



# No Way Home: Iraq's minorities on the verge of disappearance



**Cover photo:**

Displaced boy in Ashti IDP camp in Erbil providing shelter to 1,200 mainly Christian families from Ninewa.

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## Acronyms

DTM	Displacement tracking matrix	KRG	Kurdistan Regional Government
ERW	Explosive remnants of War	KR-I	Kurdistan Region of Iraq
EU	European Union	NGO	Non-governmental organization
GoI	Government of Iraq	OCHA	UN Office for the Coordination of Humanitarian Affairs
ICC	International Criminal Court	OHCHR	Office of the High Commissioner for Human Rights
ICTR	International Criminal Tribunal for Rwanda	PARCs	Protection, Assistance and Reintegration Centers
ICTY	International Criminal Tribunal for the former Yugoslavia	PDS cards	Food ration cards
IDP(s)	Internally displaced person(s)	PMU(s)	Popular Mobilization Unit(s)
IED	Improvised explosive device	UN	United Nations
IOM	International Organization for Migration	UNAMI	UN Assistance Mission for Iraq
IQD	Iraqi dinar	UNHCR	(Office of the) UN High Commissioner for Refugees
IRC	International Rescue Committee	UNICEF	UN Children's Emergency Fund
ISF	Iraqi Security Forces		
ISIS	Islamic State of Iraq and al Sham		
JCMC	Joint Coordination and Monitoring Center		

# Key findings

Since June 2014, many thousands of persons belonging to Iraq's ethnic and religious minorities have been murdered, maimed or abducted, including unknown numbers of women and girls forced into marriage or sexual enslavement. Islamic State of Iraq and al Sham (ISIS) forces and commanders have committed war crimes, crimes against humanity and the crime of genocide, including summary executions, killing, mutilation, rape, sexual violence, torture, cruel treatment, the use and recruitment of children, and outrages on personal dignity. ISIS has used chemical weapons on these groups. Cultural and religious heritage dating back centuries continues to be destroyed, while property and possessions have been systematically looted. Other forces, including Iraqi Security Forces, Popular Mobilization Units and Kurdish Peshmerga, have also committed war crimes prohibited under applicable international law.

After almost two years, conditions in the internally displaced persons (IDP) camps remain desperate, and under-resourced. There are more than 3.3 million displaced persons, including minorities. Corruption is endemic. Many IDPs are now losing patience with return policies and restrictions, which are starting to generate further demographic changes in Iraq; as many as one in five IDPs feel that they have no choice but to flee the country. The anticipated displacement from a possible effort to retake Mosul could total as many as 1 million over the next year and the international community could witness the flight of hundreds of thousands of further refugees in 2016 alone.

Many minority communities in Iraq are now on the verge of disappearance. The Christian population, which before 2003 numbered as many as 1.4 million, had dwindled to 350,000 by early 2014, and since the ISIS advance is now estimated as under 250,000. Most of the Yazidi and Kaka'i populations have been forced from their traditional lands in Ninewa and are now subsisting as IDPs or have fled the country altogether. Similarly, Ninewa's Shi'a Turkmen and Shabak have fled *en masse* to Shi'a majority areas in the south of Iraq. Justice and reconciliation matters remain an unfortunately low priority for the governments in Baghdad and Erbil and, despite supportive rhetoric, for the international community.

At the time of writing there appears to be no serious Iraqi or international effort to build the political, social and economic conditions for the sustainable return of those who lost homes and livelihoods as a result of the conflict. Militias and unscrupulous local authorities are exploiting this vacuum. Thoughtful and realistic planning – with identification of financial and other resources – should begin immediately for the post-ISIS era, including gaining agreement on the establishment of security to allow for the return of affected minorities to their original homes and lands.

# 1

## Executive Summary

Islamic State of Iraq and al Sham (ISIS) continues to kill and kidnap, committing widespread and systematic violations of international humanitarian law, international criminal law and international human rights law. ISIS has used chemical weapons, enslaved, raped and tortured women as a policy, and implemented a sweeping programme of cultural heritage destruction. At the same time, ISIS' use of children and youth for military ends, including as soldiers, suicide bombers and propagandists, has become routine and is accelerating.

In this deadly campaign, civilians and civilian property are deliberately targeted, and attacks are carried out heedless of the effects on civilians. As areas have been wrested from ISIS control, a number of mass graves have been identified in Ninewa, Diyala and Salahaddin governorates. Iraq's minority components, including Yezidi, Turkmen, Shabak, Christians and Kaka'i have been disproportionately affected by the violence, consequently leading to a general loss of trust among these communities in both the central Government of Iraq and the Kurdistan Regional Government as to their ability or willingness to protect minorities.

Latest reports indicate that approximately 3.3 million individuals, including over 1 million school-aged girls and boys, are now displaced, making Iraq the country with the highest number and fastest growing rate of people displaced in the world in 2015. Overall, the United Nations estimates that 10 million people have been affected by displacement and are thus in need of humanitarian assistance.

Meanwhile, thousands of Iraqi women are still being held by ISIS fighters, subject to slavery and sexual violence, and in dire need of medical care as well as psychosocial support once eventually released. As ISIS swept through the Ninewa plains in the summer of 2014, the local population fled quickly. Some hoped they would be able to return home within a relatively

short timeframe. However, the two key conditions for return repeatedly flagged by internally displaced persons (IDPs), namely security and basic services, have yet to be met in most locations. And even when met, these must be combined with a defined strategy providing durable solutions for returnees which include the implementation of land and property rights, restitution and reconciliation efforts.

In light of the ongoing military campaign against ISIS such a strategy has not been given priority. Among communities that have suffered mass killings, abductions and sexual violence, the desire for revenge is often strong and may trump the call for justice.

Many IDPs are now losing patience with return policies and restrictions, which are starting to generate further demographic changes in Iraq; as many as one in five IDPs feel that they have no choice but to embark on the dangerous journey to flee the country. Given that anticipated displacement from a possible effort to retake Mosul may bring Iraq's IDP total well above 4 million this year, the international community could witness the flight of hundreds of thousands of further refugees from Iraq in 2016 alone.

There appears to be no serious Iraqi or international effort to build the political, social and economic conditions for the sustainable return of those who lost homes and livelihoods as a result of the conflict. Militias and unscrupulous local authorities are exploiting this vacuum. Consequently, there is a lack of trust that the government, regional actors, local officials, or the international community will provide the necessary support to facilitate returns, locate missing persons, provide justice, facilitate the difficult process of reconciliation and ensure the return of looted possessions and homes. The result will be another Iraqi lost generation, radicalized by homelessness and depredation, repeating the cycle that created ISIS.

The report makes 52 recommendations to alleviate the humanitarian burden, to prevent future human rights abuses, promote restoration and reconciliation, and safeguard asylum. These recommendations include:

1. Immediately begin planning for the post-ISIS era, including gaining agreement on the establishment of secure areas to allow for the return of affected minorities to their original homes and lands.
2. Work to convene an international conference involving representatives of Iraqi components, officials from regional and federal levels of government, and international actors to ratify post-ISIS plans and ensure agreement on withdrawal from occupied areas, security and human rights issues and restoration of infrastructure.
3. As the primary responsible actors, the Iraqi government and Kurdistan Regional Government should identify and provide adequate resources to support displaced Iraqis and develop a comprehensive strategy with implementable policies to address Iraq's humanitarian emergency.
4. Ensure that all units of Iraqi Security Forces (ISF), including Popular Mobilization Units (PMUs), operate transparently and accountably under the command and control of the Iraqi government. Ensure that all other militia groups operating in Iraq fall under the command and control of the Iraqi government.
5. Immediately halt ongoing human rights violations – including the destruction of civilian homes and property – by ISF, PMUs and Kurdish Peshmerga and other security forces.
6. Develop a strategy to advance justice for past atrocities and identify appropriate international and domestic resources. This strategy should include:
  - mapping of all the mass graves in the relevant territory, irrespective of their origin, giving priority to recent graves because they are more exposed to destruction;
  - organizing the relatives of victims for a proper ante mortem collection of data, and for addressing their doubts, expectations, etc.;
  - defining the human resources and infrastructure needs for the exhumation, storage and analysis of recovered remains;
  - conducting proper exhumation of bodies and associated evidence; and
  - performing forensic analysis of the recovered bodies and evidence, in order to establish identification and cause of death.

These activities need to be carried out by the proper authorities, with assistance from the International Committee of the Red Cross and others who are able to provide expertise and support, conforming to the highest international standards and in coordination with the relevant authorities.

If the Government of Iraq, the Kurdistan Regional Government and the international community do not act quickly, millions of displaced Iraqis will fall further into destitution this year, or they will choose to escape the country altogether, with irreparable damage to Iraq's once rich and diverse religious, cultural and ethnic tapestry.

