



HLP AND MINE ACTION— IRAQ

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WHAT ARE HOUSING, LAND AND PROPERTY (HLP) RIGHTS?

- HLP rights are about having a home, free from the fear of forced eviction; a place that offers shelter, safety and the ability to secure a livelihood.
- The concept of HLP includes the full spectrum of rights to housing, land and property held according to statutory and customary law or informally.
- HLP rights go beyond 'ownership'
 - Other forms of rights such as user rights (e.g. rights held by tenants) or easement rights (e.g. traditional passage through a piece of land or through neighbour's land).
- HLP rights can be held on an individual basis or collectively

WHAT ARE HOUSING, LAND AND PROPERTY (HLP) RIGHTS?

- HLP rights can be documented (land title, lease agreement) or not. The lack of documentation **does not mean that the right does not exist**
 - Different people or groups can have rights to the same piece of land, including those who have been displaced.
 - Overlapping land tenure systems and rights can be complex to understand
- => NRC HLP assessment Sinjar and Zummar



LAND TENURE IN IRAQ – COMMON ISSUES

- **Double ownership** (Telafar/Zummar) -> clearance can further fuel disputes
 - 20 % of beneficiaries interviewed by NRC Zummar teams reported land disputes post-clearance – relating to double occupancy and boundary disputes
- **Secondary occupation** (Sinjar)
 - Returns to Areas of Origin: potential for increased HLP rights issues and inter-religious tensions
- **Lack of documentation**
 - 49% of HHs in Ninewa governorate reported missing relevant HLP documentation of their current accommodation (February 2020)

WHY IS HLP IMPORTANT TO MAG AND OTHER HMA ACTORS?

Mine action interventions have the potential to:

- Exacerbate land conflicts or create new ones
- Contribute to land grabbing or forced evictions as value of land increases
- Maintain or entrench gender inequalities in access to land
- Undermine food security if population relies on land for subsistence

So we want to ensure:

- **Do No Harm** : avoiding causing harm or exacerbating disputes
 - Individual level: trespassing/ theft/conflicts
 - Community level: conflict/displacement
- Reduce MAG's potential exposure to **property-related legal claims** (trespassing, damage, negligence)
- Contribute to **positive protection outcomes**

MAG-NRC PARTNERSHIP - IRAQ

Formal partnership : Oct 2019 to Sep 2020

Main partnership objectives:

- 1. Assessment and mapping:** tenure systems, needs and barriers related to HLP issues and HMA in Ninewa (MAG areas of operations)
- 2. Due diligence:** expand the role of CL to enable them to collect information on HLP information and develop procedures for due diligence
- 3. Workshops**
- 4. Training of (70) CL staff:** collection and processing of HLP information and identification of individuals requiring HLP advice and support
- 5. Referrals** from MAG to NRC ICLA teams to support with provision of legal assistance on HLP and related legal identity issues

WHAT TYPICALLY GOES INTO A DUE DILIGENCE ASSESSMENT?

Primarily about understanding land ownership claims and land use practices in a location

This can be as simple as asking several stakeholders about the land, or as complex as checking deeds

Where there is a cadaster or other formalized record keeping, it is good to check that.

Many places that will have mine contamination will have had disrupted cadasters or low reliance on state administration of land

It is important to remember that land use and ownership is often a direct legacy of privilege: gender, ethnicity, religion, political affiliation. It may not be appropriate to intervene, but it is critical to be cognizant of.

OBTAINING AN HLP ASSESSMENT

Sometimes a specialized actor, such as NRC, is available. This is less likely in non humanitarian settings

-Substitutes could include:

- Local land activists

- Local NGOs that work on community issues

In the absence of an external actor to conduct an assessment, a very basic way to start is to ask a range of local stakeholders “whose land is this?”

