was intended to redress injustices owing to misappropriation and distribution of properties during the former regime; of most concern were the dispossessions created from wrongful appropriation and distribution of properties due to the actions or policies of the former Baathist regime in the petroleum-rich Kirkuk region.¹⁷

The Iraqi Governing Council ratified the establishment of the IPCC, as the CPA regulation required without revising or debating the IPCC statute. The first of the IPCC offices opened in early March 2004, with the sole purpose of distributing claims forms. IPCC offices opened in the north, middle and south of Iraq by the end of May 2004. The IPCC since has worked to establish systems necessary for managing a mass claims system and mobilizing the resources to maintain offices and pay personnel. The process has followed the structure assigned in the subsequent and more-detailed CPA Regulation No. 12, which Amb. Paul Bremer promulgated on 24 June 2004, just days before the end of the CPA’s role. On 28 June,

¹⁵ The IPCC has announced that it “needs to continue to draw on the long experience of international organizations who have worked in the area of mass claims and property restitution. Strengthening of communication ties needs to occur so that the organizations decisions are guided by experienced recommendation. Cooperation will encourage an understanding of lessons learned and the international context IPCC operates in with the needs of transparency, efficiency and regard for international standards of human rights norms.” “IPCC Status,” IPCC presentation at the UNHCR/IOM/NRC Training on the UN Guiding Principles on Internal Displacement, Amman, 7-9 September 2004, cited in IDP Project, “Iraq Property Claims Commission (IPCC) overview (2004),” at:

<http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wViewCountries/E214086AE5FDD63EC1256F2C0056EB11>.

¹⁶ See Coalition Provisional Authority (CPA), Regulation No. 8, “Delegation of Authority Regarding an Iraq Property Claims Commission, 14 January 2004 [hereinafter CPA Regulation 8].

¹⁷ “IPCC Status,” op cit.

Prime Minister Iyad Alawi and Ambassador Bremer appointed the first Head of IPCC Suhail Al Hashimi to his position.

All governorates in Iraq have IPCC offices. Kirkuk has the largest number of four offices, and Diyala and Salah al-Din Governorates each have two offices. All governorates now have Regional Commissions that have been established with appointed adjudicators trained to decide claims. The Commission is currently reviewing cases in order to start making decisions once a compensation plan has been established.

The Prime Minister's Office has established an interministerial Working Group on Compensation for the Displaced. The IPCC and the Ministry of Displacement and Migration (MoDM) head the working group, joined by the Ministries of Finance, Agriculture, Public Works, Housing and Construction, Planning and others.

IPCC has organized a Public Information Department, which has issued public-service announcements in various media to inform IDPs of the IPCC process. It focused especially on Kirkuk and the north of Iraq.¹⁸

The process of adjudicating claims has been slow. However, at least 3,841 claims had been decided by 4 May 2005, with 549 appeals underway.¹⁹ When totaled at the beginning of July, the received compensation claims totaled 120,754, with a rush of some 10,205 claims (8.45%) submitted in the last two days before the filing deadline. At that time, the IPCC has processed 1,761 appeals, certifying 1,124 and rejecting 637.²⁰

Cash awards from government funds begin only after the Interministerial Working Group develops nationwide compensation guidelines. Besides restitution, the options include monetary grants, property restitution and soft loans, among others. In some cases, the IPCC has authorized the payment between private parties. Most of the decided cases to date, then, are typically uncontested, or were cases in which the government was the respondent.²¹

¹⁸ Ibid.

¹⁹ "Aggregate Statistics – week ending 4 May 2005," IPCC Advisory Group. This number does not include Regional Commissions in some districts that were either slow to become operational, or that are not issuing regular statistics (e.g., Qadisiyya).

²⁰ IPCC Planning and Follow up Department, "Weekly General Information Form," 6 July 2005.

²¹ E-mail correspondence with David L. Gandle, deputy senior consultant to the Iraq Property Claims Commission Advisory Group, American Embassy Baghdad, 17 May 2005.

The Occupier's Initiative

The text and context of the IPCC's founding documents, CPA Regulation No. 8 and its successor No. 12, are replete with legal dilemmas and contradictions. Amb. Bremer premised his promulgation of the statutes on a claim to corresponding "authority as Administrator of the Coalition Provisional Authority (CPA), and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolutions 1483 and 1511 (2003) and 1546 (2004)."²² This premise, in itself, is problematic to the subsequent legitimacy of CPA-made laws and institutions in Iraq, particularly in that it distorts the content and meaning of the UN resolutions that Amb. Bremer cites to ground his law-making authority.²³

²² Preamble of Coalition Provisional Authority Regulation No. 12, "Iraq Property Claims Commission," CPA/REG/23 June 2004/12 [hereinafter CPA Regulation 12].

²³ Security Council resolution 1483²³ reaffirmed "the sovereignty and territorial integrity of Iraq," stressed "the right of the Iraqi people freely to determine their own political future and control their own natural resources" and welcomed "the commitment of all parties concerned to support the creation of an environment in which they may do so as soon as possible, and expressing resolve that the day when Iraqis govern themselves must come quickly. Paragraph 4 called upon the Authority, "consistent with the Charter of the United Nations and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future..." Paragraph 5 further called upon all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907..." In its resolution 1511,²³ the Security Council reaffirmed "the sovereignty and territorial integrity of Iraq," and underscored...the temporary

It may seem beyond the purpose of—and perhaps also superfluous to—this inquiry into loss-quantification methods to challenge the CPA’s claim to authority in establishing the IPCC. However, the relevance of the CPA’s lack of legality and inappropriateness as the initiator of the IPCC is borne out particularly by historic lessons.

“Recognizing that the Statute of the Establishment of the Iraq Property Claims Commission (Regulation No.8)²⁴ needed to be amended so that the IPCC could function,”²⁵ Amb. Bremer issued a new Regulation No. 12 to replace its antecedent in the final days of the CPA term. Attached to Regulation 12 are (1) a revision of the previous IPCC statute, as Annex A, and (2) “Instructions for Operation of the Iraq Property Claims Commission,” as Annex B, which is to be applied to all claims filed before the IPCC.

The two annexes to CPA Regulation 12 contain more detailed procedural and structural information as well as some substantive changes to the previous statute. Notably, the new regulation expanded the IPCC’s functional competence to include claims arising between 18 March 2003 and 30 June 2005. In addition, Regulation No. 12 imposed the IPCC “exclusive jurisdiction” in matters of compensating property-dispossession victims, which scope the previous regulation only implied.²⁶ The revision extended the filing deadline for claims to 30 June 2005. This apparent attempt at further clarity simultaneously obscured the existing domestic and international criteria of human rights to housing and property, and to return, restitution, rehabilitation and compensation of victims

nature of the exercise by the Coalition Provisional Authority (Authority) of the specific responsibilities, authorities, and obligations under applicable international law recognized and set forth in resolution 1483 (2003). Paragraph 13 “authorizes a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq, including for the purpose of ensuring necessary conditions for the implementation of the timetable and programme as well as to contribute to the security of the United Nations Assistance Mission for Iraq, the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure...” In resolution 1586, the SC *looked forward* to the end of the occupation and the assumption of full responsibility and authority by a fully sovereign and independent Interim Government of Iraq (by 30 June 2004).²³ All references to the multinational forces circumscribe authority to measures that contribute to the maintenance of security and stability.

²⁴ The Coalition Provisional Authority Regulation 8,

“Delegation of Authority regarding an Iraq Property Claims Commission,” CPA/REG/14, January 2004/8, came into effect on 15 January 2004.

²⁵ Preamble to CPA Regulation 12, op cit.

²⁶ CPA Regulation 12, op cit., Section 5, Articles 9 and 11. Article 11 states: “The IPCC is to have exclusive jurisdiction over all claims involving immovable property, assets affixed to immovable property, easements or servitudes on property or land or other interests in real property brought in accordance with Articles 9A and 9B. Any such cases pending must be transferred by the relevant court to the jurisdiction of the IPCC.”

Giving and Taking away

While specifying the institutional and juridical mechanisms for disposing dispossession claims, the IPCC statute also may prejudice case outcomes by circumscribing (1) the applicable law, (2) the nature and scope of admissible cases, (3) the class of victims served, (4) the values at stake, (5) the methods to be applied and (6) the nature of the settlements. This decree erected obstacles to justice through the *ad hoc* limitation of rights, with potentially harmful consequences for victims, as well as for the country at large. This stage of the present inquiry considers the CPA-prescribed methods of procedure, then explores the scope of cases permitted before the IPCC. This section is then followed by a practical resort to norms arising from applicable Iraqi and international law. This inquiry primarily concerns the evaluation of compensation awards for victims, so will focus its recommendations on that aspect.

The remedies available under the current IPCC statute are laid out in Annex A, Article 8.²⁷ It advises the parties that possible remedies consist of returning the property to its original (i.e., rightful) owner;²⁸ returning the property to the original (or rightful) owner on certain conditions, such as the rightful owner reimbursing the subsequent owner for any improvements;²⁹ the subsequent purchaser/occupier purchasing the property from the original owner at a (original-purchase?) price, minus any compensation that the previous government paid as compensation at the time; or receiving compensation for the price of the property.³⁰

IPCC Structure and Procedure

Section II of Regulation No. 12 lays out the structure of the IPCC, establishing a three-tiered bureaucracy for the Iraqi Interim Government to introduce, fund and manage:

- An Appellate Division, composed of five sitting or retired judges, and established as a separate chamber of the Iraqi Court of Cassation, having its own secretariat and Appellate Division Clerk's offices to provide operational and legal support;
- One or more Regional Commissions in each governorate in Iraq (with a maximum of three in the

²⁷ CPA Regulation No. 12, Annex A, sec. 4, art. 8.

²⁸ *Ibid.*, A–E.

²⁹ *Ibid.*, F.

³⁰ *Ibid.*, L–M.

Kurdistan Regional Government area). Each regional commission is composed of (i) a judge, appointed by the Council of Judges, who presides as chairman, (ii) the Director of the Office of Real Estate Registry in the Governorate, or his representative, and (iii) the Director of State Property of such Governorate, or his representative. The regional commission may also request the assistance of persons who are experts on the subject of any claim; and

- A National Secretariat responsible for overseeing all operational and management activities of the IPCC, including the maintenance of a comprehensive database of claims and oversight of compensation and eviction orders. The National Secretariat is composed of a head, who serves as the highest official of the National Secretariat, and the personnel of operational managers, auditors, data managers, legal advisers, public-relations personnel, and any other necessary staff.

The process of adjudicating claims filed with the IPCC begins with the claimant(s), or his representative filing a claim in the proper form at any IPCC office, including any properly designated IPCC office outside Iraq. Following receipt of a properly completed claim form, the Regional Secretariat registers the case in a claim file, indicating the:

1. factual background of the case;
2. legal issues involved;
3. parties' arguments; and
4. Clerk's Office's recommendation, made by a legal adviser, as to how the case should be decided.

The relevant Regional Secretariat serves notice on any interested parties, including natural or juridical persons.³¹ The Regional Secretariat also serves notice of the claim on the General Directorate of Real Estate Registration, and the General Directorate of Real Estate Registration ensures that the official title record bears the date and reference number of the claim.³²

After the Regional Secretariat authenticates the identities of the parties, the Commission Clerk's Office reviews and verifies each claim, issuing an impartial recommendation as to how the case

³¹ In accordance with the guidelines issued by the National Secretariat and Instructions for Operation approved by the Administrator, if before 30 June 2004, or by the Iraqi Interim Government, if after 30 June 2004.

³² Article Six of Regulation 12.

should be disposed.³³ The Regional Secretariat bears the responsibility for notifying the claimants and any known interested parties of the Regional Commission's decision, which will be final unless appealed within 60 days,³⁴ "on the grounds of new evidence or manifest error" and within the IPCC's exclusive jurisdiction.³⁵

The Regional Secretariat shall encourage the voluntary resolution of claims, and may arrange mediation or otherwise facilitate the amicable settlement of issues among the claimant(s) and any identifiable interested parties. The National Secretariat is to provide guidance on the procedures.

Where the parties do not arrive at an amicable settlement, or fail to resolve the claim voluntarily, the Regional Commission Clerk's Office is to review the case file and prepare a case report. If the evidence is found sufficient, the Regional Commission may hold a hearing at its discretion to develop the factual record, and may request the assistance of other governmental and nongovernmental parties in that process. The Regional Commission then decides the claim and the appropriate remedy by majority vote with three members present.³⁶

The Claim Form

Evaluating the problematic procedural matters from the most specific to the most general, one begins at the original subject of this inquiry: the evaluation criteria provided in the IPCC claim form and instructions. The IPCC claim form allows for circumstantial questions about the events causing the property loss. The form does not allow for recording details about the values involved in the property, either as original-cost estimates, or as replacement-cost appraisals.

³³ A commissioner would be considered partial and disqualified if s/he (1) were a relative of [any] one of the parties "through parentage, marriage or adoption up to the fourth degree"; (2) were, or were to have a spouse, child, parent, son-in-law or daughter-in-law in an ongoing dispute with one of the parties; (3) had been a legal advisor for one of the parties, business partner of any kind, held an interest in a company, or been a board member of a company in which one of the parties has a controlling interest; (4) had given advice or an opinion on the particular case before it reached the Regional Commission; (5) had any other interest (financial or otherwise) in the claim. In case of such a disqualification, the appointing authorities are to fill the commissioner position with an ad hoc appointment. (CPA Regulation 12, Annex B, Section, Article 20.)

³⁴ The Regulation Annex B, Article 35 stipulates that the 60 day period runs from the time the decision is posted, or the date of the notification of each concerned party, whichever is later.

³⁵ Ibid, Article 54.

³⁶ CPA Regulation 12, Annex B, Articles 45–49.

The form does not allow for collection and documentation of any cost-wise consequences of the dispossession case. It refers only to the structure, land, and the infrastructure on the land affected/lost in the process (sections 15 and 16), but not their values.

The claim form omits any field that would guide the claimant to record other related material costs/ losses, including but not limited to replacement housing; transportation; investments in improvements; continuing interest payments of financed improvement; labor; lost rent; moveable property or immovable property that was damaged, but not confiscated.

The form allows for the claimant or the claimant's representative to describe at length the circumstances of the loss and its relation to the policies of the Ba`th regime. The form and the IPCC mechanism, as such, do not seek to establish justice in the sense of prosecuting violators. However, in the event that this were—or, in future, could be—a matter for such an eventual judicial procedure, it would be essential that the claimant identify as much as possible the duty holders, include the individuals ordering and implementing the violation. This crucial matter of transitional justice also is omitted from the IPCC statute, and falls to indigenous Iraqi initiative to address.

Compensation Principles

The IPCC statute's guide for adjudication of all cases is found in the "General Principles" in Annex A.³⁷ Like the claim form, the statute lacks any provision for claiming the lost use value of the property over the period of dispossession without remedy. In addition to lost rents from the original property, the statute is silent on the fate of the lost values from harvesting crops from illicitly acquired agricultural land. Therefore, even if allowed to address such claims, IPCC personnel and judges find no guidelines in the presumed basis of their authority, and even less instruction for quantifying losses to be restored and/or compensated.

Neither the procedure nor the claim form allows for consideration of the nonmaterial or indirect losses, such as loss of community, illness and injury, lost educational opportunities arising from the eviction/dispossession. While quantifying these losses may be less objective and quantifiable in monetary terms, they are no less

³⁷ CPA Regulation 12, "Coalition Provisional Authority," Annex A "Establishment of the Iraq Property Claims Commission (As Amended and Restated)," Section Four, "General Principles," Article 8.

real. Moreover, compensation for these losses is the victim's right.³⁸

It is essential for claimants, other government bodies and the larger public to know the criteria for compensating these past violations. At the very least, it is important that the victims and public perceive the application of criteria that are standard, consistent and not subject to nepotism, arbitrary change, bribery, or any other impropriety. Without such a safeguard of predictability and transparency, future conflicts may arise between and among persons and communities, as well as against authorities and their institutions.

If lawyers and legal practitioners are to represent their client's claim on the basis of the existing IPCC statute and ensure that the victims receive what is due, they need to be served with more information on values to be calculated, claimed and compensated. In this important aspect of the task of justice, the claimants and/or their representatives now shoulder the burden of devising a method for calculating and asserting values and losses claimed, particularly if the Iraqi government or the IPCC National Secretariat³⁹ does not revise or augment it soon. With such a vast number of claims as those expected before the IPCC, the absence of an IPCC methodology for quantifying values is likely to produce a widely varied approach to compensations, institutionalizing inconsistency and arbitrariness in the application of judicial standards.

Duty holders include current occupants of the dispossessed properties. The IPCC statute's scope, procedures and settlement recommendations make no provision for penalties to duty holders. However, it does provide for a number of rights. Article 7(F) states that:

"They need a lot of things as compensation for what they lost. You will see people who have no place to live or are just living in unaffordable rental houses, and some families have no clothes for their children. They need financial, emotional, and psychological support."

Kurdish woman, Sulaimaniya

"We lost our land. We lost our houses, our families. We lost everything. We want to return to our land, we want physical support."

Anfal widow, near Erbil

"If their money and their rights were taken from them, then they should be returned."

Turkoman man, Kirkuk

"First, material compensation, because most of them do not own houses to live and they were denied a salary for 20 or 23 years and they were deprived of food and good clothing, and they were not appointed in work positions..."

Family member of victim, Baghdad

International Center for Transitional Justice, *Iraqi Voices* (New York: International Center for Transitional Justice, 2004), pp. 43–44.

³⁸ See draft "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," E/CN.4/2003/63, 27 December 2002.

³⁹ As provided in CPA 12, Annex B, Article 66.

[I]f the property in question is occupied, possessed or used by the nonprevailing party, and such party has no other property, then the nonprevailing party would be granted a prescribed period of time to surrender possession of the premises. The Regional Secretariat shall also inform the displaced person(s) of the availability of any services for assistance.⁴⁰

Those Iraqis who benefited from the dispossessions and displacements apparently retain the benefit of the doubt (i.e., the presumption good faith). The IPCC statute provides that:

Newly introduced inhabitants of residential property in areas that were subject to ethnic cleansing by the former governments of Iraq...may be (i) resettled, (ii) may receive compensation from the state, (iii) may receive new property from the state near their residence...or (iv) may receive compensation for the cost of moving to such area.⁴¹

These terms of resettlement and compensation for the beneficiaries of illicit gains make no distinction between actors in good faith and those of bad faith. The unconditioned results likely will prove controversial, undermining the IPCC's credibility in the public eye, but also falling short of the requirements of justice for the actual victims.

