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MINE ACTION AND HLP GUIDANCE NOTE IRAQ

MA and HLP Focal Points

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Background

Overview

The Republic of Iraq is believed to be the world's most heavily contaminated country, with extensive and complex explosive hazard (EH) contamination stemming from a multitude of conflicts over the past decades, including the most recent EH contamination resulting from the conflict with the so called Islamic State of Iraq and Levant (ISIL). The type and the extent of the EH contamination in Iraq is unprecedentedly vast and multi-layered, including conventional explosive remnants of war (ERWs) such as anti-personnel mines (AP), anti-vehicle mines (AV), cluster munitions and other conventional ordnance, as well as most recently witnessed improvised explosive devices (IEDs). That, combined with the evolving nature of contamination from traditional minefields, battle area and cluster contamination to more urban and residential EH contamination, makes Iraq a pioneer for the sector of mine action and housing, land and property rights (HLP) with various the complexities of the nascent humanitarian operational environment.

An unstable security situation; fear and trauma; lack of social cohesion; issues related to documentation; lack of livelihoods; destroyed or damaged housing, as well as perceived fear of EH contamination all contribute to protracted displacements of internally displaced persons (IDPs), as well as secondary and new displacement of populations in need. Negative coping mechanisms that the persons in humanitarian need resort to, such as secondary occupation of properties, engaging in removal of EH by civilians, or paying third party groups to do so, among others, contribute to an unsafe, unsustainable, involuntary and undignified return process of IDPs to their areas of origin. According to the 2019 Iraq Humanitarian Needs Overview (HNO), the issue of protracted displacement will extend well into 2019 with predictions of it rolling over to 2020 and the coming years.

The most recent conflict in Iraq has pushed millions of people to flee their homes, causing 6.7 million to be in urgent need of humanitarian assistance, still in 2019. There are approximately 2 million IDPs living in camps and informal non-camp settlements, who are unable to return to their homes.

Humanitarian facts

The most recent conflict in Iraq saw the start of fighting in Anbar governorate in 2014. With the fall of Falluja under ISIL control, 85 000 people were forced into internal displacement. This number peaked to well over 3 million in the following years. Today, according to the 2019 Iraq HNO, there are almost 2 million IDPs, while 6.7 million people remain in need of humanitarian assistance and protection; 3.9 million are returnees; children also amount to a big proportion of people in need at 3.3 million, and women and girls amount to 3.3 million in need of humanitarian assistance and protection.¹

¹ 2019 Iraq HNO

22% of IDP households in camps cite explosive hazards as the top reason for not intending to return to their areas of origin; 12% out of camp IDP households cite the same.²

As per the 2019 Iraq HNO, forced evictions, extensive damage, destruction and secondary occupation of properties in retaken areas, coupled with an uneven access to documentation, compensation and restitution mechanisms, create additional burdens and obstacles for securing tenure, particularly for female-headed households and individuals with perceived affiliations to extremist groups.

33% of in-camp IDP households cited damage/destruction, secondary occupation, or lack of proof of ownership—as a reason for not returning to their areas of origin.³

Camp closure and consolidation is a pressing issue in present day Iraq, especially given the risks pertaining to the extent of explosive hazard contamination. The camp closure process is volatile and the responsible Government of Iraq (GoI) authorities do not have a coordinated systematic process and approach (mostly affecting the camps in Centre-South: Anbar and Baghdad governorates)⁴. A number of informal settlements are reportedly targeted by security actors and IDPs are threatened with evictions confiscation of identity documents, which creates increasing pressure to prematurely return to the areas of origin. Such coercion has been ongoing since October 2017 and will likely continue in the future. Informal settlements host a large number of IDPs and are connected to an increasing number of verbal reports raised through Protection Working Groups about incidents where IDPs returned to their homes and were injured by EHs.⁵ Coerced returns with concerning freedom of movement restrictions in some locations may push IDPs to return to their areas of origin which are unsafe in large due to the EH contamination as well as damaged or destroyed housing.