## Methodology of the report

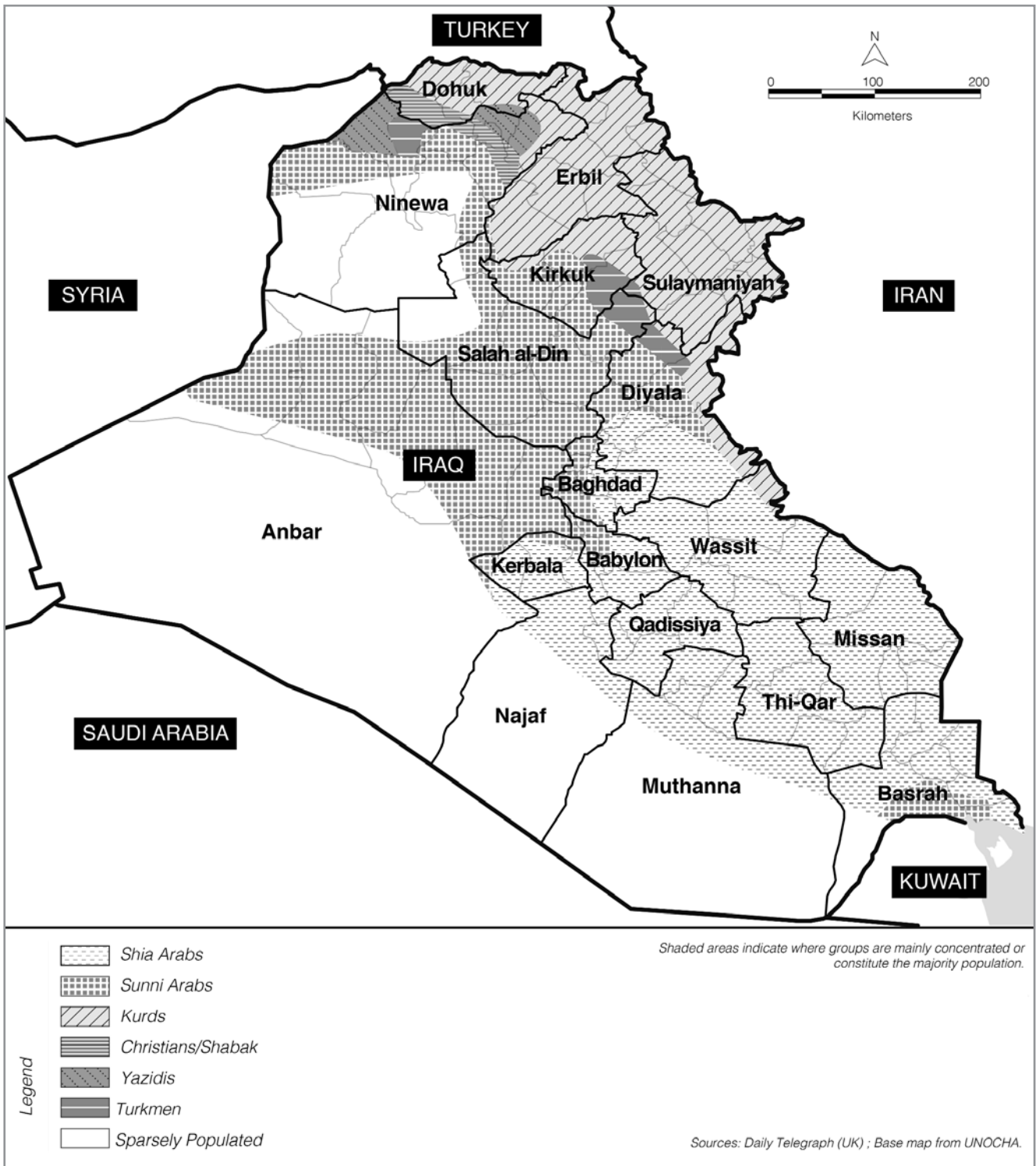
In gathering and analysing data for this report, we conducted extensive research from a broad range of sources (including human rights reports, civil society reports and press releases, academic journals, news outlets, country reports, Iraqi legislation, international conventions and other sources), with field-based research beginning in February 2016

forming the core of our approach. Data gathered for this report were obtained from the following key sources:

- interviews in Baghdad, Dohuk, Erbil and Kerbala with representatives from minority communities, displaced persons and other vulnerable populations;
- discussions with the Iraqi diplomatic missions regarding the current situation and possible solutions to address needs of Iraqi minorities in the north of the country;
- discussions with members of the Iraqi parliament, the Government of Iraq (GoI) and Kurdistan Regional Government (KRG), local government officials, NGOs and civil society activists;
- consultations with the Iraqi diaspora and members of the international community; and
- desk research from primary and secondary sources.



Ethno-religious population distribution in Iraq before 2014



# 2

## Background on affected minorities in the conflict zone

The ancient nation of Iraq is home to dozens of ethnic and religious minorities, from Bahá'í to Yezidis. This report seeks to document the plight of the five main groups most affected by the conflict since June 2014: Christians, Kaka'i, Shabak, Turkmen and Yezidis. This in no way minimizes the historic significance and current suffering experienced by other groups in Iraq, including among others Bahá'í, Bedouin, Black Iraqis, Circassians, Faili Kurds, Jews, Mandaean-Sabeans and Roma (Dom).

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Since the acceleration of violence following the fall of Mosul in June 2014, the question of numbers, data and population

information on ethnic and religious minorities has only grown more difficult. All population estimates are based on pre-June 2014 data and therefore serve as rough approximations only.

### Christians

Prior to June 2014, some two-thirds of the pre-2003 Iraqi Christian community – thought to number between 800,000 and 1.4 million – had already left the country. This includes Armenian Catholics and Orthodox, Assyrian Church of the East members, Assyrian Orthodox, Chaldean Catholics, Evangelicals, Protestants and Syriac Catholics and Orthodox.<sup>1</sup> Many consider these denominations to be distinct ethnic groups as these communities speak their own language, practise Christian traditions and often do not identify as Arab.<sup>2</sup> Ancient Assyrian civilization has made a well-known and indelible contribution to the history and culture of the region.

In the wake of the US-led invasion, community members were targeted for their religious differences as well as their perceived ties to the West, resulting in a large exodus of Christians from the country as refugees. In 2014, only around 350,000 Christians were still in Iraq,<sup>3</sup> mostly in Baghdad, Mosul and the Ninewa plain, Kirkuk, Basra as well as the three governorates in the Kurdistan Region of Iraq (KR-I).

### Kaka'i

Kaka'i, also known as Ahl-e Haqq or Yarsan, are estimated by community members to number between 110,000 and 200,000 in Iraq, mainly living south-east of Kirkuk and in the Ninewa plain near Daquq and Hamdaniya, with others also based in Diyala, Erbil and Sulymaniyah.<sup>4</sup> They are commonly considered a Kurdish subgroup and branch of the Shi'a faith, though the religion differs in important ways. The Kaka'i faith dates to the fourteenth century in western Iran



Christians at a Communion in Iraq. *Jeff Gardner.*

and contains elements of Zoroastrianism and Shi'a Islam. Nevertheless, their distinct practices and beliefs have resulted in some persecution. As a result, Kaka'i are secretive about their faith.<sup>5</sup>

## Shabak

The Shabak community have been located for centuries in the Ninewa plain area, between the Khazir and Tigris rivers and near Mosul, with a population of 200,000–500,000.<sup>6</sup> The majority are Shi'a Muslims, with Sunni Muslims making up the remaining 30 to 40 per cent. However, some Islamic militias view them as infidels and have targeted them as a result.<sup>7</sup>

Though culturally distinct, with their own customs, traditions, clothing and language, *Shabaki* – a mixture of Farsi, Arabic, Kurdish and Turkish – community members have been pressured to identify as Kurdish and experience persecution from both Kurds and Arabs as part of their broader territorial dispute over control of areas of Ninewa.<sup>8</sup> Shabak in Mosul have been forced to leave due to harassment and killings, with many taking refuge in Karbala and the KR-I since the city's fall to ISIS.<sup>9</sup>

## Turkmen

Turkmen, the third largest ethnic group in Iraq, are estimated by some community representatives to number as many as 2.5 to 3 million, though international sources give lower estimates. Though the majority are Shi'a or Sunni Muslims, there are reportedly some 30,000 Christian Turkmen as well. Most reside in the northern areas of Iraq,

with the largest concentration based in Kirkuk, and south as far as Wassit governorate, south-east of Baghdad.<sup>10</sup>

During the Arabization campaign under the former Saddam Hussein regime, the Turkmen population, along with Kurds and Assyrians, was expelled from their lands and replaced by Arabs from other areas of Iraq. After 2003, Turkmen and Kurds began to return to their original areas, resulting in tension with the Arab communities that had been moved to contested areas in the north, particularly around Kirkuk. Prior to June 2014, Turkmen were intimidated by Kurdish and central government authorities, as well as by extra-judicial militias, on religious and ethnic grounds as well as for their presence in the disputed territories.<sup>11</sup> More recently, Shi'a Turkmen have been summarily executed by ISIS fighters.<sup>12</sup>

Iraq's Turkmen community has strong support from Turkmen diaspora organizations such as the Europe Turkmen Friendships organization and other groups. Many Turkmen refugees from Iraq have travelled to neighbouring states but also to Europe, the United States and other Western nations.

## Yezidis

The Yezidi are an ancient religious group, present in the Middle East since approximately 4000 BC and based mainly in northern Iraq, though some are also based in neighbouring Syria and Turkey as well as various European countries. Most Yezidis speak Kurmanji, a dialect of Kurdish. Yezidism is also one of the oldest religions in the world still practised today, combining pre-Islamic

Zoroastrian, Manichaean, Jewish, Nestorian Christian and Muslim elements.<sup>13</sup>

Despite their distinct identity, some community members, as well as Kurds, consider Yezidis ethnically Kurdish. This reportedly has created conflict within the community and pressure from Kurdish officials and Kurdish-identifying community members, as well as death threats.<sup>14</sup> In addition, due to a misinterpretation of their religion, some militants regard Yezidis as heretical and not 'People of the Book'. They have been regularly targeted with violence as a result.<sup>15</sup> Prior to June 2014, the 2005 population of 700,000 had reportedly fallen to approximately 500,000,<sup>16</sup> with thousands of families having fled to Syria, Jordan and other states. Prior to June 2014, numerous incidents of arbitrary arrest, discrimination and other abuses against the community were reported by human rights groups.<sup>17</sup>

## Minority women and children

Although little disaggregated data is available, it is essential to highlight the particular situation of minority women and children. Besides the ongoing sexual violence and slavery in ISIS-controlled areas, minority women and children represent the most vulnerable group in Iraqi society, both as members of minority communities and as women and children. This effectively makes for double discrimination and increases the risk of exploitation and violence.

Women in Iraq generally face high levels of gender-based violence, including female genital mutilation, domestic violence, sexual harassment, murders in the name of honour, forced and early marriage, and human trafficking. These crimes continue to be perpetrated with impunity, with few prosecutions for rape and other acts of violence, exacerbated by the current violence that affects all minorities in the north.<sup>18</sup>

Children have also been particularly targeted by ISIS forces for killing, sexual violence and recruitment. Training for child soldiers occurs at several dedicated camps in Iraq and Syria. There are several reports of child soldiers as young as 13 accompanying ISIS patrols, dressed in similar attire and carrying weapons. Elsewhere, children were reportedly operating security checkpoints and even forced to act as human shields for ISIS fighters during combat.<sup>19</sup>

# 3

## The treatment of minorities since the fall of Mosul

ISIS' major military advance in Ninewa, and associated destruction and displacement, occurred from June to September 2014. This offensive began on 5 June 2014 with an attack on Samarra, then the capture of Mosul on 10 June 2014 and Tikrit and Baiji on 11 June. As disorganized ISF forces fled south from the fighting, Kurdish Peshmerga and other security forces occupied Kirkuk on 13 June 2014.