Types of Cases Considered for Compensation

The IPCC statute provides for restitution to any person, natural or juridical, or their heirs, or their bona fide representative, in Iraq or abroad, provided that their good-faith claim arises from a case that:

1. Arose between 17 July 1968 and 9 April 2003, inclusive;
2. Involves immovable property, assets affixed to immovable property, easements or servitudes ("real property"), or an interest in real property;
3. Involves property confiscated, seized, expropriated, or forcibly acquired for less than full value, or otherwise taken, by the former governments of Iraq for reasons other than land reform or lawfully used eminent domain. Any taking that was due to the owner's or possessor's opposition to the former governments of Iraq, or their ethnicity, religion, or sect, or for purposes of ethnic cleansing, shall meet this standard; or

⁴⁰ CPA Regulation 12, Annex A, Article 7.f and Annex B, Article 51 (f). However, this referral may not be sufficient to comply with minimum requirements under CESCR General Comment No. 7: "right to housing: forced evictions," para. 16.

⁴¹ CPA Regulation 12, Annex A, Article 10.

Arose between 18 March 2003 and 30 June 2005, inclusive;

1. Involves real property, or an interest in real property;
2. Involves real property confiscated, seized, expropriated, forcibly taken for less than full value, or otherwise acquired and/or reacquired:
 - (a) as a result of the owner's or possessor's ethnicity, religion, or sect, or for purposes of ethnic cleansing, or;
 - (b) by individuals who had been previously dispossessed of their property as a result of the former Ba`thist governments' policy of property confiscation.⁴²

Excluded Cases

The IPCC statute's General Principles, however, contain major gaps and drawbacks that cannot be overcome merely by arguing that the rules are mere guidelines. Particularly, the principles in Regulation No. 12 do not address all the situations covered by the jurisdictional mandate of the statute and do not provide adequate remedies for the losses they are meant to address.

For purposes of the IPCC's jurisdiction, the only cases admissible would involve actions or inactions attributable to the former governments of Iraq, including, but not limited to:

1. The actions or inactions of any State organ in Iraq, whether of the central government or of a territorial unit of the State, and whether the organ exercised legislative, executive, judicial or any other functions within the former governments;
2. The actions or inactions of a Ba'ath party member, or of a relative of a senior official of the Government or party, operating with apparent authority, or under color of authority, or with the implicit or explicit license of the former governments.⁴³

As the General Principles only address property that the Ba`thist regime confiscated or seized, it would be impossible to hold the regime responsible for property confiscated or seized after 9 April 2003. Although the Regulation 12 ostensibly extended the period of violations for the IPCC to address (until 30 June 2005), its General Principles, therefore, provide no means of redress for

⁴² CPA Regulation 12, Annex B, "B) Submission of Claims," Article 22, paras. A and B.

⁴³ CPA Regulation 12, Annex B, Article 22.

persons with claims arising from violations in the 9 April 2003–30 June 2005 period.

The principles of the IPCC statute also do not explicitly address claimants who were forced to sign contracts and transfer their land unwillingly or those whose land was taken for less than its full value. Such a category of legitimate claims would not be permitted under the IPCC statute, as in the case of lands taken under the Agrarian Reform Law No. 117 (1970).⁴⁴ Even if a claimant were to argue that the rules are so loose as to allow for a more-creative remedy, no provisions exist to guide the adjudicator on how to proceed with claims of a forced or faulty contract.

In the present context, in the particular light of actual displacements and dispossessions that have taken place since 9 April 2003, the IPCC has left thousands of victims in a legal limbo, without recourse. Those victims will have to seek remedy through other means. Otherwise, their judicial options depend on a successful challenge to the IPCC's "exclusive jurisdiction," and narrow identification of respondents (duty holders).

The victims of evictions, house demolitions and dispossessions carried out by the multinational forces will face the further multiple challenge of (1) identifying the duty holders, especially as they rotate in and out of Iraq and, eventually, withdraw; (2) trying and enforcing judgments against duty holders who are physically outside the jurisdiction of Iraqi courts; and (3) challenging the exemption of multinational forces from criminal liability erected by the CPA under CPA Order No. 17.⁴⁵

These obstacles are more fundamental than the relatively technical question about quantification methods. However, none preclude a process of proper quantification in anticipation of a future opportunity to obtain rightful compensation and/or restitution.

Appropriate methods would allow for quantification of, and restitution/compensation for moveable property or immoveable property that was damaged. However, the IPCC statute does not permit such claims.⁴⁶ Although its scope covers properties that were confiscated, the IPCC's methods of determining

⁴⁴ This Ba'thist law, published in the Iraqi Gazette No14/1971, limited individual ownership to a maximum of 1,000 dunums (1 dunum = 1,000m²) of rainfall-dependent lands, and abolished compensation payments. While the law was implemented without discrimination throughout Iraq, it also dispossessed many large landowners in Iraq's richest agricultural zone in the north of the country. Individual ownership of such land in the Kurdish north was later limited to 300 dunums.

⁴⁵ See *supra*, notes 6 and 11.

⁴⁶ CPA Regulation 12, Annex B, Article 22.

compensation are distorted by a focus on the purchase price of property (as opposed to replacement value) and neglect other values, including bodily injury, emotional harm, the accumulating lost rent, use of the property, or other potential revenues. Without considering such cases that lack quantification guidelines in the IPCC statute, victims, representatives and adjudicators may be left without any solution whatsoever. This becomes a serious problem when one considers the language of the statute's Annex A, Article 11(C), which gives the IPCC its exclusive jurisdiction.

Methods of Resolution

Most of the guidance on the methods of resolution of contentious claims is confined to Section 4 of Regulation 12's Annex B, "Instructions for Operation." The IPCC statute dismisses existing law in favor of fourteen *ad hoc* rules⁴⁷ designed specifically for the IPCC and do not necessarily bear any relation to their counterparts in the Iraqi Civil Code or Criminal Code and international public law standards. This guidance also appears to be arbitrary in so far as it proffers scenarios unguided by the practical lessons accumulated in the past decades of experience in restitution and compensation claims. Instead, that section of the statute lays out a series of scenarios, but provides "that IPCC shall comply with, but not be limited to, the application of" these examples when resolving real property claims.⁴⁸

Within the limited scope of the Regulation, the following scenarios are offered:

- A. Any properties that were confiscated or seized, or on which liens or other encumbrances were placed by the former governments of Iraq,...with title remaining in the name of the original owner shall be returned to the original owner, freed and discharged from any such liens or other encumbrances.
- B. Any properties that were confiscated or seized and whose title was transferred to the former governments of Iraq, or an agent thereof, and which were not sold to a third party, shall be returned to the original owner;
- C. Any properties confiscated by the former governments of Iraq that were used as mosques, other places of worship, religious schools, charities or were associated with such uses shall be returned to the appropriate *waqfs* (religious endowments) connected to such uses or to the

⁴⁷ CPA Regulation 12, Annex A, Section Four, "General Principles," Article 8.

⁴⁸ *Ibid.*

- appropriate holders of title to such properties prior to their confiscation.
- D. Any properties whose title is in the name of senior members of the former governments of Iraq shall be returned to the rightful owners, if it is established that such properties were improperly acquired.
- E. If a property was confiscated and subsequently sold to a buyer (the "First Buyer"), and (i) title remains in the name of the First Buyer and (ii) no improvements were made to the property, then title to the property will be transferred back to the original owner, and the First Buyer would not be entitled to compensation from the original owner.
- F. If the property was an unimproved property (that is, a property not built upon) when confiscated or otherwise seized, and then subsequently sold to the First Buyer, and the First Buyer has improved the property by building upon it, then the original owner would be entitled to either
- (i) having title transferred to him, provided that he pays the First Buyer the value of the improvements; or
 - (ii) being paid appropriate compensation for the property (as an unimproved property).
- G. If the property was sold to the First Buyer, who subsequently acquired an adjoining property from the state, then title to both the original property and the adjoining property shall be transferred to the original owner, provided that such original owner pay the First Buyer the amount that such First Buyer paid for the adjoining property.
- H. If the property has a building on it and then was sold to the First Buyer, who subsequently demolished the original building and built a new building on it, then the original owner of the property may (i) request that title be transferred to him, after paying for the new building, less the value of the old demolished building, or (ii) may request that the First Buyer acquire the property, including the demolished building (less any amounts paid by the First Buyer to the former governments of Iraq).
- I. If the property was subsequently sold by the First Buyer to other buyers, then the original owner could either (i) request that title be transferred to him, or (ii) request compensation for the value of the property. If the original owner chooses option (i) above, then the final buyer

- would be entitled to compensation for the value of the property.
- J. If the property was charged as security to a lender for a loan to the First Buyer, then title to the property would be freed and discharged from any such charge, and the lender would then have a right of action against the First Buyer to recover any outstanding balance due under the loan.
 - K. If the property was unimproved and a building was built on it by the First Buyer, and the property was charged to a lender as security for a loan, then any amounts due to the First Buyer by the original owner (pursuant to Paragraph F above) would be paid by the original owner direct to the lender to fully or partially satisfy the loan.
 - L. If the property was confiscated and sold in a public auction and was purchased by either the original owner or his heirs, then they will be entitled to compensation from the state in an amount equivalent to the purchase price.
 - M. If the property is currently being used for a public or charitable purpose, the property shall continue to be used for that purpose, and the Government or current owner, user or possessor shall provide the original owner, user or possessor with compensation.
 - N. "Any other relevant situation in line with these provisions."

Scenarios A, B, D–I also entitle the original owner to compensation for additional losses and costs, including those proposed here. However, the General Principles do not provide for such entitlement. Some proposed scenarios may lead to atavistic problems of loss and social upheaval. For example, the principles propose resolving a dispute by the IPCC deciding to settle the original owners on the original same plot along with the new possessors. Given the ethnic tensions around the past and present dispossessions and displacements, the proposed inadequate compensation for victims begs an explanation.

Applicable Norms

One of the obstacles to obtaining adequate compensation for victims is the poverty of the IPCC's founding documents, including the case claim form that is to contain the data upon which adjudication decisions are based. The second type of obstacle is in the form of the IPCC statute's claim to exclusive jurisdiction, severely limiting (1) the class of victims eligible for relief and (2) the victims' options for that ultimate relief. The applicable norms that should lie at the base of any transitional justice mechanism for victims of displacements, dispossessions and population transfer in Iraq derive from three main sources, overlooked in the founding of the IPCC. For our remedial purposes, these include minimum norms found in international human rights law, the guidelines derived from multinational efforts at housing and land restitution, and the rights and responsibilities found in indigenous Iraqi law.

International Law: Human Right to Adequate Housing and Land

In 1966, the General Assembly adopted and opened for ratification the fundamental Covenants covering the range of human rights and corresponding State obligations. Currently, 148 States parties to the Covenant on Economic, Social and Cultural Rights now "recognize the right of everyone to an adequate standard of

living...including food, clothing and housing" (ICESCR, article 11[1]). The State of Iraq ratified that treaty on 3 January 1976. Except for the United States, all states occupying Iraq also are parties to ICESCR, and all—including the United States—bear the obligation to apply the covenanted rights for all residing in the occupied Iraqi territory under its effective control.

Standing alone, Article 11 does not provide sufficient guidance as to what entitlements the right contains, or what is entailed in the State's fulfillment of obligations to respect, protect and defend HRAH. Therefore, the treaty-monitoring body has developed the legal guidance for States parties, based in the problems and solutions arising from the international jurisprudence under the Covenant. In defining the basic elements of "adequate housing" as a human right, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 4,⁴⁹ which applies generally to each and every State party to the Covenant. The absence of denial of any of these constituent elements of the right would likely constitute a violation and, therefore, a subject of remedy, including possible compensation. Giving legal specificity to both the right and the State's corresponding obligations, the Committee's GC 4 determined that seven elements must be present and satisfied in order for housing to be considered as adequate in meeting the requirements of the treaty:

(a) *Legal security of tenure*. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats...;

(b) *Availability of services, materials, facilities and infrastructure*. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) *Affordability*. Personal or household financial costs associated with housing should be at such a level that the

⁴⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 4 "right to housing, HR/GEN1/Rev.7, or access from the following link: <http://www.unhcr.ch/tbs/doc.nsf/099b725fe87555ec8025670c004fc803/469f4d91a9378221c12563ed0053547e?OpenDocument#5%2F%20Geneva,%20W>.

attainment and satisfaction of other basic needs are not threatened or compromised...;

(d) *Habitability* Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.

(e) *Accessibility*. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere...;

(f) *Location* Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) *Cultural adequacy*. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing...⁵⁰

In further experience with implementation and violations of the human right to adequate housing, it has since become clear that other related and separately codified human rights are integral to the respect, protection and fulfillment of the adequate housing, especially in the process of restoring housing rights. This calls for inclusion of the “congruent” rights to:

- Information;⁵¹
- Education and capacity building;⁵²

⁵⁰ Ibid, para. 8.

⁵¹ Universal Declaration of Human Rights (UDHR) (1948), Article 19; International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), 15.1(a) and (b); International Covenant on Civil and Political Rights (ICCPR) (1966), Article 19.2.

⁵² UDHR, Article 26 (1); Convention on the Rights of the Child (CRC) (1989), Article 28.1; ICESCR, Articles 13 and 14.

- Participation;⁵³
- Freedom of association;⁵⁴
- Self-expression;⁵⁵
- Refugee and displaced persons' rights to resettlement, rehabilitation, *nonrefoulement*, restitution, compensation and return;
- Privacy⁵⁶ and
- Security of person.⁵⁷

Again, according to the legal theory and logic of implementation, housing conditions—including in conditions of return, resettlement, restitution and rehabilitation—failure to meet any one of these legally established elements or congruent rights, consequently, may constitute a further violation of the human right to adequate housing, and, potentially, other human rights. The result then would fall short of the remedial objectives and potentially give rise to new problems.

While this explains the content of the right with its interdependent elements, the over-riding principles of application found in all of the major human rights treaties provides the general guidance on “how” that is to be accomplished. Therefore, the State must apply its obligations by ensuring the practice of:

- **Self-determination:**⁵⁸ terms of settlement are to be specified locally in a state that embodies the consent of its constituent peoples;
- **Nondiscrimination:**⁵⁹ criteria for compensation should be applied uniformly to all claimants and all duty holders;
- **Gender equality:**⁶⁰ special efforts should ensure restitution and compensation with tenure for women claimants, including Anfal widows, unmarried women, etc. on an equal basis with the treatment of men;
- **Rule of law:**⁶¹ rights and responsibilities are to be protected and regulated by a system of

⁵³ UDHR, Articles 21.b and 22; ICESCR, Article 9; ICCPR, Article 25(c); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965), Article 5(e)(iv).

⁵⁴ ICCPR, Article 22.

⁵⁵ UDHR, Article 19; ICESCR, 15.1(a) and (b); ICCPR, Article 19.2.

⁵⁶ UDHR, Article 12; CRC, Article 16.1 and 2; ICCPR, Article 17.1; ICERD, Article 5(b) and (e)(iii).

⁵⁷ Ibid.

⁵⁸ See, among the other major human rights treaties, ICESCR, Article 1.1.

⁵⁹ Ibid, Article 2.2.

⁶⁰ Ibid, Article 3.

⁶¹ Ibid, Article 1.2.

law, ensuring fair trials, and laws and judgments should be enforced by competent indigenous institutions;

- **International cooperation:**⁶² states able to provide technical and material assistance are treaty bound to do so in the interest of peace, upward development and security; while states in need of resources and assistance should avail themselves to available channels of aid from other states and appropriate international agencies;
- **Progressive realization/nonretrogression:**⁶³ state authorities and policy makers must ensure that rights and entitlements realized through the constant improvement of living conditions, and that restitution and compensation arrangements not lead to conditions of life inferior to those before the violation.

(Each of these elements and over-riding principles of application are explained further in the [HLRN Housing and Land Rights Toolkit](#).)

Rights to Restitution and Compensation

Refugee and displaced persons' rights possess rights are explicit in international law instruments that provide further instructions on how to proceed with the treatment of dispossession and displacement victims entitled to remedy. In customary international law, the Universal Declaration of Human Rights (UDHR) (1948) provides in Article 8 that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." International treaty law, the victim's right to compensation is not in doubt. The Rome Statute on the Establishment of the International Criminal Court (1998) included compensation among the remedies within the Court's authority.⁶⁴

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Article 75.1 provides: "The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting."

Normative Content of HRAH

1. **Security of tenure, freedom from dispossession;**
2. **Public goods & services**
3. **Environmental goods & services (incl. land & water);**
4. **Affordability (incl. access to finance);**
5. **Habitability;**
6. **Accessibility (physical);**
7. **Location;**
8. **Cultural appropriateness;**
9. **Information, education, capacity and capacity building;**
10. **Participation & self-expression**
11. **Movement, resettlement, rehabilitation, *nonrefoulement*, return, restitution and compensation;**
12. **Security (physical) & privacy.**

The application of international public law norms has resulted in specific obligations of states in the treatment of victims of displacement. The International Labour Organisation Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989), which Iraq ratified in 1986, provides in Article 16:

...the peoples concerned shall not be removed from the lands which they occupy. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. Whenever possible, these peoples shall have

the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. Persons thus relocated shall be fully compensated for any resulting loss or injury.

The Convention on the Elimination of All Forms of Racial Discrimination (1965), which Iraq ratified on 13 February 1970, not only guarantees the right to housing on a nondiscrimination basis,⁶⁵ it recognizes the states' obligation to "assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

⁶⁵ ICERD, Article 5(e)(iii).

International jurisprudence and instruments declaratory of international law have become a source of legal specificity of the nature and scope of compensation for victims. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) is explicit about the victim's right, and the state's obligation to compensate for harms suffered (Articles 8 and 11).