Mine Action Overview

Extensive and complex explosive hazard contamination in retaken areas, as well as the whole of Iraq continues to impede humanitarian access and safe, sustainable, voluntary and dignified return of IDPs, leaving civilians – particularly men and boys - at grave life threatening risks. Additionally, access to victim assistance remains unsatisfactory and uneven across Iraq, leaving victims/survivors without adequate provision of services.

The presence of EHs in retaken areas inhibits humanitarian and stabilisation efforts, impedes the safe, voluntary, dignified and sustainable return of IDPs, stunts reconstruction and recovery efforts and demands to be appropriately addressed in a timely manner. Survey and clearance are urgently required to facilitate and enable these activities, and risk education programmes are essential to assist in reduction of accidents before they occur. Victim assistance and referral pathways are imperative to be strengthened in order to ensure a comprehensive approach to humanitarian mine action and maintain the centrality of protection of the population in need in Iraq.

² MCNA VI Data, Reach Initiative, Iraq

³ MCNA VI Data, Reach Initiative, Iraq

⁴ Centre-South Protection Working Group information, Protection Cluster, Iraq

⁵ Ibid.

The scope, scale and severity of current contamination is without precedent. Mine action organisations require significant resources to be able to support the Government of Iraq to effectively address both the complexity of EH contamination in retaken areas, as well as the existing EH contamination across the whole of Iraq from decades before.

MA Context in Iraq

There are two national mine action bodies in Iraq: the Directorate of Mine Action (DMA) under the Ministry of Health and Environment and the Iraqi Kurdistan Mine Action Agency (IKMAA), under the Kurdistan Region of Iraq (KRI) Prime Minister's Office.

There is a lack of a reliable survey data on suspected and known explosive hazard contamination in Iraq. This negatively impacts operational planning and can lead to overlapping efforts and thus inefficient use of very limited, expensive mine action resources. This issue can also result in areas either not being subjected to Technical Survey (TS) or more importantly having any clearance activity undertaken. IMAS compliance is inconsistent, particularly to IMAS 07.11 on Land Release and Mine Action guidelines also vary across the Regional Mine Action Centres (RMACs).

There is no existing written clear guidance from the GoI and the national mine action authority on the prioritisation of areas and activities and tasking of humanitarian mine action operators for survey and clearance of residential areas and properties. Lack of a transparent conflict sensitive prioritisation system for residential and private property clearance may create or exacerbate existing inter-community tensions along religious, ethnic or class cleavages. People with perceived affiliations to extremist groups are particularly vulnerable, as they may no longer have ownership documents, are susceptible to secondary occupation and may get marginalised or discriminated against in a prioritisation process for residential area clearance tasks. This is of particular importance given that there is an ongoing issue in some areas the country of the continued persecution and exclusion from ongoing activities of some minority religious groups, with a potential of mine action operations, accessibility of houses/properties and an increase in value of the properties being used not in favour/against certain groups.

Given that 1.8 million IDPs are to return to their areas of origin, this leaves a limited Government capacity to respond to the increasing number of requests for residential clearance by returnees, as well as host and remaining communities. Such situation results in civilian population engaging in "self-clearance" activities and other negative coping mechanisms, such as hiring third-party civilians to remove suspected EHs from homes/properties. Men and boys consist over 90% of EH victims in Iraq, as per the latest data available, which makes them a group of predominantly extreme vulnerability.⁶ Women and girls are also vulnerable, as provision of services to the next of kin and female headed households is inadequate across the country. Additionally, victim assistance services, including physical therapy, physical rehabilitation and psycho-social support are scarce and not systematically available throughout Iraq.

Moreover, there is a significant gap in legal clarity regarding liability of mine action operations in relation to the residential area and private property clearance. There is no written legislation or policy in place to protect the mine action operators from legal actions and residual liability, should a property be damaged during mine action operations or even to establish whether the property damage occurred independent of the mine action intervention (i.e. conflict damaged housing/properties).

