

Property Restitution in Iraq

Peter Van der Auweraert*

Presentation at the Symposium on Post-Conflict Property Restitution
Hosted by the United States Department of State
Bureau of Population, Refugees, and Migration;
Bureau of Intelligence and Research;
Office of the Coordinator of Reconstruction and Stabilization

September 6-7, 2007

System Planning Corporation
1000 Wilson Boulevard, 30th Floor
Arlington (Rosslyn), Virginia 22209

Content

- I. Introduction
- II. Background and Establishment of the IPCC and the CRRPD
 - a. Forced Displacement and Land and Property Rights Violations under the Ba'athist Regime
 - b. After the Fall of the Regime: the Specter of an Uncontrolled, Massive Return Movement and Large-scale Property Conflicts

Lesson Learned: Post-Conflict Property Restitution Should Be Addressed Within a Larger Transitional Justice Framework

- III. Mandate, Structure and Nature of the CRRPD

- a. Mandate
- b. Structure
- c. Nature

Lesson Learned: the Type of Property Restitution Process Should be Adapted to the Expected Size of the Claim Load

- IV. Remedies

Discussion Point 1: the Complicated Relationship between Social Justice and the Funding of a Large-Scale Post-Conflict Property Restitution Effort

Discussion Point 2: Social Justice, Reconciliation and Peace Building and the Reinstitution of Past Property Relations

- V. Current Caseload and Outcome of the CRRPD

- VI. The Future of the CRRPD: Some Open Questions

Lesson Learned: A Lack of Capacity in Existing State Institutions Should be Taken into Account at the Outset

* Senior Legal Officer, Reparations Programmes Unit, International Organization for Migration, Geneva, Switzerland. All opinions expressed in this presentation are those of the author alone. The author can be contacted at pvanderauweraert@iom.int.

1. Introduction

There are at least two distinct periods for which we could discuss the question of property restitution in Iraq. The first is the Ba'athist period which lasted roughly from 1968 until April 2003. The second period started in April 2003 after the fall of Saddam Hussein, continues today and has seen millions of Iraqis displaced both inside and outside the country. The current displacement crisis has also been accompanied by important land and property rights violations be it of a different nature than those that occurred under the Ba'athist reign.

My sole focus here will be on property restitution related to the Ba'athist period because it is the only one for which redress for land and property rights violations has been systematically addressed. Iraqis who fall victim to land and property rights violations today have, ultimately, no other option that to seek justice through the ordinary Iraqi court system. In reality, this means that most are left without recourse for the time being. This is especially true for the hundreds of thousands of Iraqis that have had to leave their country since April 2003 – for them the Iraqi court system is virtually inaccessible.

There can be little doubt that any durable reconciliation and peace building in Iraq will require a property restitution effort for the violations that took place after the fall of the Ba'athist regime. Ideally this should be done within the context of a wider transitional justice strategy to help Iraq come to terms with the horrific crimes and violence the country has witnessed in the past few years. While the discussion around what should be done in this respect has already started, Iraq continues to remain far too unsettled politically to predict with any accuracy how such wider transitional justice effort will look like.

In this presentation, I will look at the background and establishment of the Iraq Property Claims Commission (IPCC) and the Iraq Commission for the Resolution of Real Property Disputes (CRRPD); the mandate, structure and nature of those Commissions; the remedies they provide to the victims of land and property rights violations; and their current caseload and results so far. Rather than coming up with conclusions or predictions, I will end this presentation by posing some open questions as regards the future of this ongoing property restitution effort in Iraq.

Throughout the presentation, I will draw attention to some selected topics for discussion and lessons learned that I believe are relevant for future post-conflict property restitution efforts. Given time constraints I can do not much more than to mention them – I hope that we will have ample opportunity in the question and answer session after the presentation and throughout the workshop generally, to discuss and analyze those points further.**

2. Background and Establishment of the IPCC and the CRRPD

a. *Forced Displacement and Land and Property Rights Violations under the Ba'athist Regime*

The establishment of the IPCC and the CRRPD is closely linked with the policies of forced displacement that characterized the Ba'athist regime throughout its reign. The regime routinely used these policies, which were usually accompanied by the confiscation, expropriation and destruction of homes, businesses and agricultural land, to maintain and expand its control over Iraq. The principal targets of those policies were always the same: the Shiite, Kurdish, Turkmen and Assyrian communities as well as anyone perceived to be an opponent or a danger to the regime.