In four serial resolutions of the UN Commission on Human Rights on "The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms" the Commission on Human Rights has called upon "the international community to give due attention to the right to a remedy and, in particular, in appropriate cases, to receive restitution, compensation *and* rehabilitation, for victims of grave violations of international human rights law and humanitarian international law..." [emphasis added].⁶⁶ For its part, the Commission has recognized that these remedies are part of a package, including compensation along with the other appropriate measures. Among the principles established at the UN-sponsored 1997 expert seminar on the practice of forced evictions was recognition of the victims':

right to compensation for any losses of land or personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments.⁶⁷

Moreover, the Declaration on Social Progress and Development (1969) earlier had recognized victims' entitlement to "Compensation for damages, be they social or economic in nature—including restitution and reparations—caused as a result of aggression and of illegal occupation of territory by the aggressor" (Article 26).

The draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law provide criteria for remedy that the IPCC founders omitted: the principle that reparation should be "proportional to the gravity of the violations and the harm suffered"⁶⁸ and that remedy be "in accordance with its

⁶⁶ Commission on Human Rights resolutions 2000/41, 2003/34, 2004/34 and 2005/35, of the 56th, 59th, 60th and 61st (2005) sessions, respectively.

⁶⁷ Sub-Commission on Prevention of Discrimination and Protection of Minorities, The Realization of Economic, Social and Cultural Rights, Expert seminar on the practice of forced evictions, Geneva, 11–13 June 1997, Report of the Secretary-General, E/CN.4/Sub.2/1997/7, para. 24.

⁶⁸ Draft "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," E/CN.4/2003/63, 27 December 2002 (revised as of 5 August 2004), Article 15.

domestic laws and international legal obligations.”⁶⁹ The Guidelines also provide a fundamental principle for reparations to cover also “bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular, dependants of persons who have died or become physically or mentally incapacitated as a result of the violation.” To that end, States should endeavor to establish national funds for reparation to victims and seek other sources of funds wherever necessary to supplement these.”⁷⁰

The present Guidelines clarify the purpose of reparation as providing victims: “restitution, compensation, rehabilitation, and satisfaction and guarantees of nonrepetition.” They instruct that:

restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.⁷¹

The UN Sub-Commission on the Promotion and Protection of Human Rights also has adopted guidance with specificity on the content of compensation required for a remedy to comply with international law norms:

VII. In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of nonrepetition.

“Reparations may take any one or more of the forms mentioned below, which are not exhaustive, viz:

12. “Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Restitution requires, *inter alia*, restoration of liberty, family life, citizenship, return to one's place of residence, employment of property.”

13. “Compensation shall be provided for any economically assessable damage resulting from violations of human rights and humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities including education;
- (c) Material damages and loss of earnings, including loss of earning potential;

⁶⁹ Ibid, Article 16.

⁷⁰ Article 18, with particular reference to cases where the perpetrator is not able to meet the demands of reparation to victims.

⁷¹ Article 21.

- (d) Harm to reputation or dignity;
- (e) Costs required for legal or expert assistance.

14. "Rehabilitation shall be provided and will include medical and psychological care as well as legal and social services."⁷²

The continuous development of human rights standards and guidance is rooted in practical application. The lamentable endurance of systematic and random housing and land rights violations has necessitated further efforts to specify standards for both remedial and preventive measures to resolve problems arising from dispossession. In its course, the UN Sub-Commission recently has adopted a set of specific principles declaratory of international law on housing and property restitution for refugees and displaced persons.⁷³ Addressing that particular class of victim of human rights violations and related crimes, the Sub-Commission has established that, in light of human rights obligations, States should:

- ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards...⁷⁴
- not establish any preconditions for filing a restitution claim;⁷⁵
- neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.⁷⁶

Practical Lessons Unlearned

The Dayton Peace Agreement recognized the right of all refugees and displaced persons in Bosnia-Herzegovina to freely return to their homes of origin and granted "the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them."⁷⁷ Annex 7 of that agreement created administrative bodies designed for mass claims resolution: the

⁷² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of Human Rights and Humanitarian Law (E/CN.4/SUB.2/1996/17).

⁷³ "Principles on housing and property restitution for refugees and displaced persons," in "Housing and property restitution in the context of the return of refugees and internally displaced persons," final report of the Special Rapporteur, Paulo Sergio Pinheiro, E/CN.4/Sub.2/2005/17, 28 June 2005, The Sub-Commission adopted the "Pinheiro Principles" by resolution on 11 August 2005.

⁷⁴ Ibid, 11.1

⁷⁵ Ibid, 13.1

⁷⁶ Ibid, 19.1

⁷⁷ General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement), 35 I.L.M. 75, "Agreement on Refugees and Displaced Persons," Annex 7, "Rights of Refugees and Displaced Persons," Article I (1996).

Office of the High Representative Ombudsperson and the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) to resolve property disputes. Although plagued with implementation obstacles and having little precedent to draw on, the CRPC enjoyed some measure of success. It collected 318,780 claims and issued some 290,000 final decisions on property title.⁷⁸ By April 2004 over 90% of formerly displaced claimants have been able to recover rights on their prewar homes.⁷⁹

The CRPC was authorized by a peace treaty involving indigenous parties to the conflict that included the relevant human rights and humanitarian law treaties not only by reference, but also by full textual inclusion in the Dayton Accords.⁸⁰ The IPCC does not share such a text or context.

Among the lessons to carry forward from the Bosnia-Herzegovina (BiH) and Kosovo experiences is that any property rights restitution should be a nationally created, owned and directed process. While the international community should assist, external powers should refrain from imposing their own concepts and preferences if the effort is to work effectively and the solutions are to be sustainable. However the CPA initiative to establish the IPCC had little Iraqi involvement, with CPA experts instead drafted the guidelines and statute that required the Iraqi Governing Council (IGC) to implement.⁸¹

In BiH, the proposed Compensation Fund never materialized due to lagging donor will. The CRPC had no enforcement mechanism and could not, by itself, assist aggrieved persons to recover their property rights and to return home. Rather, a CRPC decision represented only the first step toward the eventual end of a long process for victims to recover their rights.⁸² Part of the problem in BiH was a lack of a national legal framework to resolve restitution cases, which is not the case in Iraq, as discussed below.

Partly because it was an internationally imposed mechanism, the CRPC had no power to repeal laws and ordinances provisions contributing to the loss of property rights, nor could it order authorities to implement and enforce its decisions, or to provide

⁷⁸ Hans Das, *Restoring Property Rights in the Aftermath of War*, International and Comparative Law Quarterly, no. 53, 429–44 (April 2004), at 437.

⁷⁹ Anne Davies, "Restitution of Land and Property Rights," *Forced Migration Review*, vol. 12, no. 21 (September 2004), at <http://www.fmreview.org/text/FMR/21/04.htm>.

⁸⁰ Joseph Schechla, "A Righteous Inconsistency: Applying International Norms to Population Transfer in Bosnia and Palestine," *Critique* (spring 1998).

⁸¹ Davies, op cit., p. 3; Das, op cit., at 441.

⁸² Davies, op cit., p. 1; Das, op cit., pp. 430, 441.

accommodation and services to those in need.⁸³ Such powers would be essential to an effective compensation scheme. The IPCC statute does not deal with these implementation issues, although it is especially important to do so in an environment where local law-enforcement officials are already beleaguered.

Over a period of weeks, more than 800,000 Kosovo Albanian refugees returned to their country *en masse* along with some 500,000 internally displaced Kosovo Albanians. The inevitable result was *ad hoc* occupation of properties and conflict over land and housing, including conflicts with ethnic dimensions, without a proper legal framework for managing disputes.⁸⁴

The experiences of restoration of property and resettlement in Timor l'Este demonstrated a lack of local administrative capacity, the need for transit housing during the course of repatriation and resettlement and a rise in postconflict land disputes.⁸⁵ There, too, with most of the 700,000 persons displaced in 1999 returning after the end of Indonesian occupation, property restitution and resettlement became the burden of the international peace-keeping operation of UNTAET.

In Afghanistan, property restitution has been even more complicated and contentious, where land tenure laws are "complex, uncertain, incomplete and currently unenforceable."⁸⁶ The objective of helping foreign investors to secure land has driven land policy planning in the Afghan Transitional Administration (ATA), further impeding the restoration of rights and conciliation of disputes. In that transitional country, where national authority has not extended far beyond the capital, the property dispute resolution in the postinvasion period has been inadequate, and where new Afghan authorities have authored new housing and land rights violations.⁸⁷ Similar concerns apply to Iraq, where postwar authorities have taken over properties that Ba`thists previously had confiscated and built on while in power.

⁸³ Davies, *op cit.*, p. 1.

⁸⁴ Scott Leckie, "Housing and Property in Kosovo: Rights, Law and Justice," [UN Habitat consultant report], (30 August 1999).

⁸⁵ Daniel Fitzpatrick, "Land Policy in Post-Conflict Circumstances: Some Lessons from East Timor," *The Journal of Humanitarian Assistance* (November 2001), at <http://www.jha.ac/articles/a074.htm>.

⁸⁶ Liz Alden Wily, "Land Rights in Crisis: Restoring Tenure Security in Afghanistan," for the Afghanistan Research and Evaluation Unit, March 2003, www.areu.org.pk/publications/land/land.pdf, cited in Davies, *op cit.*, p. 4.

⁸⁷ For recommendations on expanding capacity of the Special Property Disputes Resolution Court, see "Report of the independent expert on the situation of human rights in Afghanistan, M. Cherif Bassiouni," E/CN4/2005/122, 11 March 2005, paras. 71–72. Concerning land grabbing, see report of the Special Rapporteur on adequate housing Miloon Kothari, "Mission to Afghanistan," 31 August–13 September 2005, E/CN.4/2004/48/Add.2, 4 March 2004, pp. 7–8.

These experiences provide lessons to be heeded in Iraq, although each represents unique circumstances. The unregulated return of IDPs in the absence of an effective and efficient dispute-resolution mechanism can produce new layer of violations and subsequent conflicts. Of foremost importance among lessons for Iraq are that property restitution and compensation (1) needs to be an indigenous national process; (2) should draw on local law, where applicable, thereby also identifying the need for law reform and further legislation; and (3) should address the interests of all classes of victim.

Applicability of Domestic Law

The IPCC statute's only specific reference to existing Iraqi law is in connection with a claimant who brings a claim in bad faith and, after a commissioner determines the claim's invalidity, s/he wilfully returns to the currently occupied property and takes measures to force the current occupiers to vacate that property. In both actions, the person(s) are to be considered as having committed a criminal offence under the Iraqi Penal Code.⁸⁸

The Iraqi Civil Code (1951) provides for recovery (including restitution and compensation) for more than property-related issues. Article 202 of the Iraqi Civil Code states: "Every act [that] is injurious to persons such as murder, wounding, assault, or any other kind of inflicting injury, entails payment of damages by the perpetrator." Article 202 is broad enough to provide redress to Iraqi citizens who have been injured through a wide range of intentional harm, including dispossession of property.⁸⁹

Iraqi law states that ownership vests unto the owner the right to dispose freely and absolutely of his possession and that "no one can be deprived of his ownership except in the cases and in the manner provided for by law and in consideration for fair compensation payable in advance."⁹⁰ Under Iraqi law, true title does not pass to the possessor of with property (moveable or immovable) not acquired lawfully or with the owner's free consent.⁹¹ The *Code* expressly provides that, if possession has been coupled with coercion or the property was obtained secretly or dubiously, then the acquisition shall not have an effect on the person subject to the coercion, or from whom possession has

⁸⁸ CPA Regulation 12, Annex B, Articles 23 and 24.

⁸⁹ Stigall, *op cit*, p. 36.

⁹⁰ Iraqi Civil Code, art. 1048 (1990 translation), as cited in Stigall, *op cit.*, at 36.

⁹¹ *Ibid*, Articles 1145–46.

been concealed, or who has been confused in the course of the acquisition.⁹²

A person who is usurped of, or wrongfully dispossessed of immovable property may file an action to have the property restored to her/him in order to obtain remedy such that the property “must be restituted in kind to its owner at the place wherein it was usurped if it is existing.”⁹³ In the case that restitution is made in a place other than the original place, “the expense of moving it and the costs of providing for its restitution will be borne by the usurper which thing will be without prejudice to reparations for other injuries.” If the usurper or wrongful possessor has destroyed or damaged the property, s/he is liable.⁹⁴

Beyond the narrow parameters of the CPA Regulation is the provision in the Civil Code that, in the case of usurped immovable property, “the usurper is under an obligation to restore it to the owner together *with comparable rent*. The usurper shall be liable if the immovable has suffered damage or [if the property] has depreciated even without encroachment on his part.”⁹⁵ When calculating compensation, “the court will estimate the damages commensurately with the injury and the *loss of gain* sustained by the victim, provided that the [injury and loss of gain are] a natural result of the unlawful act.”⁹⁶ (Emphases added.)

Compensation may also be awarded for the material loss of harvest crops.⁹⁷ The Iraqi Civil Code is elaborate on rights arising from “The Appropriation of Surpluses and Benefits and Recovery of Expenses.” Under Articles 1165–68, a good faith possessor “will appropriate the surpluses he has received and the benefits he has collected during the time of his possession.” A bad faith possessor will be liable for all the fruits that s/he will receive and those which s/he failed to collect as of the time when s/he became of bad faith. However, the bad-faith possessor may obtain reimbursement of that which he has spent on producing the fruits.⁹⁸ In this situation, the law makes the bad-faith possessor liable to the true owner for the amount of the fruits/benefits derived from the property, minus the costs incurred in producing that fruit/benefit.⁹⁹

⁹² Ibid, Article 1146.

⁹³ Ibid, Article 192.

⁹⁴ Ibid.

⁹⁵ Ibid, Article 197.

⁹⁶ Ibid, Article 207.

⁹⁷ Ibid, Article 196: “The accessories of the thing usurped are deemed to be usurped like it and the usurper shall be liable if they have perished even without encroachment on his part.”

⁹⁸ Ibid, Article 1166.

⁹⁹ Stigall, observes that the general principles in IPCC Regulation 12 overlook critical elements of property law that any adequate legal system must address, including

On the other hand, assuming a person who receives land without knowledge that it was wrongfully appropriated by the Ba`thist regime or other party remains legally in good faith. That person would be able to keep any fruits or crops. While this does not punish the possessor who had no way of knowing the property was wrongfully acquired. However, without an alternative mechanism for providing this form of compensation (e.g., state institutions), this protection for the good-faith possessor does not diminish the injury done to the victim.

Subsections E–M of the IPCC statute address the fate of subsequent purchasers and lists the following examples of real property claims:

If a property was confiscated and subsequently sold to a buyer (the “First Buyer”) and (i) the title remains in the name of the First Buyer and (ii) no improvements were made to the property, then title to the property will be transferred back to the original owner and the First Buyer would not be entitled to compensation from the original owner.

If the property was an unimproved property (not built upon) when confiscated or otherwise seized, and then subsequently sold to the First Buyer, and the First Buyer has improved the property by building upon it, then the original owner would be entitled to either (i) having the title transferred to him, provided that he pays the First Buyer the value of the improvements or (ii) being paid appropriate compensation for the property (as an unimproved property).¹⁰⁰

Under the IPCC statute, therefore, an Iraqi citizen dispossessed of her/his property might actually owe compensation to a subsequent purchaser. While, in certain circumstances, this arrangement could be just; the statute makes no distinction as to the circumstances arising from the subsequent purchaser’s intent or state of mind. Without explicitly recognizing the important distinction between good faith and bad faith purchasers, the prescribed outcome could protect offenders and be wholly unsatisfactory.

In Iraqi law, the aggrieved party’s right to compensation entails not only compensation for the consequent economic loss, but also to compensation for moral injury, defined as “any encroachment on the freedom, morality, honor, reputation, social standing, or financial position” of the affected person or persons.¹⁰¹ Further, damages may be adjudged to extend to third party rights holders, such as immediate family members, who also have suffered moral injury as a result of the offense.¹⁰²

primarily the issue of good or bad faith and the fate of the products of confiscated land.

See Stigall, *op cit.*, pp. 32–33.

¹⁰⁰ CPA Regulation 12, Annex A, Section Four, “General Principles,” Article 8.F.

¹⁰¹ *Ibid*, Article 205.

¹⁰² *Ibid*, Articles 204–05.

Iraqi law provides for a court to determine the method of payment of damages, which “may be payable in installments or as revenue in the form of a salary, in which case the debtor may be required to provide a security.”¹⁰³ The court also may reduce or even cancel the sum if the aggrieved party aggravated or contributed to the situation, or took actions to worsen the debtor’s situation.¹⁰⁴

Unlike the IPCC statute and the system set up to record related injury, the Iraqi Civil Code already offers a complete regime of law providing material remedy for victims of dispossession of property, eviction and population transfer, including recovery of property and/or compensation for damages arising from lost rent, lost fruits, use of usurped property, emotional damages and moral injury. Moreover, it also governs contracts and other obligations that could be invoked in the cases where Iraqi citizens were tricked or coerced into signing away their property.¹⁰⁵ The domestic law, therefore, covers cases about which the IPCC is silent; it allows for recovery of losses left unrecorded in the IPCC claim form, and applies to injury not limited to that caused by the exclusive classes of victimizers and victims proscribed in the IPCC statute.

The long timeframe provided for cases admissible under the IPCC statute (17 July 1968 to 30 June 2005) also does not add to existing Iraqi law. The Iraqi Civil Code addresses statute of limitations on claims to within 15 years of its cause.¹⁰⁶ The period is limited to five years in the case of recurring rights and cumulative losses over time, such as rent or income due to a possessor in bad faith. In cases, including certain commercial transactions, the prescriptive period is shortened further to one year.¹⁰⁷ However, the Iraqi Civil Code allows for suspension of the statute of limitations where an impediment renders it impossible for the victim to claim his or her right.¹⁰⁸

¹⁰³ Ibid, 209(1).

¹⁰⁴ Ibid, 210.

¹⁰⁵ Ibid, Articles 115 and 121. As in the case of many civil codes based on the Roman and Napoleonic model, the *Iraqi Civil Code* nullifies obligations if tainted by a vice of consent or defect of will (Articles 112–125) Accordingly, a contract is not valid if executed in mistake (Article 117), under duress (Article 112), or where a contracting party has made false representations (Article 121). Like most modern civil codes, the *Iraqi Civil Code* stipulates limits of liability for reasons of *force majeure* (Article 211) and other contingencies (Articles 212–14).