⁶ Iraq 2019 HNO

In Federal Iraq, only Iraqi Security Forces (ISF) are authorised to use explosives to render items safe, which impacts the security in the area, as explosive hazard items can potentially be left uncovered, rendered safe, but undestroyed, with an opportunity for the devices to be recovered by extremist groups and armed non-state actors. Civilian mine action entities are not allowed to use specialised equipment such as disruptors, explosives/energetics, which furthers the problem of safety of humanitarian mine action operations and poses a challenge - slowing down clearance operations and placing the operators at greater risk with increasing the chances of accidental detonation while rendering explosive hazards safe.

The added complexity when it comes to mine action operations in Iraq, particularly pertaining from the most recent EH contamination relates to historic and cultural heritage homes and properties. The sensitivity of addressing cultural heritage through mine action operations as an enabler for any reconstruction or rehabilitation efforts is multifaceted, costly and time consuming. The rubble removal has to be done carefully and requires manual approach with on-site explosive experts.

Mine Action Sub-Cluster

The Mine Action Sub-Cluster was established under the UN Cluster system and a recommendation of the Humanitarian Country Team (HCT) in Iraq and the Emergency Relief Coordinator (ERC) to activate the Cluster system in February 2014, during a Level 3 Emergency. As such, the MASC focuses on the areas prioritized under the Humanitarian Needs Overview (HNO) and the Humanitarian Response Plan (HRP), which in 2019 are namely the five governorates affected by ISIL: Anbar, Ninewa, Salah Al-Din, Kirkuk and Diyala in addition to the IDP camps and informal IDP settlements across Iraq that emerged as a result of conflict in the past few years. MASC supports the work of the National Protection Cluster (NPC), the Sub-National Protection Working Groups (PWGs) and the Governorate-level PWGs in line with the Inter-Agency Standing Committee (IASC) Reference Module for Cluster Coordination at the Country Level. The MASC strives to strengthen Government coordination in anticipation of cluster de-activation at the end of 2019 or 2020.

The Mine Action Sub-Cluster continues to engage on the following points regarding strategic advocacy on Residential Clearance:

- Increase bilateral support to existing ISF EOD capacity
- Legal framework protecting humanitarian mine action operators in place, including formal transfer of liability following post-clearance inspections and handover
- Approval to use specialized equipment to conduct clearance more safely and efficiently
- Transparent conflict-sensitive prioritization process for mine action activities, including residential area/property clearance addressing the humanitarian needs of the most vulnerable/at need population, with protection concerns taken into account, which promotes community reconciliation and avoids exacerbating tensions.

HLP Overview

Iraq has in the past few years experienced a massive wave of displacement creating an intricate housing, land and property situation. During the conflict with ISIL, many Iraqi citizens had their property rights violated, such as having lost possession of their property or have had their property damaged or destroyed by different actors.⁷ Approximately 5.8 million Iraqis were forced to abandon their homes and leave their areas of origin as a consequence of fear of violence, lack of freedom of movement, lack of access to basic services.⁸ In conflict-affected areas, unlawful seizure, sale, systematic looting, explosive hazard contamination, and damage/destruction of properties are highly common, all of which are an impediment for IDP households to return to their areas of origin and accessing/rebuilding their homes.

HLP Context in Iraq

A low percentage of Iraqis have appropriate ownership documentation. A high number of Land Registry offices were destroyed during the conflict, impeding property-ownership transfers, registration, and document restoration in affected governorates.

Female-Headed Households and widows are particularly vulnerable with respect to tenure security. This is due to cultural norms and barriers that sometimes discourage/forbid women from being formally registered as property owners.

Damaged and destroyed housing/buildings are vast and indicative of EH contamination. According to an assessment report by the Iraqi government and World Bank assessment, there are approximately 138,051 residential/housing buildings are impacted half of these structures are destroyed beyond repair.⁹

Due to the large-scale of damaged, missing or non-issued property-ownership documents (tapoo), the number of forged documents is high. This in-turn leads to issues related to legal ownership of properties.

Secondary occupations of residential properties remains a pressing issue, impacting returns, ownership verification processes, and EH clearance activities.