Since the fall of Mosul, fighting has engulfed several parts of Iraq with predominantly minority communities, including Yezidi, Christians, Turkmen, Shabak, Kaka'i and others. This fighting has centred in the Iraqi governorates of Ninewa, Salahaddin, Diyala, Kirkuk and Anbar.<sup>20</sup>

There are no accurate casualty figures, with estimates ranging from 15,000 dead to many times that figure. From January 2014 to the end of October 2015, the United Nations Assistance Mission to Iraq/Office of the High Commissioner for Human Rights (UNAMI/OHCHR) recorded at least 55,047 civilian casualties 'as a result of the non-international armed conflict in Iraq': 18,802 killed and 36,245 wounded. Improvised explosive devices (IEDs) were the deadliest tactic used against civilians. UNAMI/OHCHR note that the actual number of civilians could be much higher, and the number of civilians dead from secondary effects of the violence, such as lack of access to basic food, water or medical care is unknown. Children, pregnant women, persons with disabilities, and the elderly remain particularly vulnerable.<sup>21</sup>

The number of displaced persons, as of the end of May 2016 exceeding 3.3 million, is better calculated.<sup>22</sup> Most of these lost their homes and livelihoods as a result of ISIS actions, especially Iraq's minorities. The second largest percentage of IDPs was displaced during the month of August 2014 (23 per cent or 763,800 individuals), when hostilities affected Sinjar and other regions of Ninewa governorate.<sup>23</sup>

Since then, the number of individual reports received by United Nations (UN) officials has 'markedly decreased from previous reporting periods' – a fact that does not, however, imply an improvement in the security situation: 'It is likely that most of the members of ethnic and religious minority communities formerly located in areas of [ISIS] control have been killed or abducted [by ISIS], or fled' since the fall of Mosul. The UN adds that since ISIS-controlled areas are inaccessible for them, they cannot exclude ongoing human rights violations.<sup>24</sup>

### Death, destruction, abduction and ransom

ISIS continues to kill and kidnap, committing widespread and systematic violations of international human rights law, international humanitarian law and international criminal law. Chemical weapons have been used by ISIS. Civilians and civilian property are deliberately targeted, and attacks are carried out heedless of the effects on civilians. ISIS fighters co-locate with civilians or in civilian areas to shield fighters from attack.<sup>26</sup> For more information on violations of international law, see chapter 6.

There are a number of examples of the sweeping scale of the destruction of houses, shrines and other institutions belonging to Christians, Shabak, Yezidi and other ethnic and religious minorities in ISIS-controlled areas. To cite only a handful of examples, six houses in Mosul belonging to the expelled Christians of the city were destroyed by ISIS on 1 March 2015.<sup>27</sup> Similarly, more than 30 civilian houses, belonging to Christian families were blown up in Mosul area by ISIS between 2 June and 1 July 2015.<sup>28</sup> Other ethnic groups have also been affected by ISIS cruelty and destruction in Mosul; in the eastern part of the city, on 2 September 2015, 11 homes belonging to Shabak families were destroyed by ISIS.<sup>29</sup>

## ISIS atrocities at Kocho, August 2014

The story of Kocho village is emblematic of ISIS tactics. Following the withdrawal of Peshmerga forces and ISIS occupation of the settlement on 3 August 2014, on 15 August Kocho's

remaining 1,200 women and men were taken to a school. Men were placed on one floor of the building, women another. All the men were executed, and young boys were taken away to be trained by ISIS. Women were separated into three categories: older women, mothers and those who were pregnant, and

young women and girls. The older women and mothers were also reportedly killed, and the younger women were taken by ISIS and sold as sex slaves.<sup>25</sup> Kocho is only one example of ISIS atrocities that have taken place from Diyala to Anbar to Ninewa governorates.

Moreover, since the fall of Mosul, ISIS has destroyed, occupied, converted to mosques, reused as ISIS headquarters or shuttered all Christian institutions in Mosul. For example, all 45 churches and monasteries inside Mosul are reportedly now occupied by ISIS, who have looted, burned and destroyed property, in addition to removing the building's crosses.<sup>30</sup> The wholesale destruction and theft of Iraqi cultural heritage is discussed elsewhere in this chapter.

### Abductions

Since the fall of Mosul in June 2014, a large number of people belonging to minorities have been abducted and deported while trying to escape or to hide. ISIS' preferred targets are young women and children. Witnesses state that 'the elderly and disabled were abducted' by ISIS during the fall of Sinjar in August 2014; their whereabouts are un-

known.<sup>31</sup> Most young women and girls have become sex slaves for ISIS members or sold for profit.<sup>32</sup> Of particular concern is the fate of Yezidi women. While estimates are crude, approximately 3,500 Yezidi women are still held captive.<sup>33</sup>

On 1 January 2015, the remains of three Turkmen, reportedly abducted by ISIS in August 2014<sup>34</sup> were found by ISF in a village in Tuz Khurmatu district, Salahaddin. On 7 April 2015, Iraqi Turkmen MP, Nahla Hussein, disclosed that ISIS had kidnapped more than 400 Turkmen over the past few months, most of whom are believed to be children and women.<sup>35</sup> A Shabak leader interviewed in Baghdad in February 2016 confirmed this number, adding that most of the 416 kidnapped Shi'a Turkmen are believed to have been raped and killed.<sup>36</sup> On 9 August 2015, the Turkmen Rescue Foundation released a statement, reporting that 700 Turkmen in Mosul, including women and children, had been executed by ISIS.<sup>37</sup>

On 21 June 2015, local media reported that ISIS had abducted 1,227 children aged between 9 and 15 years from various districts of Mosul. The children were reportedly being forced to undergo training at ISIS camps on the eastern outskirts of Mosul. On 23 June, the then-Ministry for Human Rights issued a statement confirming the abduction, adding that they were being held at the al-Salamiya camp in Mosul, and that those who resisted ISIS orders were whipped, tortured or sexually assaulted. The children were divided into two groups: those between 5 and 10 years old were placed in a religious education camp, and those aged between 10 and 15 were forced into military training.<sup>38</sup>



With no place to stay Assyrian Christians are forced to live underground in unfinished buildings. *Jeff Gardner.*

## Ransom

As a result of anti-ISIS Coalition and Iraqi government efforts to undermine ISIS finances, ISIS has reportedly seen a loss of resources and income.<sup>39</sup> Human trade now represents an alternative income stream. Paying ransoms has developed into probably the only viable way to free these hostages: some have escaped their captors, but this is a small number comparatively speaking. Ransoms are usually paid by the families. In one representative story, a Yezidi man originally from Sinjar and displaced to the Sorka Camp in Dohuk governorate paid US\$80,000 to secure the release of 7 out of 45 members of his family who were abducted. The money was raised with the support of fellow members of the man's tribe.<sup>40</sup> UNAMI and OHCHR have reported similar accounts, for instance on 17 January 2015, 196 Yezidis were released from ISIS captivity after a US\$850,000 payment was made by two businessmen from Erbil and Kirkuk.<sup>41</sup>

However, the KRG claims that it has also paid ransoms. According to a senior Kurdish official, 'all of the [ransom] money for the liberated women has been paid for by the KRG', allegedly through a special office run out of the KRG Prime Minister's Office. The KRG reportedly secured the release of 1,800 women held by ISIS.<sup>42</sup> Yezidi leaders and Iraqi government officials emphatically deny these claims.

## Sexual violence and slavery

Women abducted by ISIS tell stories of abuse, exploitation and torture, including 'beatings, rape, electric shocks, forced marriage and sexual slavery'.<sup>43</sup> Women have faced sexual violence as a punishment measure and also as a reward to ISIS fighters. They have been exchanged by fighters as gifts, married by force with the purpose of rape<sup>44</sup> and repeatedly raped by ISIS fighters for enjoyment.<sup>45</sup> According to survivors, collective rape is also used as punishment for any attempt to escape.<sup>46</sup>

Generally speaking, during captivity hostages are kept in very poor conditions, and constantly harassed both physically and mentally. The health and hygiene of prisoners is left to chance, and no care is actually provided.<sup>47</sup> Survivors claim permanent injuries and sickness due to their captivity,

such as a Yezidi woman who contracted the parasitic disease visceral leishmaniasis during her nine months of captivity.<sup>48</sup>

While to date the international focus has been predominantly on crimes committed against Yezidi women and girls, over the past year many additional reports of sexual violence have emerged, extending to Christian and Shi'a women and girls in northern Iraq, and Sunni women who fled the violence in Anbar Province.<sup>49</sup> Shi'a Turkmen kidnapped by ISIS from Tal Afar have also reportedly been subjected to sexual violence, including rape, before being killed.<sup>50</sup> Additionally, as hundreds of thousands languish in IDP camps across the country for months, the incidence of sexual violence inside the camps has increased. In this case, it comes from within families. Children, living in the same room as adults, begin imitating their elders with other children or with families.<sup>51</sup>

Victims' ages usually range from 12 to 18, and there are cases of even younger victims, such as the case of a 10-year-old Yezidi child who was repeatedly raped and tortured over a period of 15 days in a school near Mosul before subsequently dying of her injuries.<sup>52</sup> ISIS fighters reportedly prefer younger women and girls, seeing them as exemplars of virginity and purity.<sup>53</sup> ISIS fighters in Eastern Syria are believed to have purchased Yezidi women as slaves for between USD 500 and USD 2,000.<sup>54</sup> ISIS sells women through the internet and social media, for example advertising an 11-year-old virgin with an asking price of US\$8,000.<sup>55</sup>

Victims and survivors urgently need physical and emotional support, and little or nothing has been done so far by Iraqi and Kurdish authorities, the international community and Yezidi communities themselves. Victims suffer a wide range of health issues, from severe post-traumatic stress to complicated gynaecological issues, disease and life-limiting disabilities; they are in great need of psychotherapy and counselling.<sup>56</sup>