In brief, there were three particular contexts in which the regime resorted to forced displacement and property rights violations: (a) the so-called “Arabisation policies” which entailed the replacement of non-Arab communities in the North with (mostly poor) Sunni Arabs from the South e.g. in the Kirkuk

** For easy reference, I placed the lessons learned and discussion points in separate tables throughout the text.

area; (b) the punishment for real or perceived opposition to the regime (e.g. the 1980-1988 Anfal campaign against the Kurds during which hundreds of Kurdish villages were destroyed and the mass expulsion of Iraqi Shiites to Iran at the start of the Iran-Iraq war in 1980); and (c) in connection with the prevailing economic system of “crony capitalism” that left regime strongmen and their supporters free to seize desirable land and businesses and thus expand their personal wealth and influence.

No undisputed figures exist of just how many Iraqis became internally displaced, fled or left the country, but there can be little doubt that displacement was a mass phenomenon during the Ba’athist era. Similarly, it is unknown how many of those who were displaced also saw their lands, homes and businesses destroyed or taken away from them. The fact that the IPCC and the CRRPD have so far received well over 130,000 property claims from inside Iraq alone, suggests that their number is more than significant.

b. *After the Fall of the Regime: the Specter of an Uncontrolled, Large-scale Return Movement*

The discussions preceding the invasion of Iraq widely assumed that the Ba’athist regime’s overthrow would almost immediately result in a large-scale return of those that had been displaced by the regime. It was to be expected that the returnees would be eager to repossess the lands, homes and businesses that they had lost, sometimes decades earlier. Unfortunately, however, simple repossession would be rarely an option: more often than not those properties were now occupied by others with nowhere else to go. Hence the perceived danger that the disputes over those properties would quickly become a principal source of post-invasion instability and conflict, unless a mechanism could be found to resolve them peacefully.

In this context, one particular problem stood out: Kirkuk. With the largest oil field in Iraq, its traditional role as the “breadbasket of Iraq” and the mass forced displacement that had taken place as a consequence of Saddam Hussein’s “Arabisation policies”, Kirkuk was seen as the most likely flashpoint in case an uncontrolled return movement would take place. Repeated claims by Kurdish politicians that Kirkuk was indeed Kurdish – a claim unlikely to be accepted by Iraq’s other communities – and that the Kurds should be allowed to return and resettle as soon as possible did little to ease anxieties in this respect. The complex property situation in Kirkuk further underscored the need to find a peaceful way to settle the property disputes that a large-scale return would bring with it.

It was against this backdrop that the Coalition Provisional Authority (CPA) decided in January, 2004, to establish a special-purpose commission to review and resolve all property disputes related to the Ba’athist era, i.e. the Iraq Property Claims Commission (IPCC). Subsequent to the CPA’s disbandment and the transfer of sovereignty to an Iraqi interim government, the Iraqi Transitional National Assembly decided in early 2006 to replace the IPCC with the Commission for the Resolution of Real Property Disputes (CRRPD). While the CRRPD has essentially the same mandate as the IPCC, the CRRPD Law introduced a number of important changes e.g. in respect of the treatment of the current occupant of the disputed property, the valuation of compensation and the composition of the Judicial Committees reviewing and deciding the claims.

The CRRPD essentially took over the entire organizational structure and staff from the IPCC. All claims submitted with the IPCC automatically became claims with the CRRPD. IPCC claimants were not required to take any particular action in this respect – their claims were from then on simply reviewed and decided under the CRRPD statute. Like the IPCC, the CRRPD remained a purely Iraqi institution, staffed exclusively by Iraqi nationals. The international involvement is limited to a very small group of IOM reparations experts providing technical advice to the senior management and staff of the CRRPD.

Lesson Learned: Large-Scale Property Restitution Should be Addressed Within a Larger Transitional Justice Framework

The CPA established the IPCC to deal with a particular problem that at the time was perceived as particularly urgent and important, i.e. how to ensure that return-related property disputes would be resolved peacefully. Its successor institution, the CRRPD, grew out of a strong sense amongst Iraqi politicians that the properties taken by the former regime should be given back to their original owners, which included many of those same politicians and their families. Both the establishment of the IPCC and the CRRPD thus appears to have been a pragmatic answer to what was seen as a fairly contained, isolated problem of property restitution and conflict prevention.