¹⁰⁶ Article 429 provides: “A case shall not be heard in respect of an obligation whatever its cause...if it has not been claimed without lawful cause for a period of 15 years...”

¹⁰⁷ Articles 430–31.

¹⁰⁸ Article 435. This rule reflects the civilian concept of *contra non valentem agere nulla currit praescriptio*, a Latin maxim meaning that “no prescription runs against a party unable to act,” and, consequently, when the reason for the rule ceases, so does the rule.

As neutral law, developed outside the framework of ideological and geostrategic interests of the CPA, the Iraqi Civil Code should allow Iraqi civil courts to rule on oppressive actions of a tyrant operating in the country, regardless who that tyrant was. However, the IPCC statute renders the Iraqi Civil Code unavailable to Iraqi citizens seeking resolution of land and property disputes. The CPA-acclaimed “exclusive jurisdiction” prevents an aggrieved Iraqi citizen with a claim cognizable under the IPCC statute from raising her/his claim in an Iraqi Civil Court.

What Needs Fixing?

On its face, as exemplified in the IPCC claim form, the restitutive process that the CPA designed for Iraqi victims of makes no provision for several categories of loss that are subject to remedy, including by way of compensation. The relief is limited further by the IPCC extending “exclusive jurisdiction” over all cases appearing to come under the IPCC statute’s wide ambit, while preventing entire classes of victims injured by parties other than the Ba`th Party, its representatives and/or the Ba`thist former government of Iraq. This disregards the similarity of the losses to those whom the IPCC statute recognizes. Even though the June 2004-revised CPA Regulation 12 extends the period of admissible cases to actions occurring up to 30 June 2005, it omits to extend the class of plaintiffs and defendants accordingly.

The IPCC statute also impedes aggrieved civilians by posing a legal bar to actions by Iraqis who seek redress in their own civil courts. This is problematic not only for reasons of substantive inadequacy of the IPCC statute, but also because it undermines the jurisdiction, credibility and public reliance on the indigenous judicial institutions. The IPCC mechanism, by taking cases out of the courts and supplanting the judicial system and the rule of indigenous law, threatens to undermine the Iraqi judicial system at

a critical moment.¹⁰⁹ It deprives the Iraqi courts of needed public perception of doing justice in resolving these highly visible disputes.

Meanwhile, those aggrieved Iraqis face another obstacle in their pursuit of justice through the IPCC due to the inefficiency of the IPCC as a new institution. Observers and other concerned parties have criticized the IPCC for not functioning.¹¹⁰ The IPCC's much-reported underachievement is apparently making the relief efforts even more retrograde in light of the continuing displacements.¹¹¹ The new displacements now fall into a legal limbo. By September 2004, "Iraq's property claims commission for disputed land in oil-rich northern Iraq [had] failed to process a single claim, despite more than 167,400 Kurds re-settling in dozens of refugee camps since March [2004] alone..."¹¹²

Moreover, the IPCC siphons off material and human resources from the not-unlimited Iraqi pool of administrators and jurists. The IPCC statute calls for the creation of an additional administrative structure consisting of numerous legal advisers, managers, auditors, data managers and administrative staff. The IPCC statute requires that judges be employed to staff the appellate division and regional commissions, diverted key judicial personnel to staff the claims commission. These concerns are in addition, but not unrelated to the question of adequate relief, including restitution *and* compensation, for Iraqi victims.

The resource requirements also include funding, for which local budgets and international donors will have to provide. Erecting new structures costs additional expenditures, the appropriateness of which must be weighed against the values of restoring and compensating lost properties. Diverting resources to support new administrative structures was a concern in the "Iraq supplemental bill" that the US Congress approved for postwar reconstruction. It appropriated \$35 million for property-related compensation claims, of which \$5 million was earmarked for administration costs.¹¹³ An

¹⁰⁹ As stressed in remarks by U.S. Deputy Secretary of State Richard L. Armitage to the Iraqi Judiciary, 15 September 2004, at:

<http://usinfo.state.gov/dhr/Archive/2004/Sep/h16-299062.html>.

¹¹⁰ Sigall, *op cit.*, pp. 40–41; Matthew, *op cit.*, quoting US Major General John R. S. Batiste to say that "The Property Claims Commission is not working: 5,399 claims have been filed, but 143,222 IDPs are trying to resettle."

¹¹¹ According to the Arab Displacement Union (ADU), a local NGO, more than 4,000 Arab families have been made homeless in the Kirkuk area since the 2003 invasion. "IRAQ: Focus on increasing displacement in Kirkuk," *IRIN* (3 May 2005), at: http://www.irinnews.org/report.asp?ReportID=46908&SelectRegion=Middle_East.

¹¹² As reported in Davies, *op cit.* The source is the current acting head of the United Nations Office for the Coordination of Humanitarian Affairs in Monrovia, Liberia.

¹¹³ Human Rights Watch, *Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq*, Vol. 16, No. 4(E) (2004), p. 70, at <http://hrw.org/reports/2004/iraq0804/>.

attorney with the US Army Judge Advocate General (JAG) Corps serving as legal liaison to the Coalition Provision Authority in Iraq has observed: “Already, millions of dollars have been given to this failed endeavor—millions better spent on further training the Iraqi civil judiciary or establishing a fund to provide compensation for those Iraqis who lost property over the past decades.”¹¹⁴

These problems and shortcomings of the IPCC, including its founders’ failure to incorporate lessons of recent property-restitution experience, the disregard for indigenous law and participation in its founding, the questions about the availability and effective use of financial and human resources, and, of course, the inferior criteria posed for determining values and eligibility of claims have real consequences for the delivery of justice, including compensation of victims.

The effective evisceration of Iraqi law as a dispute-resolution tool and the lack of reference to existing domestic or international norms in the IPCC instruments suggest that Amb. Paul Bremer and his advisors were unaware of, unconcerned with, and/or resistant to the rule of law and legal instruments that predate their appearance on the scene. By relying on their own logical devices, they have produced an instrument and standards of remedy, including compensation, that fall short of minimum rules and principles developed internationally in the field of housing and land rights. Therefore, the rather *ad hoc* process and content of the IPCC statute may limit victim’s rights to restitution and, thereby, evade the objectives of transitional justice and the ultimate goal of dissolving perceptions of injustice and resolving underlying conflicts.

¹¹⁴ Stigall, *op cit.*, p. 28.

Posing Solutions

The HLRN inquiry into the property restitution and compensation prospects for Iraqi victims housing and land rights violations has raised numerous concerns and revealed serious challenges and shortcomings arising from the IPCC statute and its implementation. Based on these observations, HIC-HLRN offers the following recommendations in the interest of providing the relevant standards of justice and relief for the victims of *all* categories of housing and land rights violations, encompassing, but not limited to, forced eviction, demolition, confiscation, coerced transfer of title and population transfer, including implantation of settlers and settlements for purposes of demographic manipulation.

HIC-HLRN envisions prospects of a transitional justice process for Iraq that seeks to remedy past and ongoing violations, as well as deter current and future replication of these violations, first to identify and then also to disburse the rightful value of losses, and to provide a basis for mediated settlements in cases of counterclaims.

Although the statutory clock is ticking on the admissibility of claims to the IPCC, that does not mean that it is too late to improve the process. The following recommendations seek to promote the lessons of foregoing postconflict experiences and apply the

housing and land rights framework as a practical measure to (1) ensure that property issues be resolved as an indigenous national process; (2) draw on local law, where applicable, thereby also identifying the need for law reform and further legislation; (3) address all classes of victim; and at least recognize all of their rights.

For any or all of these purposes, it remains necessary to gather more basic data on each claim in the proper form and with a consistent and clear quantification methodology. It is likewise urgent to correct the obstacles that the CPA has erected for victims and good-willed adjudicators, and replace them with appropriate criteria, methods, laws and institutions. With that alternative in view, HLRN proffers three levels of recommendation for urgent action:

1. that the evidence required and gathered for determining losses arising from cases be far more comprehensive and clear;
2. that indigenous Iraqi institutions apply actual law, including the guidance from international norms where gaps and/or contradictions occur, in adjudicating cases of housing and land rights violations; and
3. interpretation of the available options in the meanwhile to fill gaps and circumvent CPA-created obstructions to justice.

Several of these recommendations are easier said than done in the unstable climate of Iraq at the time of this writing. For example, prosecution of housing and land rights offenders could invite violent retribution against the monitors and investigators. It is not all together clear if the collective political will of the National Assembly is sufficient to rescind self-acclaimed immunity of CPA and MNF personnel and institutions from prosecution in the Iraqi legal system. Victims and defenders should take the interpretations of current legal opportunities proposed here into consideration as part of a comprehensive judicial strategy, weighing tactical advantages and disadvantages along with prevailing political and security considerations. At the time of this writing, it is also unclear whether the IPCC Regional Commission decisions will be practically enforceable. Hence, all ambitious recommendations will have to be determined within the realm of the possible.

Recommendations

Data collection and quantification of losses:

- ❑ In the immediate term, victims and their legal representatives are urged to quantify plaintiffs' losses thoroughly, using existing tools and techniques developed in other contexts to the extent that comprise a full inventory of claims and ultimately serve the full restoration of Iraqi victims' housing and land rights, as well as provide policy and financial planners with the data needed to assess future requirements and options for restitution and compensation.
- ❑ That method should take account of the entire complement of housing and land rights elements provided in the CESC General Comments Nos. 4 and 7, as well as other congruent and interdependent rights codified in the human rights treaties to which Iraq is a party and elaborated through the jurisprudence of the treaty-monitoring bodies.
- ❑ An authoritative Iraqi body, such as the IPCC National Secretariat, in cooperation with the Ministry of Displacement and Migration or the larger interministerial Working Group on Compensation for the Displaced, should develop and provide to IPCC adjudicators ample guidelines for determining remedies based on Iraqi law and prevailing human rights standards.
- ❑ Such a mechanism also must improve the current claim forms for new submissions and seek additional information from claimants already on record by issuing detailed instructions to claimants and their representatives on how to present data complete enough so as to determine what compensation is due to the displaced and/or dispossessed owner. These guidelines should allow all categories of loss included and omitted in the current IPCC instruments, but allowable under Iraqi law; value assessments based on current market value of structures, lands and harvest crops; lost revenue from the use of property; relocation and alternative housing costs resulting from the violation and required for resettlement; recurrent costs; values for pain and suffering, etc. (A summary of the "Loss Matrix" from the [HLRN Housing and Land Rights Toolkit](#) is annexed here by way of example.)

Institutional Correction

- ❑ It is urgent, necessary and consistent with provisions of the CPA Regulations¹¹⁵ for the IPCC National Secretariat and/or Iraqi National Assembly to restore the applicability of the Iraqi Civil Code in the adjudication of property disputes and related claims arising from housing and land rights violations. That should allow the admissibility of claims arising from forced or coercive contracts for the transfer of real property for less than its full value, including lands taken under the Agricultural Reforms Law No. 117 (1970). Applying neutral law then would replace the ideological focus on claims exclusively against the former Ba`thist leadership and permit claimants to seek remedy, focusing rather on addressing violations, as such, and relief for victims.
- ❑ The IPCC National Secretariat and/or National Assembly should determine that cases and claims received under the IPCC statute, and all property disputes, be adjudicated in their proper forum; i.e., courts of law, special courts, or other judicial institution directed by Iraqi representatives, having judicial effect, and respecting rights and due procedures of appeal.
- ❑ In the meantime, it is urgent and important for victims and their legal representatives to petition for the application of Iraqi law, which is not limited to the service of selective classes of restrictive time prescriptions set forth in the IPCC statute.
- ❑ In the interest of deterring further housing and land rights violations, civil and governmental institutions are needed to complement the IPCC's remedial work by investigating and, where possible, prosecuting housing and land rights violations committed by all parties, in addition to former Iraqi government and Ba`th Party members and institutions, identifying also those acts and omissions committed by the personnel of the CPA, multinational forces occupying the country and other

¹¹⁵ In particular CPA Regulation No. 1, "The Coalition Provisional Authority," Article 1 states that "the CPA shall exercise powers of government temporarily..." and Section 2, "The Applicable Law," claims that CPA Regulations remain in force "Unless suspended or replaced by the CPA or superseded by legislation issued by democratic institutions of Iraq; Regulation No. 12, Article 66, which states: "These Instructions may be revised or supplemented by the Iraqi Interim Government. Additional details regarding the claims process may also be found in Guidelines, interpretative memoranda, and literature prepared by the National Secretariat."

domestic and transnational parties that lead to violations of housing and land rights.

- ❑ The Iraqi National Assembly should assert practical sovereignty and the rule of law by repealing CPA Order No. 17 claiming immunity for multinational forces personnel from the jurisdiction of Iraqi courts in matters of liability for housing and land rights violations.¹¹⁶
- ❑ The Iraqi National Assembly should assert practical sovereignty and the rule of law by repealing CPA Order No. 6 “Eviction of Persons Illegally Occupying Public Buildings” in favor of local law and procedures that incorporate CESCR General Comment No. 7 “the right to housing: forced eviction,” in order to ensure that human rights and well-being be upheld in the conduct of any due-process evictions.
- ❑ Iraqi law makers and political leaders should publicly encourage civil society participation in the monitoring and documentation of past, present and future housing and land rights violations, and should formulate explicit policy and legislation to protect housing and land rights defenders from retaliation.
- ❑ International donors should consider providing aid and technical help to the Iraqi judicial system in tandem with that to the IPCC investigative and mediating functions. This will help mitigate the drain of personnel, funding and prestige from the Iraqi courts arising from the IPCC statute and its implementation, while maintaining the relevance of Iraqi courts for disposing of all IPCC-related claims with judicial effect, not only the potentially great number of valid claims that fall outside the IPCC framework.

Interpretive Options

- ❑ Claims for moveable property losses, immovable property damage, and injury arising from mental anguish or humiliation, and other claims outside the IPCC statutory chronological and subject limits still would fall within the purview of the Iraqi Civil Code and Iraqi courts. Claims for remedy should be raised in Iraqi courts now, based on the

¹¹⁶ As compatible with the UN Commission on Human Rights resolution 2005/63, which “stresses the importance of combating impunity in order to prevent violations of international human rights and humanitarian law perpetrated against civilians in armed conflicts, and urges States to end impunity for such crimes by bringing the perpetrators to justice in accordance with their international obligations.” E/CN4/RES/2005/63, 20 April 2005, para. 3.

argument that domestic Iraqi law and international treaty standards continue to apply.

- ❑ Certain plaintiffs mounting their claims in Iraqi courts after the 30 June 2005 IPCC submission deadline will hold an advantage by avoiding the various restrictions of the IPCC statute and availing themselves to the more-complete and inclusive Iraqi Civil Code.
- ❑ The IPCC's "General Principles" are not absolute and are subject to revision by the IPCC National Secretariat and under the legislative jurisdiction of the National Assembly.¹¹⁷ In the meantime, claimants and adjudicators may exercise their option, even under the IPCC statute, to resort to other legal guidance and norms in arguing or disposing claims.¹¹⁸
- ❑ All adjudicators in Iraq should scrupulously avoid replacing original or replacement land remedies with cash awards, where possible.¹¹⁹
- ❑ Claimants and their representatives before the IPCC, as well as IPCC adjudicators, should take the initiative of invoking both Iraqi and international law in order to ensure full restitution *and* compensation for victims, not a choice between them.

¹¹⁷ Ibid.

¹¹⁸ CPA Regulation 12, Annex A, "Establishment of the Iraq Property Claims Commission (as Amended and Restated)," Section 4, "General Principles," Article 8 sets forth that the "IPCC shall comply with, *but not be limited to* the application of these principles" (emphasis added).

¹¹⁹ Supra, note 67.

ANNEX 1

Coalition Provisional Authority Regulation Number 8 Delegation of Authority regarding an Iraq Property Claims Commission

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolutions 1483 and 1511 (2003),

Noting that large numbers of people from different ethnic and religious backgrounds in Iraq have been uprooted and forced to move from their properties to serve political objectives of the Ba`athist regime,

Recognizing that as a result of these Ba`athist policies, many individuals have conflicting claims to the same real property, resulting in instability and occasional violence,

Concluding that pending the establishment of a means of finally resolving property related claims by a future Iraqi government, certain of these claims may be amenable to voluntary reconciliation immediately, thereby avoiding further instability and violence,

I hereby promulgate the following:

Section 1 Delegation of Authority

The Governing Council is hereby authorized to establish the Iraq Property Claims Commission (IPCC) for the purpose of collecting and resolving real property claims and to promulgate procedures for promptly resolving such claims in a fair and judicious manner by promulgating a statute, the proposed provisions of which have been discussed between the Governing Council and the CPA and are set forth in Appendix A.

Section 2 Terms and Conditions

The authority delegated under Section 1 of this Regulation shall be subject to the following terms and conditions:

(a) The Governing Council shall ensure that all procedures established for the IPCC are consistent with orders, regulations, and memoranda promulgated by the CPA.

(b) Representatives of the CPA shall be given the opportunity to advise and assist in the claims resolution process.

(c) The CPA shall oversee the distribution of all funds for claims resolution provided by the Development Fund for Iraq or by Coalition or other donor States.

(d) In the event of a conflict between any promulgation by the Governing Council and any promulgation of the CPA, the promulgation of the CPA shall prevail.

(e) The Administrator reserves the authority to alter the Statute creating the Iraq Property Claims Commission or any procedures developed for the IPCC, or to otherwise intervene in the claims resolution process, if required in the interests of justice.

Section 3 Rescission

CPA Regulation Number 4, Establishment of the Iraqi Property Reconciliation Facility, (CPA/REG/25 June 2003/04) is hereby rescinded.

**Section Four
Effective Date**

This Regulation shall enter into force on the date of signature.


L. Paul Bremer, Administrator
Coalition Provisional Authority

Iraqi Property Claims Commission

Section One: Establishment

Article One

This statute hereby establishes the Iraqi Property Claims Commission (the "IPCC"), which shall resolve real property claims in a fair and judicious manner. The IPCC shall encourage the voluntary resolution of claims.

Section Two: Organization

Article Two

The IPCC shall consist of the following structures established by the Governing Council:

1. An Appellate Division, composed of judges and established as a separate chamber of the Iraqi Court of Cassation;
2. Regional commissions established in each governorate in Iraq. The Appellate Division may establish more than one regional commission in a governorate.