At the national level there is no such structure able to properly assist victims. Officials in the KR-I asserted that 'no other groups' besides the regional government are providing assistance, but were unable to describe any specific Kurdish programming.<sup>57</sup> Meanwhile, the international response has been feeble. In 2015, Germany established a spe-

cial programme specifically developed for traumatized Yezidi women in need of psycho-social support.<sup>58</sup> The UN Population Fund has also sought to build multi-sectoral prevention and response mechanisms to address these issues. In partnership with UN agencies and other humanitarian organizations, women's centres have been established in some IDP camps to prove a space for women and victims as well as serving as an entry point for provision of directed assistance.<sup>59</sup>

## Cruel and arbitrary punishments

After taking control over cities and villages, ISIS inflicted severe punishments upon the civilian population. In Tikrit, to name one example, ISIS fighters killed hundreds of people, targeting civilians accused of cooperating with, supporting or being relatives of police or ISF members. Properties of those suspected of cooperating/supporting the central government were seized or destroyed. Most notoriously, following the recapture of Tikrit, mass graves containing as many as 1,700 Iraqi Army cadets – executed shortly after the fall of the city to ISIS in mid-June 2014 – were identified in the nearby Camp Speicher.<sup>60</sup>

A common pretext used by ISIS for punishment is the victim's refusal to convert to Islam. In August 2014, following the battle for and the seizure of Sinjar and other surrounding cities in Ninewa governorate, witnesses reported ISIS' attempts to forcibly convert hundreds of Yezidis, particularly targeted by ISIS as considered non-believers or heretics. Those who refused were executed.<sup>61</sup>

Generally speaking, after consolidating control militarily, ISIS progresses towards religious police, stricter punishments and a rigidly focused educational system. With ISIS's strengthened judicial system also comes an increase in more serious forms of punishment, known as *hudud*, which are reserved for the most egregious offences under Islamic law. In Iraq, there are dozens of reports of executions and other extreme punishments meted out for a broad spectrum of charges, from adultery to refusal to provide medical care for ISIS fighters.<sup>62</sup> ISIS regularly forces people to gather in public places to watch punishments imposed by these courts, including stonings and beheadings.<sup>63</sup>

Those under ISIS rule are subject to a harsh system of regulations, facing torture and other cruel and inhuman treatment or punishment, including death, for failing to comply. Regulations touch upon all aspects of everyday life, dictating where people can travel, how they must dress, to whom they can speak, and what they can celebrate. Men are required to grow beards to a certain length, and women face strict regulations on clothing, employment and movements. Everyday life is characterized by arbitrary abuse of power and routine control over most aspects of life. For example, on 15 April 2015, two Yezidi men were killed by ISIS in central Mosul for celebrating the Yezidi New Year.<sup>64</sup> ISIS has also imposed cruel and inhuman punishments on minors. Such a case occurred on 2 September 2015, when ISIS cut off the hand of a boy aged around 13 years in the Bab al-Tob market in the centre of Mosul, reportedly after accusing him of theft.<sup>65</sup>

At the same time, ISIS has cracked down severely on any attempts to escape from territory it controls. On 28 April 2015, for example, eyewitnesses reported that a group of Yezidi people tried to escape the ISIS-controlled city of Tal Afar. Eight Yezidi men were subsequently tortured and killed, and their accompanying family members forced to return to the city.<sup>66</sup>

Non-Muslims under ISIS control also contend with the *jizya*, a per capita religious tax levied on non-Muslim permanent residents under Islamic law. ISIS uses the *jizya* where possible to run a protection racket. Its evasion has led to serious consequences, such as abduction of female members of the family, detention or death. After the fall of Mosul, Christians who wanted to remain in the city were asked to pay the *jizya* or to leave. *Jizya* has been collected across ISIS-controlled areas in northern Iraq. In Sinjar, those who were not abducted or killed had the option to pay the *jizya* to stay.<sup>67</sup>

## Child soldiers: cubs of the Islamic State

The Islamic State's use of children and youth for military ends, including as soldiers, suicide bombers and propagandists, has become routine and is accelerating. Children fight with, rather than as substitutes for, adult males.<sup>68</sup> ISIS has



## Testimony: The abduction and enslavement of a Christian mother from Mosul

Following the fall of Mosul to ISIS in June 2014, one respondent described how her husband disappeared shortly afterwards. However, her subsequent attempts to track him down ended disastrously with her abduction and rape over a period of months before she was eventually able to escape.

*One day I left my children with the neighbour and headed down to an ISIS-run police station to inquire about my husband. A man in his 30s came up to me and asked me what I wanted. I told him my husband had gone missing...to which the man responded 'Oh, so he was a traitor.' ...He grabbed my arm asking whether I was Christian, whether I was there to kill them with a suicide vest. He said I had to reveal where my family was and explain what I was still doing in Mosul – when I couldn't answer all his questions he pulled me into a room and aggressively took off my burka. A few other ISIS members followed us into the room and commented saying 'Look at all of this beauty which you are hiding!' and then they started to poke me and pull my hair.*

*They kept me at the station for four days, three days with my hands tied behind my back, all swollen and hurting. On the fourth day, a man came into the room where I was being held and asked 'Why won't you confess where your family is? If you just tell us, we will let you go and there is no need for this suffering.' When I still couldn't*

*reply he said he would make me confess, while showing me an extremely large needle – the kind of heavy duty needle used to sew mattresses.*

After being brutally tortured, she was then abducted:

*After this episode, the man said 'Take her to the girls, we can sell her and make a profit.'*

*They then brought me to a school which was full of young girls, and eventually I came to understand that the girls and women were divided into different rooms based on levels of beauty. In my room alone, there were more than 50 girls – the youngest, a Yezidi girl, was only 10, but most of them were between 12 and 18. There were six or seven girls in their 30s and two elderly women, one Christian and one Yezidi. They kept me in the room for one week, without touching me because I was sick and injured from the maltreatment at the ISIS police station. They said that if I didn't get better, they would sell me. In total, I was held captive for two months.*

*One night the ISIS fighters were throwing a party – the man in charge of the school entered our room saying they had guests and needed to give them three girls. He picked me and two Yezidi girls, aged 16 and 18, and pushed us through a room with a huge table full of alcohol, pills and weapons.*

*We were taken to a smaller room, where he offered his guest to choose one of us for 'the prince'. He chose the 16-year-old, as the prince wanted a 'pure one'. The 18-year-old and I were left in the room, which had two beds opposite one another. Two men en-*

*tered – based on their clothing and the language they spoke, I would perhaps say they were Afghans. Thereafter a Sheikh entered, and he married us to the two men.*

*When the Sheikh had left the room the men stripped us – we tried to fight them off, but in vain. They had their fun, and then they did it again. I was raped four times, the other girl three. On their way out, the men divorced us.*

*Ten minutes later two more men, this time Iraqi, entered the room. We were married and raped again. That night I was married to eight different men and divorced eight times. Each man raped me three or four times. When all this was over, we were taken back to the room where all the girls were being held. They made us walk naked through the big room where all the men were sitting. We were barely able to walk. This scenario was repeated every week – it was like a nightmare.*

*At one party they took [the] 10-year-old – they raped her all night, to the point that she could not walk. There was blood everywhere, and she was sick for 15 days. In the end, she didn't make it. Another girl I had known from school was sick for three days, and one morning she passed away. Three girls who tried to escape were immediately killed.*

This woman was eventually able to escape after paying a bribe. However, on her return to Mosul she was forced to flee with her family.

trumpeted its use of children in photos and videos, calling them 'Cubs of the Islamic State'.<sup>69</sup> Media reports highlight the most public and dramatic roles played by children, namely as executioners in firing squads or beheadings. ISIS also features children in multiple contexts, 'from highly publicized executions and training camps to Qur'an memorization fairs and [proselytizing] *dawa* caravans'.<sup>70</sup>

Training for child soldiers occurs at several dedicated camps in Iraq and Syria. There is at least one inside the city of Mosul, one outside Mosul and another in Tal Afar. Recruits are not solely abductees but include volunteers and others sent by their parents. Abductees as young as 14 years old have joined ISIS military activities, according to former prisoners.<sup>71</sup> Some of them are brought to Syria or other places far from their homes, to make sure their military and ideological indoctrination is not affected by any emotional ties to family or their homes, facilitating their induction as fighters.<sup>72</sup>

## Chemical weapons

ISIS has also used, or attempted to use chemical weapons, in many cases chlorine gas. ISIS reportedly fired a chemical mortar shell on or about 21 June 2015 at a Peshmerga position near Mosul Dam. On 12 August 2015, chemical weapons were used against Peshmerga positions defending Erbil.<sup>73</sup> On 8 March 2016, ISIS fired mustard gas and chlorine gas chemical rockets at the predominantly Iraqi Shi'a Turkmen residents of Taza Khurmato (also known as Taza), a farming village just south of the city of Kirkuk. Media reports estimate at least 400 casualties.<sup>74</sup>

The Organization for the Prohibition of Chemical Weapons has indicated that laboratory tests have come back positive for mustard gas, after investigating the ISIS attack of 12 August 2015. ISIS fighters may have developed their own chemical weapons capability in Mosul, drawing on resources from the oil industry and local experts to manufacture the weapons.<sup>75</sup>

## Mass grave sites

As areas have been retaken from ISIS control, a number of mass graves have been identified in Ninewa, Diyala and Salahaddin governorates. Basic information is still being collected on the

sites identified, and the Iraqi government is conducting investigations at selected sites such as at Camp Speicher in Salahaddin governorate.

Since the November 2015 retaking of Sinjar, NGOs, Kurdish authorities and other groups have uncovered at least 17 mass grave sites – most likely the Yezidi victims of ISIS – and have identified as many as 45 mass grave sites in the city and surrounding district of Sinjar.<sup>76</sup>

Mass graves have been found in western Ninewa (including Badoush and Al Jadaa), west of Mosul in the al-Eiadhia area, and in the Samarra area in Salahaddin. In October 2015, Kurdish security forces discovered a mass grave between Tobzawa and Taichy villages, south-west of Kirkuk.<sup>77</sup> Moreover, on 14 March 2015, a mass grave was found in Shamsiya village, south of Kirkuk, containing the remains of 21 Turkmen. It is reported that the killings happened during ISIS attacks in the region in July 2014.<sup>78</sup>

## Actions by ISF and other armed groups

ISIS does not have a monopoly on violations of human rights law, international humanitarian law and international criminal law in Iraq. Other armed groups, including ISF, Popular Mobilization Units (PMUs, or al Hashd al Shaabi, also known as the National Mobilization, or al Hashd al Watani),<sup>79</sup> KRG soldiers known as Peshmerga and intelligence officers, the Asayish, are also responsible for violations. Coalition forces have also been accused of violations of international humanitarian law.