⁷ According assessment of January 2018, conducted by UN Habitat and Ministry of Planning, there are approximately 60,000 houses destroyed during the armed conflict. The damage/destruction assessment is based on satellite imagery and covers only category 3 and 4 of house destructions. According to the Government of Iraq's Damage and Needs Assessment of Affected Governorates, out of 138,051 houses that have been damaged or destroyed, the district of Mosul, which is located in the governorate of Ninewa, holds the largest share of recorded number of damaged housing, compared to districts in other affected governorates, IRAQ RECONSTRUCTION and INVESTMENT, *Damage and Needs Assessment of Affected Governorates*, Part 2, January 2018.

⁸ Displacement Tracking Matrix (DTM), <https://www.iom.int/countries/cxzs/iraq>

⁹ Iraq Reconstruction & Investment, Part 2, Damage and Needs assessment, World Bank Group, January 2018.

HLP Sub-Cluster

The Housing, Land and Property (HLP) Sub-cluster was established under the UN Cluster system and a recommendation of the Humanitarian Country Team (HCT) in Iraq and the Emergency Relief Coordinator (ERC) to activate the Cluster system in February 2014, during a Level 3 Emergency to address the needs of Internally Displaced Persons (IDPs). The current Humanitarian Response Plan (HRP) for 2019 covers the whole of Iraq, and targets 1.8 million IDPs living inside and out of camps, returnees, at-risk host communities, and populations in hard-to-reach areas. As such, the HLP SC focuses on the areas prioritized under the Humanitarian Needs Overview (HNO) and the Humanitarian Response Plan (HRP), which in 2019 are namely the five governorates affected by ISIL: Anbar, Ninewa, Salah Al-Din, Kirkuk and Diyala in addition to the IDP camps and informal IDP settlements across Iraq that emerged as a result of conflict in the past few years. HLP SC supports the work of the National Protection Cluster (NPC), the Sub-National Protection Working Groups (PWGs) and the Governorate-level PWGs in line with the Inter-Agency Standing Committee (IASC) Reference Module for Cluster Coordination at the Country Level. The HLP SC strives to strengthen Government coordination in anticipation of cluster de-activation at the end of 2019 or 2020.

Recommended Approach

Mine Action Sub Cluster should establish a systematic referral pathway for HLP disputes together with the HLP Sub Cluster and subsequently key HLP partners in country, which would be of particular importance once the UN Cluster system is phased out. The pathway would be activated through each mine action organisation informing the MA SC of the specific case that requires HLP support, in case of a dispute or lack of clarity of ownership. The MA SC should contact the HLP SC within 24h for guidance and advice. HLP SC may consult with the HLP SAG and revert back to the MA SC within additional 24h on the status of the case and the potential way forward. The MA SC should immediately inform the MA SC actors who requested the support.

Humanitarian partners engaging in mine action which overlap with housing, land and property issues, such as residential area/private property survey and clearance, should primarily identify and contact the relevant MA and HLP coordination mechanism/sub cluster or lead agencies in absence of a coordination mechanism/cluster (UNMAS and UNHABITAT) to gather overview of the most recent context and any relevant and most recent MA and HLP developments.

MA actors should inform themselves, including through the MA SC and as per the Iraqi Law, of relevant pathways that ensure the protection of HLP and tenure rights of households during EH survey and clearance, in the planning phase of the project/programme development and prior to implementation of any MA survey and clearance activities.

The mine action organisations should further ensure to comply with the HLP Due Diligence prior to engaging in any survey and clearance activities. This is of utmost importance for residential areas, private residencies and properties, as well as objects/areas where public/private ownership division is not clear.

If requested to do a spot task in a residence or within the legal boundaries of private property, mine action actors should refer to the HLP Due Diligence Guidance and ensure conflict-sensitive approaches and protection of the rights of civilians are respected, while upholding humanitarian principles, as per International Humanitarian Law and International Human Rights Law.

Mine Action actors have to at all times ensure compliance with the International Mine Action Standards (IMAS) and National Mine Action Standards (NMAS), as well as refer to the National Mine Action Strategy document and any relevant official guidance from the GoI regarding mine action activities and cross cutting HLP issues.