Article Three

A. The Appellate Division of the IPCC shall be composed of five judges who have experience in adjudicating property disputes, may be retired or serving judges, and are to be appointed by the Council of Judges.

B. Each Regional Commission (the "Regional Commission") shall be comprised of (i) a judge, appointed by the Council of Judges, who shall preside, as chairman; (ii) the Director of the Office of Property Registration in the Governorate, or a representative; and (iii) the Director of State Property of such Governorate, or a representative. The Regional Commission may also request the assistance of persons who are experts on the subject of the claim.

Article Four

A. Each Regional Commission and the Appellate Division shall have a secretariat to assist in its administration.

B. The Governing Council shall ensure that the IPCC has the necessary funds to employ a secretariat and that the Regional Commissions find an appropriate place to operate in the capital of the relevant Governorate.

Section Three: Procedures

Article Five

A. The IPCC shall prepare a specialized claim form for purposes of filing claims.

B. The process of adjudicating claims filed with the IPC shall commence with the claimant(s), or his representative filing a claim form. The Parties shall submit the claim to the Regional Commission where the property is located.

Article Six

A. After receipt of a properly completed form, the secretariat of the relevant Regional Commission shall serve notice of the claim on interested parties, be that a natural or juridical person, in accordance with the Guidelines and Instructions issued by the Governing Council.

B. Following receipt of notice of a claim, the Regional Commission shall open a claim file and record the claim in the intake register in the order received.

C. The secretariat shall verify the claim and authenticate the identity of the parties, prior to submitting the file to the Regional commission.

D. The Regional Commission is entitled to request the assistance of other governmental and nongovernmental parties for purposes of valuation of interests and related matters.

E. The Regional Commission shall issue its decision with respect to the claim and the secretariat shall be responsible for notifying the parties of the Commission's decision.

Article Seven

A. An appeal of a decision of the Regional Commission must be filed with the Appellate Division within 30 days.

B. Orders issued by the Regional Commission shall be final and conclusive and can be implemented immediately, unless appealed within 30 days.

C. A decision of the Regional Commission will be enforceable when (i) a final decision by the Appellate Division is rendered or (ii) the requisite period for filing an appeal has passed.

D. The final order shall be issued to all relevant parties and the appropriate Office of Property Registration for enforcement.

E. If the property in question is occupied, possessed or used by the non-prevailing party, and such party has no other property, then the non-prevailing party shall be granted a reasonable period of time to evacuate the premises. The secretariat shall also inform the displaced person(s) of the availability of any services for assistance.

Section Four: General Principles of Adjudication

Article Eight

The IPCC shall comply with the following principles when resolving property claims. The Governing Council shall issue more detailed provisions regarding the process in the Guidelines and Instructions.

A. Any properties that were confiscated or seized, or on which liens were placed by the former government (not in the ordinary course of commercial business), but with title remaining in the name of the original owner, shall be returned to the original owner.

B. Any properties that were confiscated or seized, the titles of which were transferred to the Government of Iraq or an instrumentality thereof, and that were not sold to a third party, shall be returned to the original owner.

C. Any properties confiscated by the government that were used as mosques, other places of worship, religious schools, charities or were associated with such uses, shall be returned to the appropriate *waqfs* (religious endowments) connected to such uses or to the appropriate holders of title to such properties prior to their confiscation.

D. After ensuring appropriate due process of law, any property the title to which is in the name of senior members of the Iraqi Ba`athist Government shall be returned to the rightful owners, if it is established that such properties were improperly acquired.

E. If a property was confiscated and subsequently sold to a buyer (the "First Buyer"), and (i) title remains in the name of the First Buyer and (ii) no improvements were made to the property, then title to the property will be transferred back to the original owner and the First Buyer would not be entitled to compensation from the original owner.

F. If the property was an unimproved property (that is, a property not built upon) when confiscated or otherwise seized, and then subsequently sold to the First Buyer, and the First Buyer has improved the property by building upon it, then the original owner would be entitled to either (i) having title transferred to him, provided that he pays the First Buyer the value of the

improvements on the date such improvements were made or (ii) being paid appropriate compensation for the property (as an unimproved property) on the date of the passing of this statute.

G. If the property was sold to the First Buyer, who subsequently acquired an adjoining property from the state, then title to both the original property and the adjoining property shall be transferred to the original owner, provided that such original owner pays the First Buyer the amount that such First Buyer paid for the adjoining property.

H. If the property has a building on it and then was sold to the First Buyer, who subsequently demolished the original building and built a new building on it, then the original owner of the property may (i) request that title be transferred to him, after paying for the new building (valued on the day it was built) less the value of the old demolished building (valued on the date of the passing of this statute), or (ii) may request that the

First Buyer acquire the property, including the demolished building, valued on the date of the passing of this statute (less any amounts paid by the First Buyer to the Government).

I. If the property was subsequently sold by the First Buyer to other buyers, then the original owner could either (i) request that title be transferred to him or (ii) request compensation for the value of the property valued at the date of the passing of this statute. If the original owner chooses option (i) above, then the final buyer would be entitled to compensation for the value of the property valued at the date of passing of this law.

J. If the property was granted as a security interest for a loan to the First Buyer and therefore had a lien on it, then title to the property would be transferred back to the original owner free and clear of any liens and the lender would have a claim against the First Buyer.

K. If the property was unimproved and a building was built on it by the First Buyer, and a lien was placed on the property by a lender, then any amounts due to the First Buyer by the original owner (pursuant to paragraph F above) would be paid by the original owner to the lender to fully or partially satisfy the loan.

L. If the property was confiscated and sold in a public auction and was purchased by either the original owner or his heirs, then they will be entitled to compensation from the state in an amount equivalent to the purchase price.

M. Any other relevant situation shall be addressed consistent with these provisions.

Section Five: Other Matters

Article Nine

This statute applies to claims arising between July 17, 1968 and April 9, 2003 involving immovable property, assets affixed to immovable property, easements, or servitudes that were: (i) confiscated or seized for reasons other than land reform; or (ii) expropriated for reasons other than lawfully used eminent domain, or as a result of opposition to the Ba`athist Government of Iraq, or as a result of ethnicity, religion, sect of the owners, or for purposes of ethnic cleansing; or (iii) acquired for less than appropriate value by the Ba`athist Government of Iraq; or (iv) property otherwise affected.

Article Ten

A. Newly introduced inhabitants of residential property in areas that were subject to the policy of ethnic cleansing (i) can be resettled; (ii) can receive compensation from the state; (iii) can receive new land from the state near their residence in the governorate from which they came; and (iv) can receive cost of moving to such area.

B. The ministry of Displacement and Migration shall be responsible for administering this policy.

Article Eleven

A. Claims must be filed by December 31, 2004. Any claims filed with the IPCC after such date will not be accepted.

B. Any claims with respect to properties within the jurisdiction of this Statute but filed subsequently to December 31, 2004 can be referred to the Iraqi Court system, which shall apply the principles included in this Statute. This provision is not available to any claimant who has already filed a claim with respect to the same property with the IPCC.

Article Twelve

Any provisions in resolutions or orders or laws contradicting this statute are hereby suspended.

Article Thirteen

All ministers are required to implement this law.

Article Fourteen

The Governing Council shall issue Guidelines and Instructions that will regulate the procedures to be followed by the IPCC.

Article Fifteen

The Governing Council means the Iraqi Governing Council established on July 13, 2003. The authority of the Governing Council for purposes of this Statute will transfer to the Successor Government.

Article Sixteen

Transfers of real property pursuant to this statute shall not be subject to income tax, a tax on a transfer of real property, or any other tax or stamp duty.

Article Seventeen

This Statute will become effective on January 15, 2004.

ANNEX 2

CPA/REG/23 June 2004/12 Coalition Provisional Authority Regulation Number 12 Iraq Property Claims Commission

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA), and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolutions 1483 and 1511 (2003) and 1546 (2004),

Noting that the Statute of the Establishment of the Iraq Property Claims Commission, which was promulgated pursuant to Coalition Provisional Authority Regulation 8, Delegation of Authority Regarding an Iraq Property Claims Commission, (CPA/REG/14 January 2004/8), did not provide adequate mechanisms for the appointment, management, and operation of the Iraq Property Claims Commission,

Recognizing that the Statute of the Establishment of the Iraq Property Claims Commission requires amendment to ensure that the Iraq Property Claims Commission can function properly,

Acknowledging that an initial set of Instructions for Operation are needed to implement the Statute of the Establishment of the Iraq Property Claims Commission so that claimants, court officials, and administrators can understand better the claims process of the Iraq Property Claims Commission, and

Desiring to amend the Statute of the Establishment of the Iraq Property Claims Commission and to promulgate the Instructions for Operation of the Iraq Property Claims Commission,

I hereby promulgate the following:

Section 1

Amended Iraq Property Claims Commission Statute

The Statute of the Establishment of the Iraq Property Claims Commission, which became effective on January 15, 2004 pursuant to Coalition Provisional Authority Regulation 8, Delegation of Authority Regarding an Iraq Property Claims Commission, (CPA/REG/14

January 2004/8), is hereby amended and restated in full in the form attached hereto as Annex A.

Section 2

Promulgation of Instructions for Operation

The Instructions for Operation of the Iraq Property Claims Commission which are attached hereto as Annex B shall implement the Statute of the Establishment of the Iraq Property Claims Commission and shall apply to all claims filed before the Iraq Property Claims Commission.

Section Three

Entry and Force

This Regulation will enter into force on the date of signature.


L. Paul Bremer, Administrator
Coalition Provisional Authority

Annex A
Establishment of the Iraq Property Claims
Commission (As Amended and Restated)

Section One
Establishment

Article One

This Statute hereby establishes the Iraq Property Claims Commission (the "IPCC"), which shall resolve real property claims in a fair and judicious manner. The IPCC shall encourage the voluntary resolution of claims.

Section Two
Organization

Article Two

The IPCC shall consist of the following structures established by the Iraqi Interim Government:

- A. An Appellate Division, composed of judges and established as a separate chamber of the Iraqi Court of Cassation;
- B. Regional Commissions established in each governorate in Iraq, and a maximum of three regional commissions in the Kurdistan Regional Government area. The Appellate Division may then establish more than one Regional Commission in a governorate; and
- C. A National Secretariat which shall be responsible for overseeing all operational and management activities of the IPCC.

Article Three

- A. The Appellate Division of the IPCC shall be composed of five judges, one of whom shall be nominated by the judicial authority in the Kurdistan Regional Government, who have experience in adjudicating property disputes. They may be retired or serving judges and are to be appointed by the Council of Judges.
- B. Each Regional Commission shall be composed of (i) a judge, appointed by the Council of Judges, who shall preside as chairman, (ii) the Director of the Office of Real Estate Registry in the Governorate, or his representative, and (iii) the Director of State Property of such Governorate, or his representative. The Regional Commission may also request the assistance of persons who are experts on the subject of any claim.
- C. The National Secretariat shall be composed of (i) a Head of the National Secretariat who shall serve as the highest official of the National Secretariat, (ii) operational managers, auditors, data managers, legal advisers, public relations personnel, and any other staff necessary to ensure the orderly functioning of the National Secretariat, (iii) Regional Secretariats situated in each Governorate with all necessary staff to ensure the IPCC's orderly functioning, including Regional Commission Clerk's offices, which shall provide operational and legal support as necessary to each Regional Commission, and (iv) an Appellate Secretariat with the necessary staff to ensure the Appellate Division's orderly functioning, including an Appellate Division Clerk's office which shall provide operational and legal support as necessary to the Appellate Division.

Article Four

The Iraqi Interim Government shall ensure that the IPCC has the necessary funds to discharge its administrative duties and that the Regional Commissions and Regional Secretariats are provided with appropriate premises from which to operate in the capital of the relevant

Governorate or Kurdistan Regional Government area or at any such locations as shall be deemed expedient by the IPCC.

Section Three Procedures

Article Five

A. The IPCC shall designate the form of documents for submission of claims and for administrative purposes.

B. The process of adjudicating claims filed with the IPCC shall commence with the claimant(s), or his representative filing a claim in the proper form at any IPCC office, including any properly designated IPCC office outside Iraq.

Article Six

A. Following receipt of a properly completed claim form, the Regional

Secretariat shall open a claim file and record the claim in the intake register in the order received.

B. After receipt of a properly completed claim form, the relevant Regional Secretariat shall serve notice of the claim on any interested parties, including natural or juridical persons, in accordance with the Guidelines issued by the National Secretariat and Instructions for operation approved (if before June 30, 2004) by the Administrator or (if after June 30, 2004) the Iraqi Interim Government.

C. The Regional Secretariat shall serve notice of the claim on the General Directorate of Real Estate Registration, and the General Directorate of Real Estate Registration shall cause the official title record to be endorsed with the date and reference number of the claim.

Annex A

D. The Regional Secretariat shall verify the claim administratively, and authenticate the identity of the parties.

E. The Regional Commission Clerk's Office shall then review each claim file, and, prior to submitting the file to the Regional Commission, prepare for the Regional Commission a case report which summarizes the factual background of the case, the legal issues involved, the parties' arguments, and the Clerk's Office's recommendation, made by a legal advisor, as to how the case should be decided.

F. The Regional Commission may request the assistance of other governmental and nongovernmental parties for purposes of valuation of interests and other related matters.

G. The Regional Commission shall issue its decision with respect to the claim, but the Regional Secretariat shall be responsible for notifying the claimants and any known interested parties of the Regional Commission's decision.

Article Seven

A. Any appeal of a decision of the Regional Commission must be filed within sixty days from the date of the decision.

B. Orders issued by the Regional Commission shall be final and binding unless appealed within sixty days.

C. A decision of the Regional Commission will not be enforceable until the requisite period for filing an appeal has passed and no appeal has been lodged.

D. A decision made by the Appellate Division is final and binding in respect of any IPCC related matter.

E. The final order of the Regional Commission or Appellate Division, as appropriate, shall be issued to all relevant parties and the appropriate competent authorities for enforcement.

F. If the property in question is occupied, possessed or used by the nonprevailing party, and such party has no other property, then the nonprevailing party would be granted a prescribed period of time to surrender possession of the premises. The Regional Secretariat shall also inform the displaced person(s) of the availability of any services for assistance.

Section Four General Principles

Article Eight

The IPCC shall comply with, but not be limited to, the application of the following examples when resolving real property claims:

A. Any properties that were confiscated or seized, or on which liens or other encumbrances were placed by the former governments of Iraq (not in the ordinary course of commercial business), but with title remaining in the name of the original owner shall be returned to the original owner, freed and discharged from any such liens or other encumbrances.

B. Any properties that were confiscated or seized and whose title was transferred to the former governments of Iraq, or an agent thereof, and which were not sold to a third party, shall be returned to the original owner.

C. Any properties confiscated by the former governments of Iraq that were used as mosques, other places of worship, religious schools, charities or were associated with such uses shall be returned to the appropriate *waqfs* (religious endowments) connected to such uses or to the appropriate holders of title to such properties prior to their confiscation.

D. Any properties whose title is in the name of senior members of the former governments of Iraq shall be returned to the rightful owners, if it is established that such properties were improperly acquired.

E. If a property was confiscated and subsequently sold to a buyer (the "First Buyer"), and (i) title remains in the name of the First Buyer and (ii) no improvements were made to the property, then title to the property will be transferred back to the original owner, and the First Buyer would not be entitled to compensation from the original owner.

F. If the property was an unimproved property (that is, a property not built upon) when confiscated or otherwise seized, and then subsequently sold to the First Buyer, and the First Buyer has improved the property by building upon it, then the original owner would be entitled to either (i) having title transferred to him, provided that he pays the First Buyer the value of the improvements or (ii) being paid appropriate compensation for the property (as an unimproved property).

G. If the property was sold to the First Buyer, who subsequently acquired an adjoining property from the state, then title to both the original property and the adjoining property shall be transferred to the original owner, provided that such original owner pay the First Buyer the amount that such First Buyer paid for the adjoining property.

H. If the property has a building on it and then was sold to the First Buyer, who subsequently demolished the original building and built a new building on it, then the original owner of the property may (i) request that title be transferred to him, after paying for the new building, less the value of the old demolished building, or (ii) may request that the First Buyer acquire the

property, including the demolished building (less any amounts paid by the First Buyer to the former governments of Iraq).

I. If the property was subsequently sold by the First Buyer to other buyers, then the original owner could either (i) request that title be transferred to him, or (ii) request compensation for the value of the property. If the original owner chooses option (i) above, then the final buyer would be entitled to compensation for the value of the property.

J. If the property was charged as security to a lender for a loan to the First Buyer, then title to the property would be freed and discharged from any such charge, and the lender would then have a right of action against the First Buyer to recover any outstanding balance due under the loan.

K. If the property was unimproved and a building was built on it by the First Buyer, and the property was charged to a lender as security for a loan, then any amounts due to the First Buyer by the original owner (pursuant to Paragraph F above) would be paid by the original owner direct to the lender to fully or partially satisfy the loan.

L. If the property was confiscated and sold in a public auction and was purchased by either the original owner or his heirs, then they will be entitled to compensation from the state in an amount equivalent to the purchase price.

M. If the property is currently being used for a public or charitable purpose, the property shall continue to be used for that purpose, and the Government or current owner, user or possessor shall provide the original owner, user or possessor with compensation.

N. Any other relevant situation in line with these provisions.

Section Five Other Matters

Article Nine

This Statute governs claims:

A. (1) Arising between July 17, 1968 and April 9, 2003, inclusive;

(2) Involving immovable property, assets affixed to immovable property, easements or servitudes ("real property"), or an interest in real property;

(3) That was confiscated, seized, expropriated, forcibly acquired for less than full value, or otherwise taken, by the former governments of Iraq for reasons other than land reform or lawfully used eminent domain. Any taking that was due to the owner's or possessor's opposition to the former governments of Iraq, or their ethnicity, religion, or sect, or for purposes of ethnic cleansing, shall meet this standard; or

B. (1) Arising between March 18, 2003 and June 30, 2005, inclusive;

(2) Involving real property, or an interest in real property;

(3) That was confiscated, seized, expropriated, forcibly taken for less than full value, or otherwise acquired and/or reacquired:

i. as a result of the owner's or possessor's ethnicity, religion, or sect, or for purposes of ethnic cleansing, or; ii. by individuals who had been previously dispossessed of their property as a result of the former Ba'athist governments' policy of property confiscation.