In the conduct of operations against ISIS, ISF and pro-government militias have in some cases repeatedly shelled civilian areas and destroyed civilian infrastructure and property.<sup>80</sup> On 4 April 2015, five Shabaks were killed, including three children, during an airstrike against ISIS in the Fathiliya village of Ninewa.<sup>81</sup> The UN notes that most reports are unverifiable and 'it is also complex to assess whether principles of distinction and proportionality were adhered to, considering that ISIS deliberately bases itself in civilian areas, often fails to distinguish themselves as fighters, and uses civilians and civilian infrastructure as shields'.<sup>82</sup>

ISF and pro-government militias have also reportedly committed other war crimes in their fight against ISIS. These crimes include unlawfully demolishing buildings in recaptured areas and forcibly abducting residents, and killings.<sup>83</sup> For instance, following the departure of ISIS from Amerli in November 2014, the GoI and Shi'a forces allegedly destroyed many villages around the town, mainly habited by Turkmen and Sunni Arabs. Local residents have been denied access to safe areas at checkpoints manned by PMU or ISF units. Turkmen citizens and other ethnic and religious minorities living in Salahaddin and other formerly ISIS-controlled areas have been disproportionately affected.<sup>84</sup>

The KRG has also reportedly destroyed homes and shops in areas formerly held by ISIS. Amnesty International found widespread burning of homes and property in Ninewa, Kirkuk and Diyala governorates now under Peshmerga control.<sup>85</sup> Several Iraqi minority leaders corroborate the story, claiming it is broader in scope than the comparatively selective Amnesty International report.<sup>86</sup> And again, these governorates are locations of significant former populations of Christians, Turkmen, Shabak, Yezidi and other ethnic and religious minorities.<sup>87</sup>

Kurdish security forces have conducted repeated raids and arbitrary arrests in the southern neighbourhoods of Kirkuk city, where there are large numbers of IDPs, and the UN has verified reports of families in safe areas being forcibly moved from such areas, while their temporary shelters and structures have been demolished in Kirkuk, Ninewa and Diyala governorates.<sup>88</sup> For instance, on 3 August 2015 a local Turkmen human rights foundation, Save the Turkmen High Commission, reported that 38 Turkmen IDP families had been expelled from a building in Kirkuk that they had been using as a shelter.<sup>89</sup>

Some of the instances of forced displacement and destruction of homes and property were reportedly in retaliation for residents' family ties or perceived support for ISIS, and there are some places where locals have been allowed back in and the post-fighting destruction has been kept to a minimum. This is typically in areas with residents who have support government forces: in their absence, the probability of settlements being evacuated and homes destroyed is much higher.<sup>90</sup>

There are also some reported atrocities, ranging from kidnappings to bomb attacks, committed against Iraqi minorities by unknown or unidentified actors. For instance, on 24 February 2015, local news sources reported that two bomb attacks killed several and injured others in Amerli and al Aksari sub-districts of the Turkmen town of Tuz Khormatu.<sup>91</sup> Christian communities have also been facing killings and kidnappings in different areas of Iraq. For instance, local sources reported the abduction and murder of Christians on 5 June, 7 July and 7 September 2015 in both Diyala and Baghdad.<sup>92</sup>

## Cultural heritage destruction

*'We're faced with the largest-scale mass destruction of cultural heritage since the Second World War.'*<sup>93</sup>

ISIS has pursued a programme of cultural heritage destruction that has taken the form of smashing artifacts in archaeological museums, bulldozing heritage sites, dynamiting shrines, tombs and other holy sites of local communities, and burning libraries and archives. Among those targeted are the Mosul Museum and the archaeological sites of Nineveh, Nimrud and Ashur.<sup>94</sup> Satellite images have also identified thousands of illegal excavations in Iraq as well as Syria.

Generally, sites are looted before they are destroyed. Though estimates of the revenues ISIS has received from the sale of antiquities are wide-ranging – between US\$4 million and US\$7 billion<sup>95</sup> – some archaeologists have estimated that at least US\$300 million worth of antiquities are now on the market as part of ISIS transactions,<sup>96</sup> reportedly trafficked through criminal networks in Turkey and Lebanon.<sup>97</sup> ISIS revenues from the sale of looted antiquities have rapidly evolved from collecting a 20 per cent tax from diggers and dealers operating on their territory, to operating their own archaeological digs and selling heritage directly.<sup>98</sup> Antiquities experts believe that many of the looted items are likely being hidden for the time being, to be sold at a later date.<sup>99</sup> In terms of preventing the trade, laws around the world are weak and inconsistent, and customs officials are able to monitor only a fraction of what passes through their controls.<sup>100</sup>

# 4

## The current situation of internally displaced persons

The worsening conflict has forced further displacement of Iraqi nationals, making Iraq the country with the 'highest number and fastest growing rate of people displaced in the world in 2015'.<sup>101</sup> While as of May 2016 more than 3.3 million individuals, including over 1 million school-aged girls and boys,<sup>102</sup> have been identified as being displaced and dispersed across Iraq,<sup>103</sup> the real number is likely to be much higher as many families have fled their homes and reached other cities without being registered as IDPs.<sup>104</sup> Overall, the UN estimates that 10 million people are in need of humanitarian assistance.<sup>105</sup>

*'Chaos is no longer justified; the [humanitarian] response needs to correspond to the challenge.'*<sup>106</sup>

The IDP population in Iraq originates from 8 of the country's 18 governorates, though the majority of IDPs come from the governorates of Anbar (42 per cent) and Ninewa (35 per cent). Ethnic and religious minorities have been disproportionately affected: most of the minority population<sup>107</sup> have either sought refuge in the KR-I or in provinces in southern or central Iraq.<sup>108</sup>



Yezidi children in a camp in Zakho, Iraq, near the Turkish border. *Jeff Gardner.*

This situation of protracted displacement highlights the need for a long-term focus that goes beyond immediate security and relief. This section discusses some of the major challenges that displaced minority members are experiencing, including shelter conditions, limited services – particularly access to education – lack of legal documentation and movement restrictions.

### IDP statistics and movement

The number of IDPs varies greatly from governorate to governorate, as do shelter arrangements and other humanitarian provisions. The authors of this report had the opportunity to assess the conditions of IDPs in four governorates first-hand:

- *Baghdad* governorate currently hosts the second largest (after Anbar) IDP population in Iraq (16 per cent of the total). Most are originally from Anbar and were largely displaced after April 2015 and between September 2014 and March 2015. The vast majority (90 per cent) are hosted in private settings.<sup>109</sup>
- *Dohuk* governorate hosts the third largest IDP population (12 per cent), almost all (99 per cent) of whom are from Ninewa.<sup>110</sup> Most were displaced following the seizure of Mosul by ISIS and the expansion of its control into Ninewa, including many Christian minorities, while hostilities between Peshmerga forces and ISIS in Sinjar in August 2014 also contributed to a further wave of displacement, this time affecting mainly Yezidis, as well as Shi'a Turkmen who had sought refuge there. In terms of shelter arrangements, more than a third of the total IDP population in Dohuk reside in camps, whereas about 23 per cent are housed in critical shelter arrangements and around 41 per cent in private settings.<sup>111</sup>



- *Erbil* governorate hosts 12 per cent of Iraq's IDP population, 91 per cent of whom reside in rented houses. The rest mainly reside in camps.<sup>112</sup> Predominantly originating from Anbar and Ninewa, the major waves of displacement to Erbil were pre-June 2014 and between June and August 2014, respectively.<sup>113</sup> Local religious and humanitarian actors predict a decrease of IDPs in Erbil governorate for the coming spring, as 'many of them are just waiting for higher temperatures to flee [the country]'.<sup>114</sup> In particular, Christian communities have been pushed to emigrate, according to a religious authority interviewed for this report, as they see no future in Iraq.
- *Kerbala* governorate hosts 2 per cent of Iraq's IDP population, most of whom fled from Ninewa in June–July 2014.<sup>115</sup> On 10 June 2014 alone, 1,000 Turkmen from Tal Afar fled ISIS persecution to seek refuge in the governorate.<sup>116</sup> Kerbala differs from the other governorates in that 40 per cent of those displaced there are hosted in religious buildings, with a similar number taking shelter in rented houses. Religious authorities, including the shrines of al-Hussein and al-Abbas, have been generous in providing shelter for IDPs in so-called 'visitor cities', where the latter are provided with daily meals.<sup>117</sup> IDPs interviewed in Kerbala in February 2016 recalled that for a whole year the religious authorities provided three meals a day, though now IDPs only receive lunch. While the rooms provided in the visitor cities are reportedly comfortable and clean, most IDPs cannot afford medicine or health care.<sup>118</sup>

## IDPs' living situation and settlements

According to the IOM, the majority of identified IDPs (71 per cent) are reportedly housed in private dwellings. Of the total IDP population, 47 per cent are hosted in rented houses, 24 per cent are with host families and less than 1 per cent in hotels/motels, while around 16 per cent are in critical shelters.<sup>119</sup>

### Private dwellings

The increased number of IDPs in private dwellings and the simultaneous decline in critical shelters

since then is a seemingly positive development. However, families are running out of funds and those who were previously able to afford to pay for accommodation (such as rental homes, hotels and motels) are finding they can no longer do so.<sup>120</sup> For example, in March 2015 around 1,300 IDP families in Kerbala faced the prospect of eviction after the Ministry of Migration and Displacement withdrew coverage of their rent.<sup>121</sup> Others are now planning to leave Iraq before they completely run out of money.<sup>122</sup> What is more, lack of documentation means some IDPs are unable to enter formal tenancy agreements, putting their security of tenure at constant risk.<sup>123</sup>

At the same time, overcrowding is typical in homes hosting IDP families, making living conditions untenable in the long run. For example, it is not unusual to encounter four to six families squeezed into one house together, and even when there are fewer, with more than one family sharing a home, all the services in the house are communal.<sup>124</sup> Interviews undertaken by the authors in northern Iraq in February 2016 revealed that there are families who have chosen voluntarily to move back into camps, due to limited space in the house they rented, despite the fact that conditions in rented houses are generally better than in camps.<sup>125</sup>

Moreover, host families are also suffering from the same lack of access to humanitarian aid as IDPs, which means that hosting displaced relatives and friends can strain their resources. The limited UN response is reportedly mainly targeting IDPs in camps, leaving those who live in houses largely without much-needed assistance.<sup>126</sup> As a result, more and more IDP families risk being forced into alternative shelter arrangements.