HLP Due Diligence Process Map

MA actors engaging in EH survey and clearance of civilian properties should increase their knowledge and capacity on HLP rights and redress mechanisms. This is important due to the fact that households often do not have any prior knowledge of issues related to MA and HLP, and thus might seek information related to their HLP rights from MA actors.

Accordingly, the following steps should be taken by MA actors when developing and implementing their activities:

1. Learn about HLP framework in Iraq

It is important for MA actors to have a comprehensive understanding of the HLP context in Iraq. In cases of uncertainty or in the absence of an HLP focal point, MA actors should consult with HLP experts in order to clarify the underlying HLP issues. This is particularly important as the HLP context differs across the governorates. MA partners are encouraged to get in touch with the MA SC and HLP SC jointly to seek information from the HLP SC regarding an overview of the HLP framework in Iraq. HLP SC should support accordingly. In the absence of a cluster system, the MA actors should seek support from UNMAS and UNHABITAT who should provide basic information on the HLP overview and refer further to government and NGO stakeholders for more in depth information, if deemed necessary.

2. Understand the HLP Compensation Scheme

As Iraq has faced many conflicts over the years, it is crucial for the MA actors to acquaint themselves with the compensation scheme for damaged/destroyed properties (Law 20 and 57, Amendment I) and any other relevant legislation that may arise.

3. Address the following HLP/MA points:

- Gather information on national laws that regulate HLP rights and the basic HLP framework in country
- Identify functioning relevant offices in the area (such as the Land/Property Registry Office) which would be able to support resolution of HLP issues. In case there is no official office, identify a governing body/authority (i.e. community leader, mukhtar, mayor, governor, etc.) who may be able to support in dispute resolution
- Confirm whether the household is in possession of HLP ownership documentation. If no ownership documentation is available, identify alternative means for verification of property ownership in the area. In order to do so, your organisation needs to understand

the customs of how the HLP disputes are resolved in the area and follow the same principle, at a minimum.

- Learn what are the pressing HLP issues of vulnerable people, such as Female-Headed Households, widows, people with disabilities, etc.
- Understand what is the ethno/religious composition of the area and assess whether there is a potential for exacerbation of ethno-religious cleavages and potential conflict. If the demographics have changed after the conflict, there may be a higher risk of secondary occupation and HLP disputes, which may have protection implications and high conflict sensitivity.
- Evaluate how the mine action intervention may have potential implications on housing/property value.
- Always maintain the humanitarian principles of neutrality, impartiality, and do no harm.

4. HLP rights verification and Due Diligence

Establishing a minimum level of ownership of a property is a pre-requisite for any MA actors planning EH survey and clearance of private properties. This is vital in order to avoid any potential disputes (ex: secondary occupation) and accountability issues. Exercising due diligence in property-ownership verification should be done as follows: The verification of the HLP ownership documents should be as below;

- Identify the plot/land/house to be cleared from Explosive Hazards
- Establish ownership over the property that will be cleared
 - An establishment of ownership could be done with a valid ownership document presented by the owners themselves together with a valid identification document proving it is the same person. If the document is presented by anyone other than the owner than the next of kin relationship has to be proven (i.e. marriage certificate) in front of two independent witnesses.¹⁰ In such case, a document should be signed by all present parties – the claiming owner/next of kin and the two witnesses confirming the truthfulness of the ownership verification statement. The witnesses and the claiming ownership party all have to present valid identification document (i.e. national ID, passport, or UN issued documentation for IDPs and persons lacking legal identification).

Ownership verification statement example:

I, (full name), the undersigned, hereby confirm that the residential property at (exact address) is in ownership of my (state the legal relation to the owner) and I as such have the rights of usage. It is in absence of the owner and in my capacity as his/her (state the legal relation to the owner) that I confirm the ownership documentation before the below-signed two independent witnesses.