Article Ten

A. Newly introduced inhabitants of residential property in areas that were subject to ethnic cleansing by the former governments of Iraq prior to April 9, 2003 may be (i) resettled, (ii) may receive compensation from the state, (iii) may receive new property from the state near their

residence in the governorate or area from which they came, or (iv) may receive compensation for the cost of moving to such area.

B. The Ministry of Displacement and Migration shall be responsible for administering this policy.

Article Eleven

A. Claims must be filed in the proper form and properly completed by June 30, 2005. Any claims filed with the IPCC after such date will not be accepted.

B. Any claims with respect to properties within the jurisdiction of this Statute but filed subsequently to June 30, 2005 may be referred to the Iraqi Courts, which shall apply the principles included in this Statute. This provision is not available to any claimant who has already filed a claim with respect to the same property with the IPCC.

C. The IPCC is to have exclusive jurisdiction over all claims involving immovable property, assets affixed to immovable property, easements or servitudes on property or land or other interests in real property brought in accordance with Articles 9A and 9B. Any such cases pending must be transferred by the relevant court to the jurisdiction of the IPCC.

Article Twelve

The terms of this Statute shall take precedence over any provisions in resolutions or orders or laws that are inconsistent.

Article Thirteen

The National Secretariat shall issue Guidelines which will set forth the procedures to be followed by the IPCC.

The National Secretariat may issue interpretative memoranda which set forth the manner in which it shall construe the Instructions for Operation.

Article Fourteen

The Iraqi Interim Government means the Government appointed on June 1, 2004, and assuming sovereignty on July 1, 2004. The authority of the Iraqi Interim Government for the purposes of this Statute will transfer to the successor governments of Iraq.

Article Fifteen

Transfers of real property pursuant to this Statute shall not be subject to income tax, a tax on a transfer of real property, or any other tax or duty.

Article Sixteen

This Statute will become effective on 1 July 2004.

Annex B
Iraq Property Claims Commission
Instructions for Operation

Section One
General Provisions

Article 1

These Instructions implement the Statute of the Establishment of the Iraq Property Claims Commission (As Amended and Restated) (the “Statute”) and apply to all claims filed before the Iraq Property Claims Commission (IPCC). Unless otherwise stated, references to Articles are Articles in these Instructions.

Article 2

Together with the Statute, these Instructions govern:

- a. The composition of the IPCC;
- b. The submission of claims before the IPCC;
- c. The reception of claims by the IPCC;
- d. The process for deciding claims;
- e. The legal effectiveness of IPCC decisions.

Section Two
Composition of the IPCC

Article 3

In accordance with Article 2 and Article 3 of the Statute, the IPCC shall consist of a National Secretariat, an Appellate Division and one or more Regional Commissions in each governorate or Kurdistan Regional Government area.

National Secretariat

Article 4

a. A National Secretariat for property claims shall be established. The initial Head of the National Secretariat shall be appointed by the Administrator after consultation with the Iraqi Interim Government for a term of two years which may be renewed once at the discretion of the Prime Minister of Iraq. The initial Head of the National Secretariat shall then take action to manage the work of the National Secretariat by setting up an office, including but not limited to, the following staff:

- i. Operational managers to oversee IPCC operations, to coordinate among the different branches of the IPCC, and, where appropriate, to issue user manuals and operating guidelines to direct certain functions of the IPCC;
- ii. Auditors to inspect IPCC operations for fraud, waste or mismanagement;
- iii. Data managers to enter into the national database of claims the information on forms submitted to the IPCC, and to review the national database for cases with similar and recurrent factual patterns;
- iv. Legal advisers to ensure consistent application of IPCC rules, to oversee orders of compensation, and, where appropriate, to request that the Appellate Division issue an advisory opinion addressing an unresolved issue of law or fact;

- v. Public relations personnel to advertise the existence of the IPCC, the location of IPCC offices, the rules of procedure of the IPCC, and other issues it deems appropriate;
 - vi. Appellate Division Secretariat and Regional Secretariats in accordance with Article 3(C) of the Statute and Article 8, Article 9, Article 16, and Article 17; and
 - vii. Any other staff necessary to ensure an orderly functioning of the National Secretariat in accordance with the responsibilities outlined in these Instructions.
- b. All subsequent appointments to the office of Head of the National Secretariat shall be for four years, without term limits, and made in accordance with the following procedure:

The Council of Judges shall recommend three candidates to be considered for appointment as Head of the National Secretariat. The Iraqi Interim Government or successor Government of Iraq shall then appoint one of these candidates as Head of the National Secretariat.

Article 5

The National Secretariat shall:

- a. Ensure consistent implementation of, and compliance with, the Statute, these Instructions, any legal determinations made by the Appellate Division, and any IPCC Guidelines issued by the National Secretariat;
- b. Audit IPCC offices;
- c. Establish a national database of claims, and enter into that database the information received from the Regional Secretariats, IPCC offices or from persons living outside Iraq.
- d. Review the national database for cases with similar and recurrent factual patterns and common legal issues, and notify the Regional Commissions or Appellate Division, as necessary, of such cases for coordinated treatment.
- e. Coordinate among the different branches of the IPCC, and between the IPCC and the Ministry of Housing, the Ministry of Justice, the Council of Judges, the Ministry of Displacement and Migration, and the Ministry of Finance, and any other resource as necessary;
- f. Issue user manuals and operating guidelines;
- g. Manage IPCC public relations and communications;
- h. Oversee orders of compensation and the implementation of orders requiring persons to surrender possession of their property;
- i. Support the Appellate Division and Regional Commissions; and j. Accomplish other tasks assigned to it herein or in future IPCC Instructions.

Appellate Division

Article 6

The Appellate Division shall be an independent review body within the IPCC located in Baghdad and established as a separate chamber of the Iraqi Court of Cassation. It shall hear appeals of decisions made by the Regional Commissions.

Article 7

- a. In accordance with Article 3(A) of the Statute, the Appellate Division shall be comprised of five retired or serving judges who have experience in adjudicating property disputes, to be appointed by the Council of Judges. The judges of the Appellate Division shall represent a cross section of the Iraqi population. Each Judge shall have a deputy who must be approved by the Council of Judges.

- b. To the extent that the Council of Judges appoints to the Appellate Division any serving judges, such judges shall be transferred to the IPCC to serve on a full-time basis.
- c. Each judge of the Appellate Division shall act as Chief Judge in turn, in an order of appointment to be determined by the Council of Judges. Each appointment shall have a maximum duration of two years.

Article 8

In accordance with Article 3(C) of the Statute, an Appellate Division Secretariat shall be established for the Appellate Division to assist in the IPCC's administration. The Appellate Division Secretariat shall report to, and take guidance and instructions from, the National Secretariat. To establish the Appellate Division Secretariat, the National Secretariat shall appoint a Head of the Appellate Division Secretariat, who shall then take action to establish a support service for the Appellate Division by setting up an office, including but not limited to, the following staff:

- a. Receptionists to ensure the orderly flow of people through the office, and to answer basic questions relating to the IPCC.
- b. Persons tasked with notifying the Regional Commissions and Regional Secretariats of Appellate Division decisions, as required by these Instructions.
- c. Persons trained in: (i) distributing and receiving claim, response and appeal forms, and (ii) entering such forms into a computer and sending the electronic data to the National Secretariat for data processing.
- d. Docket managers to oversee case files and issue final orders.
- e. Any other staff necessary to ensure the orderly functioning of the Appellate Secretariat, in accordance with the responsibilities outlined in these Instructions

Article 9

In accordance with Article 3(C) of the Statute, an Appellate Division Clerk's Office shall be established in the Appellate Division Secretariat and provide operational and legal support as necessary to the Appellate Division. The Appellate Division Clerk's Office shall report to, and take guidance and instructions from the Appellate Division Secretariat and (as necessary) the National Secretariat.

To establish the Appellate Division Clerk's Office, the Head of the Appellate Division Secretariat (in consultation with the Head of the National Secretariat) shall provide the Chief Judge of the Appellate Division with a list of ten candidates qualified to serve as the Head of the Appellate Division Clerk's Office. The Chief Judge of the Appellate Division (in consultation with all other Appellate Division Judges) shall then appoint one candidate from the list of ten candidates provided by the Appellate Division Secretariat as the Head of the Appellate Division Clerk's Office. The Head of the Appellate Division Clerk's Office shall then set up an office in the Appellate Division Secretariat which shall be composed of legal advisors who shall review case files and prepare for the Appellate Division a case report which summarizes:

- (i) the factual background of the case;
- (ii) the legal issues involved;
- (iii) the parties' arguments; and
- (iv) the Clerk's Office's recommendation, made by a legal adviser, as to how the case should be decided.

Article 10

In accordance with Article 2(B) of the Statute, the Appellate Division may determine that a governorate or Kurdistan Regional Government area would benefit from more than one Regional Commission, and, if it does, shall establish the territorial boundaries of each Regional Commission within a governorate or government area. The Appellate Division also may determine that a Regional Commission should operate in more than one governorate.

Article 11

Upon request of the National Secretariat or a Regional Commission, the Appellate Division may issue an advisory opinion on any unresolved question of law or common issue of fact to establish the rule to be applied uniformly to subsequent similar cases.

Article 12

The term of office of the judges of the Appellate Division shall expire after five years and may be renewed upon decision by the Council of Judges, except that the term of office shall terminate upon completion of all claims before the Appellate Division.

Article 13

The standards under which a judge of the Appellate Division shall disqualify himself or herself from considering a claim are the same as the standards under which a Regional Commissioner shall disqualify himself or herself. Where a judge of the Appellate Division is not available to consider a claim, whether because they disqualify themselves or otherwise, their deputy may sit on the Appellate Division and act with the full powers of the unavailable judge.

Regional Commissions

Article 14

a. In accordance with Article 2(B) of the Statute, each Regional Commission shall serve a different governorate or Kurdistan Regional Government area and shall be located in the capital city of the governorate or Kurdistan Regional Government area in which it serves, unless the Appellate Division otherwise determines in accordance with Article 10.

b. Notwithstanding Paragraph (a) of this Article, a Regional Commission may sit in any part of the territory over which it has jurisdiction if the Chairman of the Regional Commission or the National Secretariat determines, in their discretion, that the circumstances so warrant.

Article 15

In accordance with Article 3(B) of the Statute, each Regional Commission shall be comprised of (i) a judge appointed by the Council of Judges, who shall serve as the Chairperson; (ii) the Director of the Office of Real Estate Registry in the Governorate in which the Commission sits, or their representative; and (iii) the Director of State Property of such Governorate, or their representative.

Article 16

In accordance with Article 3(C) of the Statute, a Regional Secretariat shall be established for each Regional Commission to assist in the IPCC's administration. The Regional Secretariat shall report to, and take guidance and instruction from, the National Secretariat. To establish the Regional Secretariat, the National Secretariat shall appoint a Head of the Regional Secretariat, who shall then take action to establish a support service for the Regional Commission by setting up any necessary offices, including but not limited to, the following staff:

a. Receptionists to ensure the orderly flow of people through the office, and to answer basic questions relating to the IPCC.

- b. Persons tasked with notifying interested parties, as required by these Instructions.
- c. Persons trained in: (i) distributing and receiving claim, response and appeal forms, and (ii) entering such forms into a computer and sending the electronic data to the National Secretariat for data processing.
- d. Docket managers to oversee case files and issue final orders.
- e. Mediators and staff to assist in the voluntary resolution of claims.
- f. Any other staff necessary to ensure the orderly functioning of the Regional Secretariat, in accordance with the responsibilities outlined in these Instructions.

Article 17

In accordance with Article 3(C) of the Statute, a Regional Commission Clerk's Office shall be established in each Regional Secretariat and provide operational and legal support as necessary to the Regional Commission. The Regional Commission's Clerk's Office shall report to, and take guidance and instructions from the Regional Secretariat and (as necessary) the National Secretariat.

To establish the Regional Commission Clerk's Office, the Head of the Regional Secretariat shall provide the Chairperson of the Regional Commission with a list of ten candidates qualified to serve as Head of the Regional Commission Clerk's Office. The Chairperson of the Regional Commission (in consultation with all other members of the Regional Commission) shall then appoint one candidate from the list of ten candidates provided by the Head of the Regional Secretariat as the Head of the Regional Commission Clerk's Office. The Head of the Regional Commission Clerk's Office shall then set up an office in the Regional Secretariat which shall be composed of legal advisers who shall (in accordance with Article 6(E) of the Statute) review case files and prepare for the Regional Commission a case report which summarizes:

- (i) the factual background of the case;
- (ii) the legal issues involved;
- (iii) the parties' arguments; and
- (iv) the Clerk's Office's recommendation, made by a legal adviser, as to how the case should be decided.

Article 18

Members of a Regional Secretariat may be required by these Instructions, by the Chairperson of the appropriate Regional Commission or by the National Secretariat to travel to any part of the territory over which the Regional Commission has jurisdiction in order to facilitate the intake or processing of claims.

Article 19

The commissioners' term of office shall expire after three years and may be renewed upon decision by the relevant appointing authority, except that the term of office shall terminate upon completion of the Regional Commission's consideration of the claims before it.

Article 20

- a. A Regional Commissioner shall disqualify himself or herself from considering any claim in which their impartiality might reasonably be questioned.
- b. The impartiality of a Commissioner might reasonably be questioned, *inter alia*, if:
 - i. The Commissioner is a relative of one of the parties;

- ii. The Commissioner or their spouse, child, parent, son-in-law or daughter-in-law has an ongoing dispute with one of the parties;
 - iii. The Commissioner has been a legal advisor for one of the parties, business partner of any kind, held an interest in a company, or been a board member of a company in which one of the parties has a controlling interest;
 - iv. The Commissioner or their relative has given advice or an opinion on the particular case before it reached the Regional Commission; or
 - v. The Commissioner has any other interest (financial or otherwise) in the claim.
- c. For the purposes of these Instructions, “relative” is defined as “a relation through parentage, marriage or adoption up to the fourth degree”.
- d. Where a Commissioner is not available to consider a claim, whether because they disqualify themselves or otherwise, their position shall be filled by an ad hoc appointment by the appointing authorities, so that the appointing authority which appointed the disqualified Commissioner shall appoint the ad hoc replacement.

Submission and Reception of Claims

(A) Information on claim submission

Article 21

The National Secretariat shall carry out national and international information programs, and Regional Secretariats shall carry out such programs within the territories of their respective Regional Commissions, to ensure that potential claimants receive notice of, and instructions on submitting a claim to the IPCC. Such programs shall employ notices to be published widely (i.e., both inside and outside Iraq, as appropriate, and via a number of different media) and repeatedly in order to reach all potential claimants.

(B) Submission of claims

Article 22

Any person, natural or juridical, or their heirs, may submit a claim to the IPCC so long as the claim:

A. (1) Arose between July 17, 1968 and April 9, 2003, inclusive; (2) Involves immovable property, assets affixed to immovable property, easements or servitudes (“real property”), or an interest in real property;

(3) That was confiscated, seized, expropriated, forcibly acquired for less than full value, or otherwise taken, by the former governments of Iraq for reasons other than land reform or lawfully used eminent domain. Any taking that was due to the owner’s or possessor’s opposition to the former governments of Iraq, or their ethnicity, religion, or sect, or for purposes of ethnic cleansing, shall meet this standard; or

B. (1) Arose between March 18, 2003 and June 30, 2005, inclusive; (2) Involves real property, or an interest in real property; (3) That was confiscated, seized, expropriated, forcibly taken for less than full value, or otherwise acquired and/or reacquired:

i. as a result of the owner’s or possessor’s ethnicity, religion, or sect, or for purposes of ethnic cleansing, or;

ii. by individuals who had been previously dispossessed of their property as a result of the former Ba’athist governments’ policy of property confiscation.

For purposes of the IPCC’s jurisdiction, actions or inactions attributable to the former governments of Iraq include, but are not limited to:

1. The actions or inactions of any State organ in Iraq, whether of the central government or of a territorial unit of the State, and whether the organ exercised legislative, executive, judicial or any other functions within the former governments;
2. The actions or inactions of a Ba'ath party member, or of a relative of a senior official of the Government or party, operating with apparent authority, or under color of authority, or with the implicit or explicit license of the former governments. Claims for damages only are not within the jurisdiction of the IPCC.

Article 23

A claimant who brings a claim in bad faith and with knowledge that such claim is fraudulent will be deemed to commit a criminal offence under the Iraqi Penal Code.

Article 24

A claimant who, after issuance of these Instructions, willfully returns to currently occupied property and takes measures to force the current occupiers to vacate that property will be deemed to commit a criminal offence under the Iraqi Penal Code.

Article 25

- a. Claims shall be submitted in person, in the prescribed form, at any IPCC office as required under Article 5 of the Statute.
- b. Claims submitted by persons located outside Iraq will be governed by a separate set of Instructions.
- c. Claims will be deemed to be filed once the claim has been accepted by the Regional Secretariat acting through any IPCC office and the applicant has been issued an acknowledgement bearing the claim reference number.

Article 26

Where security conditions or geographical conditions so warrant, the Regional Secretariat may dispatch a mobile team, consisting of members of the Regional Secretariat, to an area with a concentrated population of potential claimants, to facilitate the intake and processing of claims.

Article 27

- a. Where a representative acts on behalf of a claimant, the representative must prove their representation. The IPCC shall prescribe the form of evidence of representation, and the signature of the claimant authorizing representation on that form shall be considered sufficient evidence of representation unless there is reason to believe that such signature was wrongfully obtained.
- b. Where property rights are communally held, and the person in whose name the property is registered cannot be found, other members of the community may file a claim on behalf of the entire community if such members offer proof of the registered person's absence and proof of membership in the community.

Article 28

The claimant, or their representative, shall attach to the claim form any available evidence, including any testimonial evidence, proving their rights to the claimed property.

- a. Written testimony shall be sworn and notarized, in accordance with Iraqi law.
- b. For documentary evidence, the claimant, or their representative, shall submit a certified copy. Wherever possible, the IPCC shall review and certify, as true and correct, any original documents pertaining to the claim, but the IPCC will not accept custody of any original documents.