### Critical shelters

While the number of IDPs in critical shelter arrangements has declined over the past year, it does not necessarily mean that IDPs have voluntarily found more sustainable alternatives. The UN Office for the Coordination of Humanitarian Affairs (OCHA) has reported that eviction or the threat of eviction has affected many of those staying in critical shelters: for example, in early September 2015, 90 IDP families living in a school in Baghdad faced the risk of eviction by local authorities, and in

**Table 1:** Shelter arrangements of IDPs in Iraq, January 2015– May 2016

Shelter type	Shelter grouping	No. in January 2015	% of IDPs	% of IDPs in groupings	No. in May 2015	% of IDPs	% of IDPs in groupings
Camp	Camp	212,226	9	9	366,792	11	11
Host family	Private dwellings	574,974	25	61	780,276	24	71
Hotel/motel		41,562	2		11,634	0	
Rented housing		755,376	34		1,543,686	47	
Informal settlements	Critical shelter arrangements	67,086	3	29	127,752	4	16
Religious buildings		162,414	7		110,436	3	
School buildings		52,410	2		34,878	1	
Unfinished /abandoned buildings		367,764	16		251,730	8	
Unknown/other	Unknown/other	20,376	1	1	73,788	2	2

Source: Based on IOM's DTM Rounds X111 (January 2015) and 46 (May 2016).

Kirkuk 25 IDP families at the Shoqāq Sadam complex were also threatened with eviction.<sup>127</sup>

In Kerbala, the shrines of al-Hussein and al-Abbas have provided housing for the majority of the governorate's IDPs,<sup>128</sup> many of whom are living in humble conditions in so-called *husainiyyas* on the outskirts of the city, along the Baghdad–Kerbala and Kerbala–Najaf roads. Interviews with Turkmen IDPs taking shelter in a *husainiyya* on the outskirts of Kerbala revealed that the mosque has been providing water and electricity since their arrival to Kerbala in August 2014, but the IDPs do not have access to adequate health care. The residents of another *husainiyya*, also in Kerbala, gave similar accounts. They noted, however, that while the religious authorities bring fresh water every three days, during summer months it is not enough for five families to share.<sup>129</sup>

## Conditions in camps

Another worrying development is the growing number of IDPs (11 per cent) living in camps, where conditions, particularly during winter months, are severe. Despite forewarnings regarding the need to prepare for winter conditions,<sup>130</sup> IDPs in camps and unfinished buildings struggled to cope with heavy rains and cold in the particularly harsh winter of 2015/16. Rain caused flooding in many camps in the KR-I, affecting an estimated 84,000 IDPs in over 40 sites and camps in early November 2015 alone.<sup>131</sup>

While camp conditions back in November 2014 were poor, with the limited winterization of tents and the failure to properly prepare for rain and snow causing miserable living conditions,<sup>132</sup> this lack of preparation has unfortunately continued over the past 15 months, with more reports of this year's harsh winter taking a heavy toll in Iraqi IDP camps.<sup>133</sup> An interview with a Yezidi IDP living in a camp in Zakho, Dohuk governorate, revealed the poor conditions of the camp:

*There are absolutely zero services available: our children do not have access to education; medical services are insufficient; and the management of the camp, as well as the quality of the food and products we receive, are inadequate. Moreover, internationals are not allowed to enter our camp, only media outlets vetted by the authorities can pay a visit, therefore there is very little awareness about our conditions.*<sup>134</sup>

This report, while unique to the camp in question, is not an atypical representation of camp standards in the KR-I. A visit to Khanke, also in Dohuk governorate, in February 2016 revealed that the conditions have deteriorated further:

*We used to get water delivered here free of charge – now we have to pay IQD 5,000 (approximately US\$4) per tank, which is a lot of money for us. Those who cannot afford to pay have to walk to the end of the village and carry water*

*back in buckets. We also used to have pipes giving us access to water, but the authorities have now closed the tap. I don't know why.'*<sup>135</sup>

IDPs in Khanke further reported that other essential services, such as electricity, have been cut off by the local government, with local government officials allegedly telling the IDPs to 'sort it out themselves'. Families that have managed to set up their own improvised electricity lines are able to channel just enough electricity to charge their mobile phones.<sup>136</sup> Onsite, the authors of this report noted that electricity cables were on the ground, right next to water tanks, and were told that children playing in the vicinity would sometimes get electrical shocks.

While a limited number of winterized tents have reportedly been provided by NGOs, an elderly man in Khanke explained that most of the IDPs in the informal camp had had to buy their own tents, as only people with connections were provided with material.<sup>137</sup> Moreover, there were still no proper bathrooms in the camp: most of them consisted of just four poles with fabric around, the authors also observed a number of sheet metal latrines, each reportedly shared by five families.<sup>138</sup>

A field report published by Refugees International in November 2015 described similar conditions for IDPs in central and southern Iraq. At one of the camps in Anbar, Refugees International reported seeing a puddle of sewage several inches deep in the entryway of a nearby abandoned building that had been the first shelter in the camp. Not only had the sewage been running down from higher floors, it was also estimated that there was only one latrine for every 120 people - far below the recommended international standards of one toilet for every 20 users.<sup>139</sup>

All of these shortfalls and problems have been further exacerbated by the continual influx of new IDPs into the camps every day.

## Lack of documentation and movement restrictions

As ISIS swept through the Ninewa plains, the local population fled quickly and under the assumption

they would be able to return home within a relatively short timeframe. Thus many left behind, and have subsequently lost, their homes, livelihoods and possessions. Overall, this situation has started to negatively affect the mental and physical well-being of Iraqi IDPs.<sup>140</sup>

The implications of the loss of important documentation, such as ID cards, housing cards or food rations cards (PDS cards) must not be underestimated, as the lack of such papers can cause immense difficulties in accessing essential services and public goods, including medical care, education, food rations, employment and government welfare. Indeed, without these documents, it becomes nearly impossible for IDPs to register with the Ministry of Migration and Displacement in order to claim government assistance packages. Many IDPs also face challenges in accessing food rations as they have either lost their PDS cards or are unable to transfer them to their new location.<sup>141</sup>

For many it has been impossible to return to retrieve their documents for a number of reasons – insecurity, restriction of movement by armed forces (including Peshmerga, PMUs and ISF),<sup>142</sup> or the destruction of their homes and possessions. Significantly, male IDPs are likely to be detained by the police or prevented from moving between areas, and this is especially true of male IDPs travelling without documentation. This is problematic not only for the detained men but also for women and children if families are separated, as women are unable to hold documentation either in their own name or on behalf of their family due to the patriarchal nature of the Iraqi documentation system. For instance, all PDS cards bear the name of the male head of the household, thus women without a male companion can be prevented from transferring and using the card.<sup>143</sup> Moreover, female-headed households face additional challenges following the death of the provider (a likely scenario for ISF or PMU employees), as they do not receive the salary of the deceased husband.<sup>144</sup>

Further barriers to accessing documentation include not only the complex nature of registration,<sup>145</sup> but also constantly changing rules<sup>146</sup> and under-staffed administration offices. According to a senior international official, Iraq's Interior Ministry has become more active in addressing these



issues, for example by opening identity card replacement offices in the KR-I, including in IDP camps. Yet reportedly this is not enough.<sup>147</sup> Furthermore, as noted by a senior member of the Iraqi parliament's Committee on Migration and Displacement, issuing *jinsiya* and other documents in IDP camps sends a message to IDPs, regularizing their presence there, and is in many ways an obstacle in and of itself to their going home.<sup>148</sup>

In addition to the process of registration, there is a great need for transparency when it comes to access.<sup>149</sup> Freedom of movement has over the past year become tied to the issue of local authorities increasingly detaching from a weaker central government, operating independently and interpreting the law as they see it.<sup>150</sup> Also, local tribes are now reportedly negotiating access, making freedom of movement dependent on to which tribe one belongs.<sup>151</sup> There have been reports of checkpoints being closed to IDPs in Sulaymaniyah and in Kirkuk,<sup>152</sup> with bottlenecks being caused where IDPs are being asked to meet onerous 'sponsorship' requirements – which many are unable to do.<sup>153</sup> Many IDPs have also been stopped at the Bzebez bridge connecting Anbar with the Baghdad provinces.<sup>154</sup> Further restrictions have occurred in the south of Iraq, where the movement of Sunni IDPs into Shi'a-majority provinces is limited.<sup>155</sup> Shabak who have fled to the south have also reportedly been facing restrictions on their freedom of movement.<sup>156</sup>

These accounts contradict the claims of local authorities in Kerbala that IDPs have been welcomed without discrimination. At the same time, local officials have maintained that Kerbala is not large enough to host more people and that the central government should do more in terms of improving the security, political and human rights situation so that people can return home.<sup>157</sup> Similar accounts have been found elsewhere: in May 2015, the Babylon Provincial Council announced that it could allow no more IDPs into its governorate 'due to a lack of resources to host them'.<sup>158</sup>

Many ethnic Arabs, Turkmen and Shabak have also reportedly found their access to the KR-I restricted, and thus have been forced to relocate to the disputed areas of Shekhan and Akre in Ninewa, areas in Kirkuk, or in the districts of Kifri and Khanaqin in Diyala.<sup>159</sup> Other sources re-

port that as the KR-I refused to receive Turkmen IDPs, they were forced to relocate to southern Iraq by aeroplane.<sup>160</sup>