Signature (ownership claiming party)

Signature (independent witness 1)

Signature (independent witness 2)

Date and place

¹⁰ Independent witnesses cannot be in a familial or tribal relationship with each other, but have to be two independent Iraqi citizens

- Take a dated photo of the claiming owner/person with ownership rights in front of the residence with the two signatory independent witnesses, include the MGRS and a clearly written our address with the name of the place, district, and the governorate, and file it together with the signed ownership verification statement.
 - In case no ownership documentation is present the same statement and procedure as above should be followed, with an additional layer of verification from the local community leader or mukhtar, as well as the mayor being present and adding their signatures to the above statement in their official capacity.
 - In case the residence/property is of cultural or historical significance and heritage the above should be complemented with a third layer of verification from the governor. In such case a mandatory accompanying signed approval letters for mine action intervention at the site should be obtained prior to engaging in any EH clearance related activities from the governor, the mayor, the religious communities affiliated with the site, as well a letter from the Iraqi Directorate of Antiquities.
- Identify whether the beneficiary owns, rents or informally occupies the property and only engage in mine action activities if the ownership is clear and direct (as per the above point). If the property is rented or informally occupied, do not engage in any MA activities on the site.
 - Identify who owned the property prior to the conflict and if the ownership was legally transferred if different. Contact HLP SC for support in establishing the legality and verification of the transfer of ownership.
 - Identify the number of people who have an ownership stake in the property and ensure all owning parties consent to the mine action intervention
 - Check if there is a formal purchase/rental agreement available and take it into account when assessing the HLP situation (follow the above guidance on statements regarding ownership and consultation with the HLP SC for support)
 - Identify whether there are competing claims of ownership on the property and if so, disengage from any MA intervention on the disputed property.
 - Refer to the Mukhtar and local leaders when verifying property-ownership documents, as per the above guidance on ownership statement verification
 - Ensure that women, persons with disabilities, and other vulnerable groups are not excluded in the due diligence process
 - If clear ownership cannot be established, disengage from any mine action activities on the concerned property/residential area

5. Conduct awareness-raising on EH clearance activities

One of the key steps to ensure that a project will be implemented successfully, is awareness raising to community. All MA partners should conduct awareness raising by informing and educating the community on MA and HLP related issues, within the vicinity of the working area (i.e. the nearby village/town). Informing the community about their rights related to MA and HLP would enable the mine action actors to more effectively implement their project. It should be emphasized that coordinating awareness raising activities together with local leaders and engaging the community to participate in awareness-raising sessions would help reach the targeted beneficiaries more easily, as well. One of the main important issues to inform the beneficiaries about is the compensation scheme of the war damaged/destroyed properties. In this regard, all MA partners should inform beneficiaries on the compensation scheme in Iraq as per Law 20 and 57 (first amendment). Further information can be found in Compensation Guidelines and Advocacy Paper released by HLP Sub-cluster, Iraq. HLP Due Diligence, which is released by HLP SC, would help MA partners as well to understand more HLP related issues.

6. Ensure your organisation and operators have a 3rd party liability insurance

As operations in conflict damaged properties are conducted in structurally unstable environments, it is particularly important that the MA actors ensure their operational staff and their organisation has a comprehensive 3rd party liability insurance scheme. Moreover, as there is no clear written guidance from the GoI and DMA on accountability and liability in case of accident or damage during survey and clearance operations of residential areas and private properties, the responsibility lies upon the MA actors to ensure their operations and staff to the best of the ability possible. Therefore, it is strongly advised that all mine action operators in Iraq planning to engage in residential and private property clearance obtain the third party liability insurance prior to the start of the survey and clearance operations. In case of absence of the third party liability insurance, and if the MA operator is conducting non-residential non-private mine action activities and is requested to do a spot task in a residence or other private property, the MA organisation should immediately consult with the MA and HLP SC for advice on how best to proceed.

7. Ensure your organisation has internal SoPs, Operational Plan and Guidance on mainstreaming HLP into MA interventions and programming, prior to engaging in any MA activities with potential HLP disputes.

For guidance and referral on developing MA and HLP specific guidance, contact the MA SC and HLP SC, as well as UNMAS and UNHABITAT for reference.