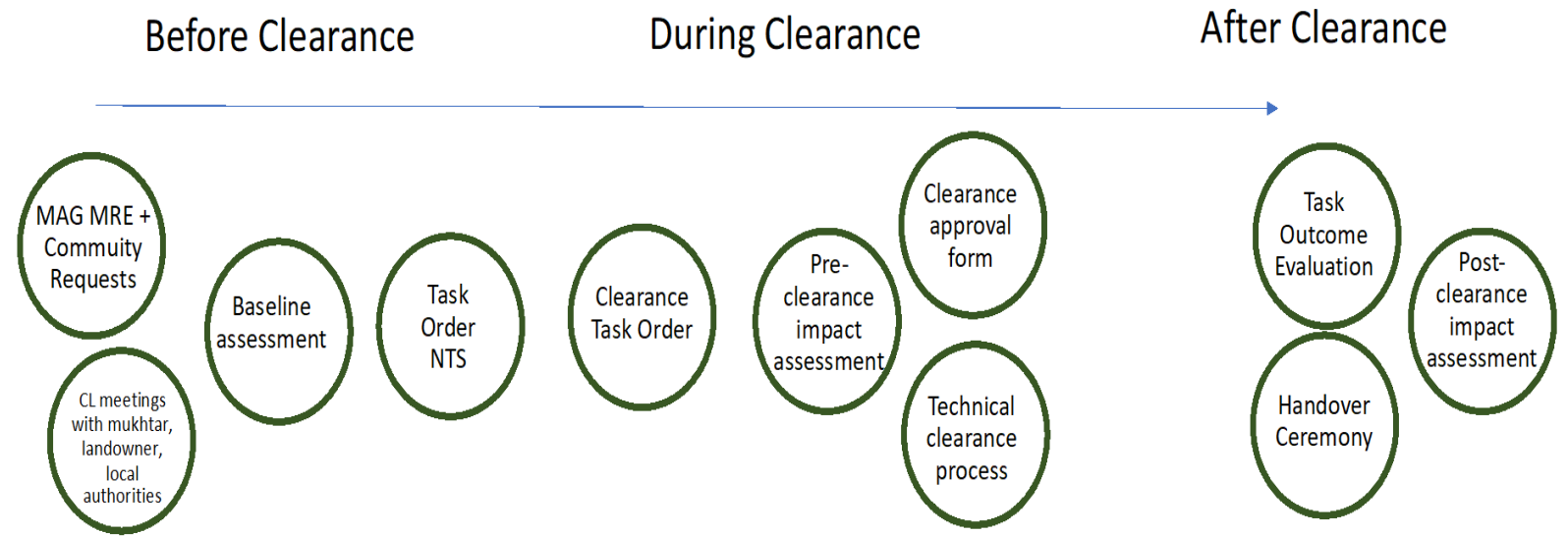
Multiple conflicting answers will offer information about the likelihood of conflict



APPLICATION

IDENTIFYING HLP ENTRY POINTS

Stage in MAG process:



HLP issues:

- HLP specialist organisation provides background on HLP in the area incl. tenure types and documentation
- Stakeholder consultation identifies current HLP disputes and potential future issues
- Assessment includes consultation with displaced communities
- MAG decisions on clearance using HLP policy
- Possible NRC HLP and civil doc info sessions
- Clearance approval includes due diligence on HLP – identifying individual + household HLP issues
- Use different types of tenure documentation for clearance approval form
- Mitigation measures for issues such as multiple ownership claims, inheritance issues
- Referral to NRC for support where needed
- Post-clearance assessment identifies changed land use practice and HLP disputes
- Referral to NRC for some ongoing HLP and civil documentation issues
- MAG trends analysis and advocacy

GUIDELINES FOR APPLICATION - IRAQ

- Not always going to be possible to verify ownership to 100% degree of certainty
- Before clearing private property, MAG shall establish that a person **is more likely than not** the owner of the property and obtain their permission for clearance
- **Humanitarian exception:** in cases where ownership is unclear or owner is unable to give consent, private property will be cleared if the EO presents an **imminent, life-threatening risk** to individuals in neighbouring properties/general public
 - ⇒ Senior Technical Manager shall sign Clearance Approval form with note explaining why exception was granted



DUE DILIGENCE AND MONITORING— MAG IRAQ

Form	When is it used?
Survey and Clearance approval form	Pre-clearance
Clearance declination and disclaimer form	Pre-clearance
Proof of ownership documentation form	Pre-clearance
Pre-and post-clearance impact assessment	RCIA = Pre-clearance and immediately (3 months) after clearance CCIA = 12 months post-clearance for select tasks
Referral of HLP cases to NRC	When required

DUE DILIGENCE

Documentation Provided?***	Ownership Confirmed by Key Informants?	OK to Clear?
Owner's personal identification <u>AND</u> matching proof-of-ownership	One key informant	Yes
Owner's personal identification <u>OR</u> matching proof-of-ownership	Two or more key informants	Yes
Owner's personal identification <u>OR</u> matching proof of ownership	One or zero key informants	No. De-prioritize and refer case to an HLP actor for assistance.
Owner's personal identification <u>AND</u> matching proof of ownership.	Zero key informants	No. De-prioritize, seek confirmation from at least one key informant, or refer case to an HLP actor for assistance.
<p>*** If the owner is not physically present, and clearance is requested by someone else on their behalf, then further proof shall be obtained:</p> <ol style="list-style-type: none"> 1. Obtain the owner's consent remotely (i.e., by phone), or obtain a copy of an official certificate confirming they are dead/missing; and 2. Find <i>one additional</i> key informant who can verify the relationship between the person requesting clearance and the owner. 		



CHALLENGES AND LESSONS LEARNED

CHALLENGES IN APPLICATION

- Displacement – many landowners are absent
- Ownership documentation - not always available, especially in rural areas
- No suitable or determined time for filling the HLP forms - clearance plan
- Owners change their minds after signing the HLP forms
- House clearance: rubble removal problems
- Time-intensive for Community Liaison teams

REFLECTIONS

- Identification of an HLP partner to provide context-specific analysis of HLP issues => supports formulation of response/due diligence
- Adaptation is key: HLP due diligence process must be fit for purpose and context.
 - Changes to original forms include:
 - Details on existing damage to property
 - Description of property and planned survey/clearance for property
 - Amendment form to gain consent for further survey/clearance
- Need for impact assessment data on HLP in order to assess possible longer-term development of HLP issues