Article 29

The claimant, or their representative, may withdraw the claim or part of the claim at any time until a decision is issued.

a. A withdrawal shall be explicit, in the prescribed form, signed by the claimant and filed in the manner specified for claims in Article 25.

b. Upon receipt of notification of a withdrawal, the Regional Commission may accept the withdrawal, with or without prejudice, and the Regional Secretariat shall record in the national database that the claim has been withdrawn.

C) Processing of Claims (in-country claimants)

Article 30

Upon receipt of a claim in the proper form, the Regional Secretariat shall review the form in the claimant's presence, or in the presence of their representative, to ensure that all obligatory information is provided. Where the claim form is missing obligatory information, the Regional Secretariat shall advise the claimant, or their representative, of what must be done to provide the missing information and shall return the claim form to the claimant, or to their representative, without processing it.

Article 31

Once the Regional Secretariat has reviewed the claim form and advised the claimant, or their representative, of any missing obligatory information, it is the responsibility of the claimant to complete the form within the filing period. The claim will not be accepted for processing by the Commission until all obligatory information is provided.

Article 32

Immediately upon receipt of a properly completed claim form, and, in the claimant's presence, or in the presence of their representative, the Regional Secretariat shall:

a. Assign the claim a unique claim number;

b. Affix a pre-printed label with the unique claim number to the claim form;

c. Provide the claimant with confirmation of receipt in the prescribed form showing the unique claim number for future reference.

Article 33

After assigning a unique claim number to the claim, the Regional Secretariat shall serve notice of the claim on all identifiable interested parties, in accordance with Article 6(B) of the Statute.

a. The Regional Secretariat shall serve notice of the claim on interested parties by:

i. Physically posting notice for a minimum of one month on the subject property, at the office of the Regional Commission and in any local or electronic venues that may attract an interested party's attention; and ii. Communicating the notice in writing to any identifiable interested parties, unless impracticable.

b. Upon serving or posting notice (whichever is later), the Regional Secretariat shall record the date of notice.

c. The notice shall provide sufficient details to enable any interested party to file a response to the claim. Further information relating to the claim may be provided by the Regional Commission, if the Head of the Regional Secretariat determines that such information is necessary for the proper filing of a response.

Article 34

The Regional Secretariat shall identify interested parties by reviewing the national database for any other claims relating to the subject property, searching the appropriate property registry for current and previous owners, identifying any current users or occupiers of the property, and taking any other steps it deems appropriate.

Article 35

Absent good cause, interested parties shall have forty five days from the date on which notice is served or posted (whichever is later) to submit a response to the claim. A response shall be submitted in the prescribed form and shall be submitted in the manner specified for a claim form in Article 25.

Article 36

For any form received by the Regional Secretariat, the Regional Secretariat shall enter the data from the form into the computer, and transmit the electronic version of the form data to the National Secretariat for data processing. The Regional Secretariat shall also send the original version of the form to the National Secretariat for filing in the national repository.

Article 37

Upon receiving the data from the Regional Secretariat, the National Secretariat shall transfer that data into the national database. Upon receiving the original paper copy, the National Secretariat shall file it at a national repository.

(D) Processing of Claims (of out-of-country claimants)

Article 38

The National Secretariat shall process the claims of out-of-country claimants in the same way that the Regional Secretariats process the claims of in-country claimants, except as provided herein or in future IPCC Instructions.

Article 39

The appropriate Regional Secretariat remains responsible for notifying all identifiable interested parties of a claim, and the Regional Commission with jurisdiction over the area in which the property is located shall decide the claim.

Process for Deciding Claims

Article 40

The Regional Secretariat or the National Secretariat may, at any time, consolidate claims that arise out of the same sequence of events or that are otherwise intertwined, in the interest of expediting the resolution of all claims.

(A) Principles

Article 41

The IPCC shall comply with, but not be limited to, the application of principles set forth in Article 8 of the Statute.

(B) Settlement

Article 42

The Regional Secretariat shall encourage the voluntary resolution of claims, and may arrange mediation or otherwise facilitate the amicable settlement of issues among the claimant(s) and

any identifiable interested parties. The National Secretariat will provide guidance on the procedures to be followed.

Article 43

Where all parties resolve a claim voluntarily, the claim shall be removed from the Regional Commission's docket in one of the following ways:

- a. The claimant may withdraw their claim, pursuant to Article 29; or
- b. The parties may notify, in the prescribed form, the Regional Secretariat of the settlement.
- c. Where the parties notify the Regional Secretariat of the settlement under Paragraph (b) above, the Regional Secretariat shall convey that form to the Regional Commission. The Regional Commission shall then approve or, in extraordinary circumstances, disapprove the terms of voluntary resolution.

Article 44

Where the Regional Commission approves the terms of voluntary resolution, such approval shall be final and binding between the parties to that resolution, not subject to appeal, and of the same force and effect as a Final Order.

- a. If the settlement is not submitted to the Commission because the claim is withdrawn by the claimant, or the Commission disapproves the settlement, the voluntary resolution will have only the legal effect that it would have had under Iraqi law in the absence of the Statute and these Instructions.
- b. Where the Commission disapproves the terms of settlement, the claim shall be adjudicated in accordance with these Instructions, unless the claimant chooses to withdraw the claim.

(C) Adjudication

Article 45

Where the parties do not pursue amicable settlement or fail to resolve the claim voluntarily, the Regional Commission Clerk's Office shall review the case file and prepare for the Regional Commission a case report which summarizes:

- (i) the factual background of the case;
- (ii) the legal issues involved;
- (iii) the parties' arguments; and
- (iv) the Clerk's Office's recommendation, made by a legal adviser, as to how the case should be decided.

Article 46

If, in analyzing the evidence, the Regional Secretariat determines that the evidence submitted is insufficient or of doubtful reliability, the Regional Secretariat may initiate evidence collection and/or verification procedures.

Article 47

Upon receiving the case file and the case report from the Regional Secretariat, the Regional Commission may, in its discretion, hold a hearing to develop the factual record.

Article 48

- a. In accordance with Article 6(F) of the Statute, the Regional Commission may request the assistance of other governmental and non-governmental parties for purposes of valuation of interests and other matters relating to the issues in dispute.

b. Where the Regional Commission requests the assistance of other governmental parties, such parties shall provide the requested assistance.

Article 49

The Regional Commission shall decide the claim and the appropriate remedy by majority vote with three members present.

Article 50

In making a decision, the Regional Commission shall look to the previous decisions of other regional commissions for guidance and shall accept the previous decisions of the Appellate Division as conclusive on any resolved issue of law or fact.

Article 51

The Regional Commission shall issue a decision that:

- a. identifies the parties' names;
- b. identifies the property at issue;
- c. determines the parties' respective rights to the subject property, including ownership rights, rights of possession, and rights of use;
- d. provides the legal basis for that determination;
- e. sets forth such legal remedy as the Regional Commission deems appropriate; and
- f. if applicable, identifies for the parties the availability of any governmental services or assistance.

Article 52

In accordance with Article 6(G) of the Statute, the Regional Secretariat shall notify the parties, or their representatives, of the Commission's decision by delivering to them a copy of that decision, if such delivery is practicable, and by posting notice of the decision both at the office of the Regional Commission and in any local or electronic venues that may attract the parties' attention.

Article 53

Decisions of the Regional Commissions shall be final and binding on the parties, unless appealed within sixty days from the date of decision, except that the Commissions may correct any clerical or technical errors in any earlier decisions.

(D) Appeals

Article 54

Any party may appeal a decision of a Regional Commission on the grounds of new evidence or manifest error.

Article 55

To appeal a decision of the Regional Commission, a party shall file, within sixty days from the date of the Regional Commission's decision, an appeal in the prescribed form. Such form shall be filed in the manner specified for claims in Article 25.

Article 56

Upon receipt of an appeal, the Regional Secretariat shall:

- a. Stay issuance of a Final Order; and
- b. Enter the form into a computer and send the electronic version of it to the National Secretariat for data processing.
- c. Forward the appeal form and the case file to the Appellate Division Secretariat.

Article 57

The Appellate Division Secretariat shall:

- a. Notify the Regional Secretariat of its receipt of the Appeal;
- b. Review the case file and the decision being appealed;
- c. Transfer the case file and the decision being appealed to the Appellate Division Clerk's Office who shall prepare for the Appellate Division a case report setting forth:
 - (i) the decision below;
 - (ii) the ground for appeal;
 - (iii) a summary of the parties' arguments; and
 - (iv) the Appellate Division Clerk's Office's recommendation, made by a legal adviser, as to whether to consider the appeal and how to resolve it.

Article 58

All decisions by the Appellate Division shall be made by a majority vote and with five members present. In the event that a Judge is unavailable, their deputy may sit on the Appellate Division and act with the full powers of the unavailable judge.

Article 59

The Appellate Division may not reconsider its decision, but it may correct any clerical or technical errors of any earlier decision.

Article 60

The Appellate Division Secretariat shall notify the appropriate Regional Commission and Regional Secretariat of the Appellate Division's decision. The Regional Secretariats shall be responsible for notifying the parties, or their representatives, of the Appellate Division's decision in accordance with the provisions of Article 52.

Legal Effectiveness of IPCC Decisions

Article 61

Upon issuance of a decision by the Appellate Division, or, where no appeal is made, fifteen days after expiration of the sixty day period for appeal, the Regional Secretariat shall issue to the parties and to the appropriate Office of Property Registration a Final Order confirming that the decision is final and binding. The Final Order shall identify the name(s) of the rights holders, the subject property, and the remedy, if applicable. In addition, each Final Order shall have a unique serial number and shall be verified with an official stamp.

Article 62

In accordance with Article 7(E) of the Statute, Final Orders are directly enforceable by the competent authorities of the district where the subject property is located.

Article 63

Final Orders may be reopened only if a person:

- a. Files a claim or response before the IPCC within the filing period;
- b. Has a claim to the subject property under Article 22; and c. Demonstrates that they did not know, and could not reasonably be expected to know, of the previous claim with respect to that property.

Article 64

In accordance with Article 7(F) of the Statute, Final Orders requiring the current occupants to surrender possession of the property may be enforced after sixty days if the occupants do not vacate the premises voluntarily. All other Final Orders may be implemented immediately.

Article 65

Where a Final Order results in a previous occupier, possessor or user of property surrendering possession of the premises, the Regional Secretariat shall inform that person of any services available for assistance, and of any policy of the Ministry of Displacement and Migration to resettle or compensate such persons, in accordance with Article 7(F) and Article 10(B) of the Statute.

Article 66

These Instructions may be revised or supplemented by the Iraqi Interim Government. Additional details regarding the claims process may also be found in Guidelines, interpretative memoranda, and literature prepared by the National Secretariat.

Article 67

The National Secretariat may issue interpretative memoranda which set forth the manner in which it shall construe the Instructions.



HOUSING AND LAND RIGHTS NETWORK Habitat International Coalition

Quantification Methodology and “Loss Matrix”

✓ **Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions**

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time. In order to capture many of the values, sustained

monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc. (This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, it is vital that any modifications be shared among the community of monitors to ensure consistency and compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using a calculator (or the Excel formula provided in the HLRN "Tool Kit": <http://toolkit.hlrn.org/index.html>.)

Follow the links to access the details of the quantification methodology and "**Loss Matrix**."

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the "speculative value," which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors’ and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients' property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipated profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining "goodwill" as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner's relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of "Other than Victim's Losses."

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals' value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation

would be included by narrative in the Victim's Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim's and Nonvictim's Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under “Other than Victims’ Nonmaterial Costs.”)

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims' nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impoverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak *vis-a-vis* new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Equipment costs

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.



HLRN Housing and Land Rights "Loss Matrix "

Type of violation:	Forced eviction		Confiscation	Demolition
	Inheritance	Access denial		Other
Type of cost/loss	Method	Short-term	Long-term	Cumulative
Victims' Material Losses				
Structure	Replacement value, based on reliable estimates from local contractors.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	Combined short-term and long-term values.
Subtotal:				1
Plot	Current market value, based on estimates from real estate agents or insurance adjustors	At the time of the violation.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	
Subtotal:				1
Contents	Replacement value of contents inventories provided by inhabitants, preferably taken before the loss.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	Combined short-term and long-term values.
Subtotal:				1
Collateral damage	Replacement value of assets damaged or destroyed, based on owner's actual costs (if possible).	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	Combined short-term and long-term values.
Subtotal:				1

Infrastructure	Replacement value, based on reliable estimates from local contractors, if replacement is provided by services outside the community. In cases where local inhabitants installed the original infrastructure, replacement cost would include the cost of replacement equipment and materials, plus a reasonable value estimate of donated labor.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	Combined short-term and long-term values.
Subtotal:				1
Business losses	Actual value of losses incurred from lost revenue, lost clientele, damage or destruction of business assets, inventories, or other material cost arising from the violation.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months. However, revenue and stock losses could be cumulative and continuous, affecting livelihood over a longer period, if no alternative replacements are found. Therefore you may need to make your projection over a longer period.	Combined short-term and long-term values.
Subtotal:				1

Equipment/ inventory	Replacement value	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year). However, business losses relating to equipment and inventory could be cumulative and continuous, affecting livelihood over a longer period, if no alternative replacements are found. Therefore you may need to make your projection over a longer period.	Combined short- term and long- term values.
Subtotal:				1
Prospective income	Previous year base, plus local inflation factor and other mitigating circumstances.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	Combined short- term and long- term values.
Subtotal:				1
Mortgage, other debt penalties	Actual cost of interest on loans for land and/or property lost or damaged to the point of being unusable. If the violation renders it impossible for	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	Combined short- term and long- term values.

	inhabitants to meet their debt-repayment obligations, any consequent penalties accrued would be counted here.			
Subtotal:				1
Livestock	Current market value, based on estimates from market prices and brokers			
Subtotal:				1
Land	Current market value, based on estimates from real estate agents or insurance adjustors		The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	
Subtotal:				1
Trees/crops	Current market value, based on actual investments to date and any current value of standing crops based on current market prices.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months. However, the loss of crops and trees to livelihood could be cumulative and continuous over a longer period, if no alternative replacements are found. Therefore you may need to make your projection over a longer period.	Combined short-term and long-term values.
Subtotal:				1

Lost/decreased wages/income	Actual wages, salary or other regular or other anticipated income sacrificed as a result of the violation.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	
Subtotal:				1
Health care	Actual cost of medical, mental health or other physical treatment or therapy arising as a result of the violation.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	Combined short-term and long-term values.
Subtotal:				1
Interim housing	Actual cost of temporary housing (rent) required as a result of the violation.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	Combined short-term and long-term values.
Subtotal:				1
Bureaucratic and legal fees	Costs paid, or due to be paid for administrative and legal assistance, fees to bureaus or bribes exacted for services to the victim(s) in connection with the violation.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	Combined short-term and long-term values.
Subtotal:				1
Alternative housing	Actual cost of replacement housing (rent) required as a result of the violation.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months.	Combined short-term and long-term values.
Subtotal:				1

Resettlement	The actual costs of labor, services and materials required, such as moving, storage, preparation of resettlement site, etc.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	Combined short-term and long-term values.
Subtotal:				1
Transportation costs	Actual cost to victims for fleeing from violence, returning to home site, additional transport costs from resettlement site to source of livelihood, community visits, etc. as in connection with, or as a result from the violation.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	Combined short-term and long-term values.
Subtotal:				18
Subtotal of victims' material losses:				36
Victims' Nonmaterial Losses				
Health	(your full description of consequences here)			
Living space	(your full description of consequences here)			
Reconstruction licensing	(your full description of consequences here)			
Psychological harm	(your full description of consequences here)			
Disintegration of family	(your full description of consequences here)			
Loss of community	(your full description of consequences here)			
Inheritance	(your full description of consequences here)			
Environment/ecology	(your full description of consequences here)			
Standing/seniority	(your full description of consequences here)			

Political marginalization	(your full description of consequences here)			
Social marginalization	(your full description of consequences here)			
Further vulnerabilities	(your full description of consequences here)			
Other than Victims Material Costs				
Collateral damage	Physical damage to home, property, infrastructure, landscaping or other material value belonging to neighbors and others affected by the violation. These could involve material losses in any category considered in quantifying the victim's material losses/costs.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	Combined short-term and long-term values.
Subtotal:				1
Services and fees	Any costs incurred by any person or institution facing the need to procure services, advice or other intervention from a billing party.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	
Subtotal:				1
Opportunity costs	Business losses, reduced rent income or other deficit in revenue arising from the violation.	At the time of the violation and during the following 30 days.	The projected or actual costs following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	Combined short-term and long-term values.
Subtotal:				1

Police	Actual or reasonably estimated cost of labor and materials (actual salaries paid per hour of work, and portion of supplies and equipment used) in all conduct leading up, carrying out and following up the violation. This would include a range of activities and situations, from police harassment aspects of victims to police prosecution of victimizers.	Actual or reasonably estimated cost of labor and materials for the period of all known and relevant activity leading up, during the violation and over the following 30 days.	Actual or reasonably estimated cost of labor and materials for the period of all known and relevant activity following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	Combined short-term and long-term values.
Subtotal:				1
Bulldozers	Actual or reasonably estimated cost of use and labor to operate bulldozers and other equipment to carry out the violation. In some cases, authorities actually bill the victims for the "service," in which case a value is already attached.	At the time of the violation, taking into account that the scale of the violation could include multiple violations and take place over days.	If the violation takes place as an operation over 30 days, then the costs would be considered over the following 11 months to provide a "long-term" calculation.	Combined short-term and long-term values.
Subtotal:				1
Lawyers	Actual billable or reasonably estimated cost of pro bono and public sector lawyers working in the service of the authorities	Actual or reasonably estimated cost of labor and materials for the period of all	Actual or reasonably estimated cost of labor and materials for the period of all known and relevant activity	Combined short-term and long-term values.

	carrying out the violation, or in the prosecution and defense of the perpetrators.	known and relevant activity leading up, during the violation and over the following 30 days.	following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	
Subtotal:				1
Military	Actual or reasonably estimated cost to the public of the use of army or other military personnel for its role in carrying out or responding to the violation.	At the time of the violation, taking into account that the scale of the violation could include multiple violations and take place over days.	Actual or reasonably estimated cost of labor and materials for the period of all known and relevant activity following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	Combined short-term and long-term values.
Subtotal:				1
Other forces	Actual or reasonably estimated cost to the public of the other than military for its role in carrying out or responding to the violation.	Actual or reasonably estimated cost of labor and materials for the period of all known and relevant activity leading up, during the violation and over the following 30 days.	Actual or reasonably estimated cost of labor and materials for the period of all known and relevant activity following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	Combined short-term and long-term values.
Subtotal:				1

Bureaucracy and	Actual or	Actual or	Actual or	Combined short-
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administration	reasonably estimated cost of labor and materials (actual salaries paid per hour of work, and portion of supplies and equipment used) in carrying out all administrative functions leading up, carrying out and immediate following up the violation. This would include a range of activities and situations, from court clerks processing eviction or demolition orders, to clerks processing or delaying building permits to census enumerators selecting inhabitants for relocation, etc.	reasonably estimated cost of labor and materials for the period of all known and relevant activity leading up, during the violation and over the following 30 days.	reasonably estimated cost of labor and materials for the period of all known and relevant activity following the initial 30 days after the violation and throughout the subsequent 11 months (covering the combined period of one solar year).	term and long-term values.
Subtotal:				1
Total costs/losses to other than victims:				
				9
Grand total:				
				45
Other than Victims Nonmaterial Costs				
Political legitimacy	(your analytical narrative here)			
Social costs	(your analytical narrative here)			
Civil order	(your analytical narrative here)			

ANNEX 4
**Principles on Housing and Property Restitution for
Refugees and Displaced Persons**

UNITED NATIONS



**Economic and Social
Council**

Distr.
GENERAL
E/CN.4/Sub.2/2005/17
28 June 2005
Original: ENGLISH

Economic, Social and Cultural Rights

**Principles on Housing and Property Restitution for
Refugees and Displaced Persons¹**

Preamble

Recognizing that millions of refugees and displaced persons worldwide continue to live in precarious and uncertain situations, and that all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands,

Underscoring that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up-to-date and accurate information, including on physical, material and legal safety issues in countries or places of origin,

Reaffirming the rights of refugee and displaced women and girls, and recognizing the need to undertake positive measures to ensure that their rights to housing, land and property restitution are guaranteed,

Welcoming the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons, as well as the many national and international laws, standards, policy statements, agreements and guidelines that have recognized and reaffirmed the right to housing, land and property restitution,

Convinced that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution programmes, on the part of international organizations and affected States, is indispensable to ensuring their effective implementation,

Convinced also that the implementation of successful housing, land and property restitution programmes, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace.