Neither the IPCC nor the CRRPD emerged as part of a larger transitional justice effort addressing the question of redress for *all* victims of the former regime. They were not the outcome of an inclusive political debate or reflection on how Iraqi society could best come to terms with a legacy of brutal and violent oppression or what was needed to facilitate a transition from decades of authoritarian rule to a democratic society living under the rule of law. Not addressing post-conflict property restitution from a wider transitional justice perspective raises at least three problematic issues.

The first issue has to do with the fact that an isolated approach is more likely to lead to an unequal treatment of victims. In the concrete example of Iraq, it is difficult to defend that until the present day systematic redress is only available to victims of land and property rights violation and not, for example, to the widows of those who died at the hands of Saddam Hussein's regime, the former political prisoners or the people who lost property other than real estate.¹ Equally, there is little to say for the fact that the CRRPD Law focuses only on the forcible taking of property but provides no redress for property destruction which e.g. in the Kirkuk area affected many.

In the context of Iraq it is thus legitimate to ask whether failing to address the question of redress holistically has not led to the exclusion of the most vulnerable groups from the reparations process. Beyond the basic justice and equity issues such a situation raises, it also casts doubt on the ability of an isolated process like the CRRPD to contribute to durable reconciliation and peace building in Iraq. The ongoing conflict makes this point when it comes to Iraq itself probably academic – any good the CRRPD could have done in this respect is largely offset by the brutal violence and strife the country witnesses every day – but it does carry a warning for other post-conflict situations to avoid looking at property restitution in isolation.

The second issue an isolated approach raises has to do with the need for a property restitution effort to have external coherence with other government policies. No matter how well intentioned, the effect and impact of a property restitution effort will be weakened if in other areas the state pursues goals and policies that are incompatible, or even contradictory to this effort. Such external coherence is easier to achieve if there is a broad understanding across the government and the state administration that the state as whole is engaged in a transitional justice effort for the crimes committed by that state in the past. Otherwise chances are that those not directly involved with the implementation of the property restitution effort will continue “business as usual” and through their actions undermine some of the positive impacts such effort can have.

An example from Iraq is the practice of the Ministry of Finance to routinely appeal all CRRPD decisions in which the Iraqi state stands to lose. This includes almost all compensation decisions and decisions where the state is ordered to return property to the original owner. The objective the Ministry pursues with this policy –i.e. the protection of the state finances- is obviously legitimate and even desirable when it comes to an ordinary litigation context involving the state. It is, however, less defensible when carried out in the frame of an exceptional effort to redress earlier wrongs committed by the state itself. The systematic opposition of one state organ to decisions by another state organ in

¹ The Martyr Foundation and the Political Prisoner Foundation were established for this purpose, but, contrary to the CRRPD, they are not really operational.

favor of the victims of these violations sends, at the very least, a rather diffuse message about the state's current views on its past behavior, to say nothing about the additional time and resources such policy requires from an already overstretched system.

Finally, there is also a more pragmatic, but nevertheless very real reason why approaching large-scale property restitution in isolation is not a good thing. In any context, the overall resources that the state has available for transitional justice will not be unlimited as transitional justice will always have to compete with other, equally pressing needs and priorities. Hence the political decision of how much the state can allocate for a large-scale property restitution effort should best be made within the context of the decision how much the state can allocate for redress to all victims of, as in the example of Iraq, the former regime. Otherwise there is risk that the over-generous provisions of the partial effort will consume so many resources that there remains little financial or political space for reparations efforts in respect of other, equally deserving categories of victims.

This is a real concern also in case of the CRRPD Law as it is likely to impose a very high financial liability on the Iraqi state. Just how high this liability could be is not known – no assessment was ever made of just how much the new compensation rules introduced by the CRRPD Law were likely to cost. But that in the coming months and years this liability is will increase further is almost certain: many Iraqis still living abroad have not yet had a chance to file a claim and many inside Iraq are likely to shift their claims increasingly from restitution to compensation, now that the payment of compensation has started. Restitution decisions amount to little in a context where their enforcement is fraught with dangers and difficulties, not in the least for those repossessing the property.