## Lack of access to education

*'Iraq is seeing a lost generation in its youth. They will be tougher than the Daesh. Without education, they will be the first to pick up a rifle.'*<sup>161</sup>

UNAMI and OHCHR report that over 1 million school-aged girls and boys are currently displaced in Iraq, approximately 70 per cent of whom have lost almost a year's worth of education.<sup>162</sup> What is more, almost one in five schools are no longer functioning, resulting in the schools that are operational being overcrowded and under-staffed, and unable to accommodate many displaced students.<sup>163</sup> As one Iraqi NGO director interviewed for this report stated, 'What kind of education can we expect when putting hundreds of children in one classroom?'<sup>164</sup>

The closing of schools has also meant that the distance children must now travel to reach the nearest school might prevent them from attending classes altogether. For example, assessments carried out by the Hammurabi Human Rights Organization in camps in Erbil revealed that while, in theory, children have some access to education, many parents do not have the resources to pay for the buses that travel to schools located far away. In the south,<sup>165</sup> IDPs face similar problems: a group of Turkmen women from Tal Afar, currently living in a *husainiyya* on the outskirts of Kerbala, explained that their children were unable to attend school as the nearest one was a considerable distance away and they did not have a car.<sup>166</sup>

In Dohuk governorate, the school in the formal Khanke camp is also open to IDP children from surrounding areas, but again the distance presents an obstacle for many. Interviews revealed that IDP families in the informal Khanke camp would only send their younger children to school during summer months because of the hazardous walk to school.<sup>167</sup> IDPs in nearby Soroka reported that they still send their children to school in Khanke every day, usually on foot.<sup>168</sup>

Girls have been hit particularly hard by the current situation, as many are encouraged to stay home to ensure their safety and security. Moreover, in many areas of Iraq the belief that it is culturally inappropriate for girls to attend mixed schools means that some parents are blaming their daughters' lack of attendance on the shortage of all-girls schools.<sup>169</sup>

Furthermore, the need for IDP youth to contribute to supporting their families is pushing them out of school:

*I have taken my 15-year-old son out of school, because our family needs him to work. We are not the only ones; a lot of families do like this.*<sup>170</sup>

IDPs in the north, in particular minorities, have also been negatively affected by changes in the learning environment and curriculum. Local NGOs, volunteers and IDPs alike, report that in the KR-I, where the teaching language is Kurdish, non-Kurdish speakers are *de facto* prevented from accessing school or universities, due to language barriers.<sup>171</sup> For instance, the Hammurabi Human Rights Organization has expressed concern over the fact that many Christians and Yezidis have been quitting even temporary schools due to a different education environment,<sup>172</sup> whereas IDPs from Sinjar have reported difficulties in adapting to the KR-I curriculum, as schools in Sinjar pre-ISIS used to follow the Arabic curriculum of the GoI.<sup>173</sup>

Local government officials in both the north and south of Iraq agree that one of the main challenges brought about by the current displacement crisis revolves around children and education. While some schools have reopened in Sinjar governorate, no comprehensive and targeted education programme has been put in place to actually assist children in returning to the classroom.<sup>174</sup> In Karbala, there are not enough caravan schools<sup>175</sup> and even those that exist are not all properly equipped.<sup>176</sup> In Tikrit the situation is reportedly somewhat better, with schools and the university resuming their activities and the current academic year starting only one month late. However, even there equipment is missing or unusable, and university students living or temporarily displaced in Kirkuk face difficulties reaching Tikrit, as the road connecting the two cities is controlled by ISIS.<sup>177</sup>

## The humanitarian response

The responsibility for protecting IDPs naturally lies first and foremost with the national authorities of the country.<sup>178</sup> The overall responsibility for addressing IDPs' needs, therefore, falls squarely on the federal government and the KRG – with the assistance of local and international humanitarian organizations and other appropriate actors.

While the GoI's social safety net has been critical for protecting and supporting displaced families, this protection floor is under severe strain as persistently low oil prices have had a crippling effect on both the GoI and the KRG.<sup>179</sup> Public revenues have dropped by more than 40 per cent.<sup>180</sup> Moreover, the KRG has publicly warned that it is running out of money, meaning its ability to provide basic services to the nearly 1.8 million Iraqis and Syrians who have fled there is being seriously weakened. In 2015 the KRG appealed to Western governments for the provision of US\$1.4–2.4 billion to stabilize the situation of the IDPs in the region.<sup>181</sup> At least US\$1 billion per year is required to sustain IDPs in the KR-I.<sup>182</sup>

What is more, with the IDP crisis putting a strain on local economies, services and infrastructure, the lack of funding makes host communities, and also IDPs, increasingly vulnerable.<sup>183</sup> For instance, in Sulymaniyah health services have reportedly been cut off, forcing the local population to go to IDP health clinics, and thus creating competition for services between locals and IDPs.<sup>184</sup> Similarly, cutbacks in Erbil governorate have also forced local inhabitants of Ainkawa to use IDP clinics.<sup>185</sup> This in turn is causing further tensions to an already dire situation.

As a result, Iraqis from diverse ethnic, geographical and socioeconomic backgrounds are now feeling disillusioned and disappointed not only with the GoI and KRG, but also with the UN.<sup>186</sup> An IDP in Khanke explained that no official has visited the (informal) camp for the past six months and no one was taking responsibility for running it: even the UN has reportedly stopped showing up.<sup>187</sup> A senior political figure in Baghdad further stressed:

*Whatever basic support the government and international community provided before, now we*

*don't have any. IDPs are demoralized – they... cannot go home, so they are fed up with the government. Last year the Iraqi government had an excuse, saying "Be patient and soon you will return to liberated lands." They don't have this excuse any longer.'*<sup>188</sup>

## The government response

In July 2014, the Iraqi government established a Supreme Committee for Displaced Persons under Resolution 328, with the intention of providing assistance for the displaced as quickly as possible. The committee subsequently established an executive committee, which had operational centres in the KR-I and Kirkuk, with plans to use the IQD 1 trillion (approximately US\$819 million) in funding the government had promised to set aside for it.<sup>189</sup>

A year later, on 26 July 2015, the GoI's Joint Coordination and Monitoring Centre (JCMC) and the KRG's Joint Crisis Coordination Centre (JCC), which together are responsible for coordinating one of the region's largest and most complex humanitarian crises, agreed to join forces to help ensure that humanitarian assistance reached Iraq's more than 3.3 million IDPs.<sup>190</sup> Moreover, in February 2016, a new inter-agency committee was reportedly established with different ministries to tackle the IDP crisis.<sup>191</sup>

In addition to these positive and much needed attempts to coordinate relief efforts at the national level, the government launched a 2016 Plan for Relief, Sheltering and Stabilization, the implementation of which will be closely linked to the UN and partners' 2016 Iraq Humanitarian Response Plan.<sup>192</sup> Both came into effect on 1 January 2016 and seek to overcome some of the funding gaps by setting out prioritization levels to make sure the basic needs of the most vulnerable are met.<sup>193</sup> More concretely, the GoI's plan gives an outline of the steps needed to be taken to register vulnerable people and to provide legal protection as well as adequate shelter, food security, education, health and cash assistance plans.<sup>194</sup>

In 2014 the Ministry for Displaced and Migration started distributing one-time grants of IQD 1 million (approximately US\$900) to each IDP family. Multiple sources confirm that 85–90 per cent of those registered with the ministry have now received their first entitlements.<sup>195</sup> A second round of

distributions of IQD 1 million has reportedly been allocated in the national budget, but financial shortfalls have prevented distribution. According to one Iraqi MP interviewed for this report, 'IQD 400,000 (approximately US\$350) has been taken from the salary of each government employee, but none has been given to IDPs or refugees.'<sup>196</sup>

Various other ministries and governorates have also been contributing to the humanitarian response.<sup>197</sup> For instance, the Ministry of Oil reportedly has been providing kerosene to displaced families in the KR-I, Baghdad, Diyala and Anbar, mostly at no cost, but in some cases against payment.<sup>198</sup> Pursuant to the GoI 2016 plan, other ministries, including Trade, Health, Education, Higher Education, Construction, and the governorates have been identified to provide assistance in specific areas.<sup>199</sup>

Despite these positive actions, insecurity, administrative hurdles, corruption, discrimination, political aspirations and severe funding shortages have undermined and weakened assistance delivery.<sup>200</sup> According to Beyani Chaloka, the UN's Special Rapporteur on the human rights of internally displaced persons, the government's approach has been 'largely *ad hoc*' and there is a dire need for greater resources, planning and attention to meeting the needs of IDPs.<sup>201</sup>

This assessment is in line with accounts on the ground. A staff member of a medical centre for IDPs in northern Iraq explained the following difficulties:

*'Currently no support is provided by the GoI, despite the fact that our centre seems to be the only medical structure for IDPs in Erbil governorate; the 'official' hospital often refuses to treat IDPs, even at the emergency room. We therefore rely very much on international support, and even so our 85 staff members are working on a voluntary basis. Worse, not only is the GoI not supporting the centre, it is also trying to hinder our work: we recently had to register the centre as an organization to avoid operational problems with the authorities, who have been complaining about the lack of official authorization.'*<sup>202</sup>

The director of the centre added that the staff members are often forced to work for the local government and harassed if they try to volunteer for the medical centre.<sup>203</sup>

With regard to cash assistance, the Iraqi government has most recently decided to distribute monthly entitlements of IQD 400,000 (approximately US\$320) to IDP families, from a US\$2 billion fund administered by the Ministry of Displacement and Migration.<sup>204</sup> However, the current dire financial straits of the Iraqi government, combined with practical difficulties and the lack of capacity to distribute the funds, explains why implementation of this decision is still pending.

A further problem, as noted earlier in this chapter, is the fact that many IDPs are prevented from accessing government entitlements due to a lack of documentation. Moreover, IDPs interviewed in Kerbala in February 2016, expressed discontent with the fact that every IDP family, no matter the size, received the same amount of IQD 1 million – meaning that a family of two is better off than a family of ten, which is the norm among Yezidis, for example.