¹ Excerpt of Final report of the Special Rapporteur, Paulo Sergio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-sixth session, Item 4 of the provisional agenda, E/CN.4/Sub.2/2005/17, 28 June 2005.

Section I. Scope and Application

1. Scope and Application

- 1.1 The Principles on housing and property restitution for refugees and displaced persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.
- 1.2 The Principles on housing and property restitution for refugees and displaced persons apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee (hereinafter “refugees and displaced persons”) who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

Section II. The Right to Housing and Property Restitution

2. The right to housing and property restitution

- 2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.
- 2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor nonreturn of refugees and displaced persons entitled to housing, land and property restitution.

Section III. Overarching Principles

3. The right to nondiscrimination

- 3.1 Everyone has the right to be protected from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.
- 3.2 States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

4. The right to equality between men and women

- 4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.
- 4.2 States should ensure that housing, land and property restitution programmes, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.

- 4.3 States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

5. The right to be protected from displacement

- 5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.
- 5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.
- 5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.
- 5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

6. The right to privacy and respect for the home

- 6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.
- 6.2 States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.

7. The right to peaceful enjoyment of possessions

- 7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.
- 7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.

8. The right to adequate housing

- 8.1 Everyone has the right to adequate housing.
- 8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

9. The right to freedom of movement

- 9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.
- 9.2 States shall ensure that freedom of movement and the right to choose one’s residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

Section IV. The Right to Voluntary Return in Safety and Dignity

10. The right to voluntary return in safety and dignity

- 10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.
- 10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.
- 10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.
- 10.4 States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

Section V. Legal, Policy, Procedural and Institutional Implementation Mechanisms

11. Compatibility with international human rights, refugee and humanitarian law and related standards

- 11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.

12. National procedures, institutions and mechanisms

- 12.1 States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.
- 12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests of the child”.
- 12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.
- 12.4 States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other

rights of possession, as well as decision-making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

- 12.5 Where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, States should request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.
- 12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.

13. Accessibility of restitution claims procedures

- 13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim.
- 13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.
- 13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests of the child.”
- 13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.
- 13.5 States should seek to establish restitution claims-processing centres and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.
- 13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.

- 13.7 States should develop restitution claims forms that are simple and easy to understand and use and make them available in the main language or languages of the groups affected. Competent assistance should be made available to help persons complete and file any necessary restitution claims forms, and such assistance should be provided in a manner that is age and gender sensitive.
- 13.8 Where restitution claims forms cannot be sufficiently simplified owing to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner that is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.
- 13.9 States should establish a clear time period for filing restitution claims. This information should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of collecting information and access, the extent of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.
- 13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.
- 13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or nongovernmental sources (whether national or international), such legal aid should meet adequate standards of quality, nondiscrimination, fairness and impartiality so as not to prejudice the restitution claims process.
- 13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

14. Adequate consultation and participation in decision making

- 14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.
- 14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

15. Housing, land and property records and documentation

- 15.1 States should establish or re-establish national multipurpose cadastral or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution programme, respecting the rights of refugees and displaced persons when doing so.
- 15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that

housing, land and/or property as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

- 15.3 States should ensure, where appropriate, that registration systems record and/or recognize the rights of possession of traditional and indigenous communities to collective lands.
- 15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection in situ or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format), transferring them securely and recognizing the authenticity of said copies.
- 15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.
- 15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.
- 15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.
- 15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

16. The rights of tenants and other nonowners

- 16.1 States should ensure that the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

17. Secondary occupants

- 17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner that is compatible with international human rights law and standards, such that secondary occupants are afforded

safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.

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

18. Legislative measures

- 18.1 States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.
- 18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.
- 18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

19. Prohibition of arbitrary and discriminatory laws

- 19.1 States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.
- 19.2 States should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and

property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.

- 19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to be protected from discrimination and to equality in both law and practice.

20. Enforcement of restitution decisions and judgments

- 20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgments.
- 20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgments made by relevant bodies regarding housing, land and property restitution.
- 20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgements. Threats or attacks against officials and agencies carrying out restitution programmes should be fully investigated and prosecuted.
- 20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programmes.
- 20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgements, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

21. Compensation

- 21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.
- 21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

Section VI. The Role of the International Community, including International Organizations

22. Responsibility of the international community

- 22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.
- 22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take

fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

- 22.3 International organizations should work with national Governments and share expertise on the development of national housing, land and property restitution policies and programmes and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.
- 22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through the establishment of national procedures, institutions, mechanisms and legal frameworks.
- 22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and programmes may be successfully implemented and enforced.
- 22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgments. Members of the Security Council should consider including this role in the mandate of peace operations.
- 22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

Section VII. Interpretation

23. Interpretation

- 23.1 The Principles on housing and property restitution for refugees and displaced persons shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.

ANNEX 5

Coalition Provisional Authority Order Number 6 Eviction of Persons Illegally Occupying Public Buildings (rescinded 28 June 2004, in accordance with CPA Regulation 100, Section 4)

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA), and the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 (2003),

Recognizing that the assets and property of the Iraqi Baath Party constitute State assets,

Affirming the CPA's commitment to counter the threat to security and civil order posed by the illegal occupation of public property and improper disposition of that property,

Acting on behalf, and for the benefit, of the Iraqi people,

I hereby promulgate the following:

Section 1 Eviction

- 1) The CPA now exercises control over all public property and all property formerly owned by the Ba'ath Party within Iraq. Any individual or groups determined to be in illegal occupation of such public property shall be evicted.
- 2) The determination of illegal occupancy for purposes of this Order shall be made by the Commander of Coalition Forces or his designee.

Section 2 Inventory

The CPA Facility Manager shall prepare and maintain an inventory describing the location and contents of all public property and property formerly owned by the Baath Party within Iraq.

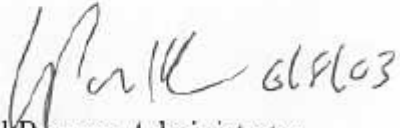
Section 3 Right of Appeal

Individuals or groups who are evicted from public property, or property formerly owned by the Baath Party within Iraq, may appeal their eviction by submitting, to the Administrator or his designee, written evidence showing a valid right of occupancy, such as evidence of purchase for full value, or that the property did not properly fall within Section 1 of this Order.

CPA /ORD/8 June 2003/06

Section 4
Entry into Force

This Order shall enter into force on the date of signature.

Handwritten signature of L. Paul Bremer and the date 6/8/03.

L. Paul Bremer, Administrator
Coalition Provisional Authority

ANNEX 6



OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS



The right to adequate housing (Art.11.1): forced evictions : 20/05/97. United National Committee on Economic, Social and Cultural Rights General Comment 7

Convention Abbreviation: CESCR

The right to adequate housing (art. 11.1 of the Covenant):
forced evictions

(Sixteenth session, 1997)*

1. In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are *prima facie* incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.

2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to "undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made". ^{1/} In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the "fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them" was recognized. ^{2/} Agenda 21 stated that "people should be protected by law against unfair eviction from their homes or land". ^{3/} In the Habitat Agenda Governments committed themselves to "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided". ^{4/} The Commission on Human Rights has also indicated that "forced evictions are a gross violation of human rights". ^{5/} However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

3. The use of the term "forced evictions" is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to "forced evictions" is a tautology, while others have criticized the expression "illegal evictions" on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term "unfair evictions" is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to "forced evictions", primarily

since all suggested alternatives also suffer from many such defects. The term "forced evictions" as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

5. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be "determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society".

6. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.

7. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.

8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use "all appropriate means" to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against "arbitrary or unlawful interference" with one's home. It is to be noted that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

9. Article 2.1 of the Covenant requires States parties to use "all appropriate means", including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such

legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.

13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure "an effective remedy" for persons whose rights have been violated and the obligation upon the "competent authorities (to) enforce such remedies when granted".

14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person's home can only take place "in cases envisaged by the law". The Committee observed that the law "should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances". The Committee also indicated that "relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted".

15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

17. The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, *inter alia*, that "international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account". ⁶¹

18. Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights" (Part I, para. 10).

19. In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the "number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction", (b) "legislation concerning the rights of tenants to security of tenure, to protection from eviction" and (c) "legislation prohibiting any form of eviction". ⁷¹

20. Information is also sought as to "measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) 'beautiful city' campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites". ⁸¹ However, few States parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.

21. Some States parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

Notes:

* Contained in document E/1998/22, annex IV.

1/ Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May–11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, para. C (ii).

2/ Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), para. 13.

3/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, Vol. I (A/CONF.151/26/Rev.1(vol.I), annex II, Agenda 21, chap. 7.9 (b).

4/ Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n).

5/ Commission on Human Rights resolution 1993/77, para. 1.

6/ E/1990/23, annex III, paras. 6 and 8 (d).

7/ E/C.12/1999/8, annex IV.

8/ Ibid.

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**Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland**



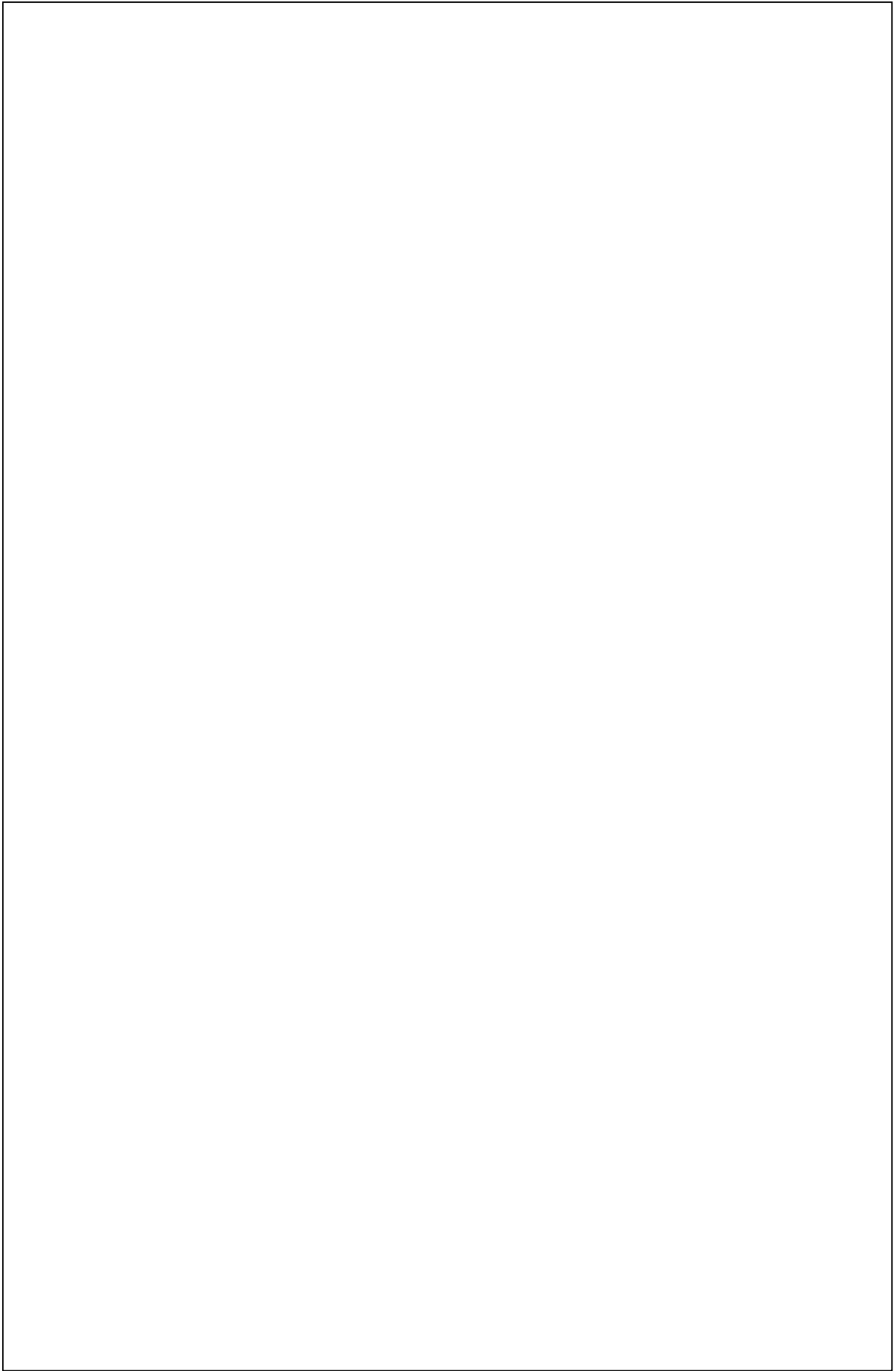
HIC-HLRN

Middle East/North Africa Program

Building upon HIC's long experience at advocating indigenous housing and land rights in Palestine, since 2000, HIC-HLRN has addressed special needs of its civil society members and affiliates across the Middle-East/North Africa region by promoting rights-based solutions for local and regional housing struggles.

The MENA Program promotes the development of economic, social and cultural rights culture in the region and builds the capacity of member organizations by providing training, appropriate methodologies for housing rights monitoring and legal defense, and access to international forums, including the UN human rights system. Through its officers and members, the HLRN MENA Program contributes to the region's discourse on economic/social/cultural rights (ESR) and globalization, not least by conducting related regional and inter-regional exchanges of expertise. HLRN seeks to help create the context for MENA communities and housing rights defenders to develop practical skills, to work cooperatively and develop solidarity regionally and with civil-society counterparts and social movements elsewhere.

HIC-MENA's website also provides a self-service database and archive with unique Arabic-language resources on housing and ESCR. For more information on the MENA Program and HIC-HLRN membership, go to: www.hic-mena.org.



HOUSING AND LAND RIGHTS NETWORK (HLRN)

More than a billion people are ill housed, or have no shelter; tens of millions are forced from their homes and land due to war, discrimination, development projects, social-service reductions, economic liberalization and privatization policies. They all need our solidarity.

Habitat International Coalition (HIC) is an independent, international, nonprofit movement of over 450 members specialized in various aspects of human settlements. Its members include NGOs, CBOs, social movements, academic and research centers, professional associations and like-minded individuals from 80 countries in both North and South, all dedicated to reciprocal cooperation toward realizing the human right to adequate housing for all. HIC's programmatic activities are managed through thematic structures:

- Women and Shelter Network (HIC-WAS)
- Housing and Land Rights Network (HLRN)
- Habitat and Sustainable Environment Network (HSEN)
- Social Production of Habitat Working Group
- Working Group on Housing Finance and Resource Mobilization

Housing and Land Rights Network (HLRN) objectives:

HLRN members share with HIC general a set of objectives that bind and shape HLRN's commitment to communities struggling to secure housing and improve their habitat conditions. HLRN advocates the recognition, defense and full implementation of every human's right everywhere to a secure place to live in peace and dignity by:

- Defending the human rights of the homeless, poor and inadequately housed;
- Promoting public awareness about human-settlement problems and needs globally;
- Upholding legal protection of the human right to housing as a first step to support communities pursuing housing solutions, including social production and other practical means to realize the right;
- Cooperating with various UN human rights bodies to develop and monitor standards of the human right to adequate housing, as well as clarify states' obligations to respect, protect, promote and fulfill the right;
- Providing a common platform for communities across the Network to formulate and share problem-solving strategies through social movements and progressive NGOs in the field of human settlements; and
- Advocating on their behalf in international forums.

To attain these objectives, HLRN member services include:

- Building local, regional and international member cooperation to form effective housing rights campaigns;
- Human resource development, human rights education and training;
- Enhancing self-representation skills and opportunities;
- Action research and publication;
- Exchanging and disseminating member experiences, best practices and strategies;
- Support for lobby efforts toward policy reform;
- Developing tools and techniques for professional monitoring of housing rights;
- Urgent actions against forced eviction and other violations.

For more information, log onto HIC-HLRN websites at:

www.hlrn.org and www.hic-mena.org

Housing and Land Rights Network



HABITAT INTERNATIONAL COALITION