3. Mandate, Structure and Nature of the CRRPD

a. *Mandate*

The CRRPD is competent for three types of land and property rights violations: (1) confiscation or seizure of property for “political, religious or ethnic reasons” or in relation to “ethnic, sectarian or nationalistic displacement” (Art. 4, I, CRRPD Law) (e.g. in frame of “Arabisation policies”); (2) appropriation or seizure of property without consideration, with manifest injustice or in violation of the applicable legal rules (Art. 4, II, CRRPD Law); and (3) state property allocated to the members of the previous regime without consideration (Art. 4, III, CRRPD Law).

As was mentioned earlier, the CRPD is not competent to provide redress for the destruction of property. While victims whose homes or businesses were destroyed may get back the land on which the destroyed property used to stand, they will not receive compensation for loss caused by the destruction itself. This is especially problematic in the Kirkuk area, where the seizure and confiscation of agricultural land was often accompanied by the wholesale destruction of local villages and farms. Here, additional efforts outside the CRRPD may be required to render return to the lost properties a real and feasible option.

The CRRPD can only rule on land and property rights violations that took place in the period between 17 July 1968 and 9 April 2003, i.e. between the date on which the Ba’athist party definitely seized power in Iraq and the date on which Baghdad fell to the US-led invasion forces. Claims that relate to violations outside this period have to be submitted to the ordinary Iraqi courts. This means, for example, that “Arabisation Arabs” who were forcibly expelled from their homes in Northern Iraq by Kurdish or other returnees after 9 April 2003 can only go to the Iraqi courts for redress, even though the returnees themselves would have had access to the CRRPD.

b. *Structure of the CRRPD*

The CRRPD operates through decentralized claims review and decision making. It has thirty offices throughout the country with thirty-two Judicial Committees reviewing and deciding claims. It is the property's location that determines which Judicial Committee has jurisdiction over the dispute. Each

Judicial Committee is made up of one judge appointed by the Judicial Council, one representative from the local Property Registration department and one lawyer appointed by the Head of the CRRPD. The CRRPD Law foresees that in case of diverging opinions, the opinion of the judge will prevail. In practice, however, many Judicial Committees appear to operate mostly by consensus.

Under the CRRPD Law all parties to a claim have the right to appeal against a Judicial Committee decision. For that purpose, the Law establishes a Cassation Commission based in Baghdad and comprised of seven judges. Two of those have to be appointed by the Kurdistan government. The Cassation Commission does not rule on the facts of the case and will only look at the legality of the Judicial Committee decision. In case the Commission finds the latter to be in breach of the Law, it will refer the case back to the same Judicial Commission which will then have to re-review the case in accordance with the Cassation Commission's ruling.

The fact that a single body has to review and decide appeals regarding decisions from thirty-two Judicial Committees together with the fact that the CRRPD Law provides parties with unlimited appeal rights has led to a huge bottleneck at the appeals level. This is further compounded by the earlier mentioned practice of the Ministry of Finance to systematically appeal all decisions that create a liability for the state. At the current pace, it is estimated that it will take the Cassation Commission close to thirty years to finish its projected caseload. As what is likely to be only a partial remedy to this problem, the CRRPD is considering the creation of two separate chambers within the Cassation Commission.

The CRRPD also has a secretariat based in Baghdad which is led by the Head of the CRRPD, who is in charge of the overall management of the CRRPD process.

c. *Nature of the CRRPD*

Both the CPA and the Transitional Iraqi Parliament decided to endow respectively the IPCC and the CRRPD with a quasi-judicial process for reviewing and deciding property claims. It includes features such as the obligation for the Judicial Committees to hold at least one hearing in each case that involve all parties to the claim (claimant, current occupier, Ministry of Finance,...); an individualized expert property valuation in each case allowing for valuation by multiple experts in case of disagreement amongst the parties; the requirement to submit formal, documentary evidence; the possibility of site visits by the Judicial Committees; and the application of ordinary Iraqi civil and procedural law in areas where the law is silent. While overall the applicable rules and procedures are somewhat more flexible than what is common in Iraqi courts, the process remains very time and resource consuming.

Lesson Learned: the Type of Reparation Process Chosen Should be Adapted to the Expected Size of the Claim Load.

The choice of the best type of process to carry-out a post-conflict property restitution effort is a complex one. It is also a vital one, as the success or failure of such effort will in part depend on the process that was chosen to implement it. Ideally, the choice should take into account contextual factors such as, for example, the general capacity of the state; the available human and material resources; the expectations of the victims and the wider society; continuing conflicts and tensions within communities and, crucially, the size of the expected claim load. The latter factor refers to what is often one of the crucial pressures on a post-conflict or post-authoritarian regime property restitution process, namely the pressure of expedience and resolving the claim load within a reasonable period of time. What is understood as reasonable will of course depend on the context, but it is almost universally so that there are political limits on how long a process can take to resolve its claim load and beyond which the process risks losing its legitimacy and, worse, relevance.

It is doubtful whether a quasi-judicial process will ever be well-suited to deal with tens of thousands of property restitution cases (the CRRPD has so far received over 130,000 claims). For such a claim load, an administrative process may be the only viable option, even more so in countries where the available

human and/or material resources are scarce. In the case of Iraq, the consequences of the choice of a quasi-judicial process are, in terms of expediency, further compounded by a pervasive, highly formalistic and bureaucratic legal culture especially amongst the older generation of judges who make up the majority of the Judicial Committees and the Cassation Commission. This contextual reality further underscores that an administrative style process may have been the better option for property restitution in Iraq.

4. Remedies

The CRRPD Law has relatively elaborate rules on remedies. A number of different scenarios exist in this respect. Victims of property rights violations have the right to the restitution of their property in case the property is still in the hands of the Iraqi state, a senior member of the former regime or “anyone who took advantage of their powers” at the time. In all other cases – i.e. cases where one or multiple sales or transfers of the property occurred subsequent to the illegal expropriation of seizure – the victims will have the option to request either restitution or the payment of compensation. In the last scenario, the law provides the current occupants with the right to compensation if the CRRPD decides to reconstitute the property to the claimant.

In all cases, the value of the compensation will be determined in reference to the worth of the house, business or land at the time the claim was filed. In principle, the claimant or the current occupant, as the case may be, will thus be compensated for the full value of the property at that time. The burden to pay compensation to either the claimant or the current occupant falls on the party that first sold the property after its confiscation or seizure. In the vast majority of cases this will be the Iraqi state, as confiscated or seized property was usually first transferred from the original owner to the Iraqi state before it was sold on. Finally, the law provides that the successful claimant will have pay compensation to current occupant for any improvements that the latter made to the property.

Discussion Point: The Complicated Relationship between Social Justice and the Funding of Large-scale Property Restitution Efforts.

It was pointed out earlier that the CRRPD Law is likely to impose high financial liabilities on the Iraqi state, at least in part because it goes beyond mere property restitution to include also compensation rights for both the claimants and the current occupants. In the case of Iraq, this reparations effort is funded through the normal state budget for both the administrative costs and the costs coming from the payment of compensation and the return of state properties.

The use of current state resources to provide redress to victims of a past regime raises an important question of social justice and redistribution of wealth which is too rarely discussed. Is it indeed fair and just to employ those resources, especially in the all too common scenario where state resources were plundered by a former elite, who was also responsible for the human rights violations or crimes that now stand in need of being redressed? More often than not, this former elite will have its assets stacked away abroad and may themselves have left the country altogether.

Put somewhat simplistically, it will thus be the current taxpayers who are requested to shoulder the financial burden of providing reparation to the victims of such former elite – taxpayers who may not have benefited from the former regime and who will often include the victims themselves. Even where victims are too poor to contribute to the current state resources they may still indirectly contribute to the supporting the reparations effort as the resources used to fund it are no longer available for other areas of state services.

There is no easy solution to this conundrum. One way of at least partially addressing it, however, is to try and link large-scale reparations efforts with a systematic policy of recovering assets stolen or illegally acquired by the former elite from the state or the country, and allocate any recovered assets to the fund or budget used for the reparations effort. This is also an area where the international community could provide concrete support to the state in question, as very often such assets will have

been moved abroad. No such systematic effort is currently being undertaken in Iraq.

One interesting test-case in this respect is the Justice and Peace Law (JPL) in Colombia. The law determines as one of the conditions for the former paramilitary leaders to benefit from the sentence reduction offered under the law that they have to return all assets acquired illegally as a paramilitary. These assets are then put into a Victim Reparations Fund, out of which victim reparations will eventually be paid. If successful, the JPL will have ensured that those who committed and benefited from the paramilitary violence and illegal activities are also the ones who, at least in part, shoulder the burden of subsequent redress to the victims.

Of course, the suggestion is not to *condition* victim reparations on the recovery of stolen or illegally acquired assets – it is simply a plea to consider a link between the redress for past violations and the recovery of assets stolen or illegally taken by those that committed the violations.

Discussion Topic: Social Justice, Reconciliation and Peace Building and the Reinstitution of Past Property Relations

Any successful large-scale property restitution effort will have important redistributive effects in the society where it takes place. While this is rarely achieved in full, such effort will in essence attempt to reestablish property relations as they were before, in case of post-conflict property restitution, the conflict started or, in case of post-authoritarian regime property restitution, the authoritarian regime in question took power. In case of the CRRPD the outcome will be at least a partial restoration of pre-Ba’athist property relations and a redistribution of properties, and thus wealth, amongst communities. As a matter of redress for earlier rights violations the discussion can end here – this is exactly what such a property restitution effort should set out to achieve. Looked at from the perspective of social justice or reconciliation and peace building this is not, however, necessarily so.

Lets first look at social justice. The social justice effects of the implementation of a large-scale property restitution effort will at least to some extent be determined by the fairness or unfairness of the property relations in the period the restitution effort is intended to “restore”. If for example property relations in that earlier period were unfair and the outcome of the type of power relations and dynamics that concentrated most of the national wealth in the hands of a very small part of the population, those social justice effects will most likely be negative. They may also undermine the social reform objectives pursued by the government in other areas, notably in the area of land reform.

The type of property relations that existed in the earlier period that is to be “restored” will be relevant also to assess the impact a large-scale property restitution effort is likely to have in terms of national reconciliation and peace building. This effect is likely to be negative if, for example, earlier property relations clearly favored one group over another. Similarly, if in the earlier period an important part of the population was effectively barred from access or title to land and property as a result of a longer-term history of poverty and exclusion, a “pure” post-conflict property restitution effort may well end up sowing the seeds for future conflict and strife.

There is no easy solution on how to balance those concerns with the obvious right of victims of property rights violations to obtain redress. But it would be politically foolish to not to at least briefly assess the type of property relations that will be re-established through a large-scale post-conflict or post-authoritarian regime property restitution effort. If nothing else, this would allow for the adoption of corrective measures to mitigate or prevent some of the undesirable effects such effort may end up having.

5. Current Caseload and Results of the CRRPD

Today, the CRRPD has received close to 135,000 claims, out of which more than 55,000 concern properties located in the Kirkuk area. The total number of claims that have so far been decided

amounts to little over 37,000, i.e. about one fourth of all claims. On its face, the latter figure is quite impressive, giving the complexity of the CRRPD procedures and, especially, the situation in Iraq over the past few years. In terms of the actual outcome of the CRRPD the situation is, however, slightly less positive than the figures may lead one to believe and this for a number of reasons.

The first reason is that, according to the CRRPD, approximately 9000 decisions will have to be re-reviewed as a consequence of the changes introduced by the CRRPD Law. As the Law changed the valuation criteria for compensation, all compensation decisions that were decided in application of the IPCC statute now have to be reconsidered as to the awarded amount. At the same time, also restitution decisions involving a secondary occupant will have to be re-reviewed, as the CRRPD introduced the formal right of the secondary occupant to receive compensation in case the property is returned to the original owner. It is unclear at the moment how long this re-review will take.

The second reason is that a significant number of successful claimants face difficulties in having their CRRPD restitution decisions enforced. While accurate figures regarding the enforcement rate are lacking and likely to differ from region to region, it is generally assumed that a considerable proportion of final restitution decisions have remained un-enforced. Anecdotal evidence suggests that until recently this was at least in part due to the unwillingness of certain Property Registration Offices to re-register property in name of the original owner on the basis of a CRRPD decision. Of late, this situation appears to have improved after repeated interventions by the Head of the CRRPD. A continuing problem, however, appears to be the difficulties faced by the Enforcement Department of the Ministry of Justice to evict unwilling current occupants due to the prevailing security situation and the lack of capacity. Especially in areas with high rates of violence, the Department and the Police are said to lack either willingness or capacity to enforce CRRPD restitution decisions against unwilling occupants.

A third reason why the situation is less positive than the decision rate appears to suggest is the low rate of enforcement for compensation decisions. It was not until December 2006 that the CRRPD and the Ministry of Finance agreed on a procedure to pay compensation to successful claimants and this despite the fact that the Iraqi State Budget for 2006 had specially allocated \$200 million for CRRPD compensation payments. Initially reluctant to get directly involved with the payment of compensation –a responsibility which the CRRPD Law lays with the Ministry of Finance– the CRRPD is now itself paying out compensation to the claimants with funds drawn from an account funded by the Ministry of Finance based on groups of position compensation decisions presented to it. So far, four groups of claims have been compensated, in total amounting to little more than one hundred cases. It is clear that the compensation rate will need to increase drastically for the CRRPD to live up to the promise of its statute.

Lessons Learned: A Lack of Capacity in Existing State Institutions Needs to be Taken into Account at the Outset

One common reason to establish special-purpose property restitution commissions is that the other state institutions lack capacity to deal with a large property claim load in a fair and expedient manner. The example of the CRRPD and other experiences show however, that somewhere in the flow, the property restitution effort will always need to rely on the collaboration and input of other, already existing state institutions. Concrete examples include the provision of documentary evidence (cadastre or property registration department); enforcement of property transfer protection rules while claim is pending (court system); enforcement of decisions (police); the payment of compensation (Ministry of Finance; banking system); the re-registration of property (cadastre or property registration department) and others. Moreover, such commissions will inevitably be affected by the prevailing administrative and political culture in either a positive or a negative way.

The establishment of a property restitution commission in a weak or partially functioning state will thus raise a number of sometimes very complex issues. One issue is the lack of capacity or resources in existing state institutions. This can be addressed through ensuring at the outset that the relevant

institutions and their staff throughout the territory are, on the one hand, made aware of the property restitution process and their role in it and, on the other hand, are given additional resources and capacity including training to deal with the extra workload caused by that process. Of course, in countries where the state is virtually absent in large parts of the territory, a state driven process of property restitution may simply not be a viable option as in such cases the capacity and resource gap is simply too large to be filled in a short period of time.

Another, even more difficult problem is posed by the situation where existing state institutions are politicized or corrupt and the rule of law and good governance culture is weak or non-existent. If in a country the rule is a politicized administration that works primarily in the service of local or national political elites, it will be extremely difficult to mount a large-scale property restitution process with national resources alone. Here, the establishment of an international commission or structure may be required even though, at some stage of the process, such a structure will also have to rely on local state institutions. Moreover, the functioning of such an international body poses its own challenges e.g. in terms of an (initial) lack of local knowledge, significantly higher cost and its integration into the local legal framework.

In this area no quick fix solutions exist. To discuss and debate how such contextual factors can best be dealt with is, however, an urgent task. Most states where post-conflict or post-authoritarian regime property restitution is likely to be an important political issue in the near future are states that are weak and malfunctioning in the sense described here.

6. The Future of the CRRPD: Some Open Questions

It is very difficult to make any sensible predictions about the future of the CRRPD in a situation that is as volatile and unsettled as Iraq is today. So instead, I will end with a few open questions which, I think, capture the magnitude of the challenges the CRRPD faces in the coming months and years.

Will the CRRPD be able to resist the politicization and sectarian fragmentation that increasingly appear to affect the Iraqi state and its institutions? How long can the CRRPD continue to carry-out its daily operations in a context where in many regions of Iraq law and order have all but broken down and where more and more people are literally scrambling to survive? What is the impact of the large-scale displacement that continues to take place in Iraq today on the work of the CRRPD and the situation of its claimants? Do the losers in the property restitution process consider the CRRPD to be engaged in a legitimate effort to redress past wrongs or do they see the CRRPD as simply one more manifestation that the Iraqi state is out to take revenge on the Sunni community? And finally, how long will there be sustained political will to fund a property restitution effort that may well take more than one decade to finish its work and that addresses crimes that are rapidly being overshadowed by the staggering scale of violence and atrocities inflicted on the Iraqi population on a daily basis?