## The international response

With low oil prices and the cost of the ongoing war hitting the Iraqi government hard, it has become

more and more crucial to mobilize humanitarian assistance from outside the region. While it is anticipated that Iraq's federal budget will allocate IQD 800 billion (approximately US\$667 million) through the 2016 Plan for Relief, Sheltering and Stabilization, this still leaves an estimated deficit of IQD 1,069 billion (approximately US\$891 million).<sup>205</sup>

In response to this, the UN and its partners launched on 1 January 2016 a Humanitarian Response Plan (HRP), making an appeal for the US\$891 million shortfall to cover the remaining 57 per cent of the total funding needed to allow aid to reach the most vulnerable 7.3 million (of the over 10 million) Iraqis in need of assistance.<sup>206</sup> However, as of the end of June 2016, only a little over 35 per cent, or US\$312.7 million, of the Humanitarian Response Plan appeal has been funded.<sup>207</sup> There is currently only US\$15.6 million in outstanding pledges, from the Central Emergency Response Fund (see Table 2).

- The *European Commission* has been an important donor throughout the current Iraq crisis. On 23 September 2015, the European

**Table 2:** State funding for humanitarian support in Iraq, 1 January–29 June 2016<sup>213</sup>

Donor	Funding (US\$)	% of grand total	Outstanding pledges (US\$)
United States	89,161,840	28.5%	0
Germany	86,643,565	27.7%	0
European Commission	48,854,789	15.6%	0
Japan	29,270,150	9.4%	0
Canada	17,114,160	5.5%	0
Sweden	8,454,535	2.7%	0
United Kingdom	7,982,392	2.6%	0
Netherlands	6,802,721	2.2%	0
Allocation of unearmarked funds by UN agencies	6,045,329	1.9%	0
France	5,081,596	1.6%	0
Norway	3,556,520	1.1%	0
Switzerland	2,168,524	0.7%	0
Finland	865,501	0.3%	0
Korea, Republic of	700,000	0.2%	0
Denmark	526,469	0.2%	0
Italy	390,190	0.1%	0
Luxembourg	382,514	0.1%	0
Carry-over (donors not specified)	108,355	0.0%	0
Estonia	83,799	0.0%	0
Various (details not yet provided)	51,835	0.0%	0
Spain	45,501	0.0%	0
Malaysia	40,000	0.0%	0
Central Emergency Response Fund (CERF)	0	0.0%	15,000,000
Private (individuals & organisations)	-1,618,109	-0.5%	0
<b>Grand total</b>	<b>312,712,176</b>	<b>100.0%</b>	<b>15,000,000</b>

Commission announced a proposal to increase its humanitarian budget in response to the global humanitarian situation, in particular the Syrian crisis.<sup>208</sup> Subsequently, the European Commission stepped up its assistance to Iraq with €40 million in humanitarian funding, partly in recognition of the importance of supporting reconciliation and preventing Iraq becoming 'another Syria'.<sup>209</sup>

- Among other disbursements, on 29 February 2016, the *US* announced an additional US\$20 million in emergency food assistance to Iraq.
- The *UK's* international development minister, Desmond Swayne, announced GB£ 20 million extra humanitarian funding following his visit to Iraq in September 2015. This brought the total UK government contribution between June 2014 and September 2015 to 79.5 million.<sup>210</sup> For 2016, however, the UK has thus far only contributed with around US\$8 million.
- In addition to its monetary contributions, *Germany* has successfully implemented its Humanitarian Admission Programme, which relocated 1,000 highly vulnerable women and children to the state of Baden-Württemberg in Germany (with the support of IOM Iraq).<sup>211</sup>
- *Japan*, in turn, has contributed to the UN Human Settlements Programme (UN-Habitat), which will go towards 'Gender-sensitive Durable Shelter Support for Internally Displaced Persons in Iraq' and 'Promoting Urban Recovery in Newly Liberated Areas in Iraq'.<sup>212</sup>

## Humanitarian actors

For humanitarian actors working with mobile populations in Iraq, the growing violence in the country has made it increasingly difficult to provide effective aid to vulnerable populations. In this context the importance of local NGOs should not be underestimated, as they play a crucial role in accessing people in areas beyond the reach of international NGOs.<sup>214</sup> There are currently 209 NGOs operating in Iraq (40 international, 169 national).<sup>215</sup>

One example of efforts to improve support and protection to IDPs is the Protection, Assistance and Reintegration Centers (PARCs) implemented since 2009 by the International Rescue Committee (IRC) and the UNHCR across central and southern Iraq.<sup>216</sup> These centres carry out weekly accommodation assessments, identify needs and give legal

assistance to IDPs in all settlement types. In 2015 the IRC conducted over 1,200 community-level assessments, reached over 84,000 households and provided legal assistance in over 7,950 cases.<sup>217</sup> Half of the aforementioned cases have involved IDPs seeking to obtain documentation. What is more, the PARCs employ male and female lawyers and monitors in order to ensure that women are able to feel comfortable in getting the support they need. Additionally, the IRC is training male and female members of the community (as well as working with community coordination structures) with the aim of creating a critical mass of people who are able to understand and therefore work successfully with legal and procedural rules. By doing this they hope to be able to indirectly reach those areas (such as the Abu Ghraib district) that are not accessible to their mobile teams.<sup>218</sup>

More recently, an IDP Call Centre<sup>219</sup> was set up in 2014, based in Erbil, as a nationwide hotline for IDPs to contact in order to get information on humanitarian assistance and get feedback on that assistance. The male and female staff in the call centre give IDPs the opportunity to decide with whom they will be more comfortable to speak, are able to talk in different languages and dialects used in Iraq and have been trained to be able to gather accurate information from callers. When an IDP calls the centre, they can be given information on humanitarian programmes (such as locations, documentation requirements, etc.) and specific NGOs or UN agencies are then flagged if further investigation is required. Additionally, the call centre makes regular reports to the Humanitarian Country Team (HCT) as well as collecting feedback from IDPs for humanitarian agencies.<sup>220</sup>

# 5

## Prospects for emigration or return

*[T]he most painful thing is that whenever we [Christians] leave – we never go back. We left our heritage, graves and ancestors with that land.'*

*Christian religious leader displaced from Qaraqosh in Ninewa*

Decisions on return<sup>221</sup> are primarily dependent on the humanitarian, human rights and security situation in both the location of displacement and the location of potential return. Based on these factors, internally displaced families choose either to pursue return, flee the country or simply wait until either option becomes viable. While returnee figures have gradually but consistently increased since March 2015,<sup>222</sup> the number of families migrating back to their location of origin, whether or not in safety and dignity, remains small compared to the millions of individuals still internally displaced.

### The views of IDPs on return

According to the UNHCR, 42 per cent of IDPs in central and southern Iraq intend to return to their area of origin, while 35 per cent are waiting to make a decision on the matter. A substantial 95 per cent of those wanting to return cite poor living conditions in their area of displacement as the reason for their intentions.<sup>223</sup> These figures change dramatically when all governorates are analysed collectively. When including the KR-I and other northern governorates of Iraq, the statistic drops considerably to only 22 per cent of displaced individuals intending to return to locations of origin.<sup>224</sup>

Trends in displacement flows must be considered in conjunction with these figures. With Christians and Yazidis from Ninewa commonly displaced to the KR-I, while large Turkmen and Shabak communities have been displaced to the centre or south of Iraq, one might conclude that the

views of IDPs on return vary between different minorities. Field research indicated that this was indeed the case. Views on return are influenced by a variety of factors, including protection concerns, territorial disputes, history of persecution, conditions of areas of displacement, conditions of areas of origin, as well as emotional attachment to hometowns.

### Views of displaced minorities

Turkmen families displaced to the south of Iraq demonstrated a strong intention to return to their areas of origin. However, for many, security and services are key prerequisites of return. Families residing in informal settlements as well as in Shi'a religious congregation halls (*husainiyya*) emphasized these preconditions.<sup>225</sup> Nevertheless, there was a pressing desire to return among displaced Turkmen from Tal Afar, Ninewa.<sup>226</sup> Interviewees expressed a deep sense of longing for their hometowns as well as the intention to journey back to Tal Afar as soon as it was retaken from ISIS.<sup>227</sup> An Iraqi NGO director emphasized: 'We tried to facilitate returns to areas near Amerli and Tuz [Khurmatu] but IDPs only want to return home to Tal Afar.'<sup>228</sup> He went on to predict that if Tal Afar was retaken, at least half would return immediately.<sup>229</sup>

However, not all share such eagerness to return so soon. A Turkmen woman residing in one of Kerbala's 'visitor city' settlements – generally considered to offer better standards of IDP living conditions than most – feared that if Tal Afar is retaken she would have no choice but to return home immediately, despite poor conditions in the area of return. She claimed that she would otherwise be required to start paying rent on her present accommodation, which her family simply could not afford.<sup>230</sup> A young Turkmen girl, also residing in the same settlement, expressed her desire to settle in Kerbala indefinitely – 'I like it here, it's nice and I'm close to

the shrines. My only problem is that my school is too far away, otherwise I don't want to go back.<sup>231</sup>

Christian groups held pessimistic views on return. Numerous displaced Christians in Ainkawa, Erbil, expressed their frustration at conditions of displacement, but no interviewees indicated that they had any real hope of leaving Erbil to return to their areas of origin. Most did not think it a realistic possibility. One Christian leader interviewed in northern Iraq in February 2016 expressed hope that Christians could lead a 'dignified life' in Iraq, but he did not think this was still possible in many areas of origin. Instead, he spoke of the long-term or permanent settlement of Christian IDPs in Ainkawa, and his attempt to encourage this idea among displaced communities.<sup>232</sup> However, many Christian IDPs disagree with this view, reluctant to settle permanently in the KR-I. According to the same leader, while Christians do not have hopes of return, they are at the same time reluctant to invest in a future in Ainkawa as it would effectively mean giving up on their land.<sup>233</sup>

Predictions on returns to Ninewa are worryingly low: some estimates put the number of Christians in Ninewa prior to the ISIS assault at 80,000, with most of them having fled, and only 30,000 expected to return.<sup>234</sup> Similarly, a local government official from Sinjar does not foresee that more than 50 per cent of IDPs will ever return to the district.<sup>235</sup>

Displaced Yezidis interviewed in a small village in Dohuk governorate expressed hopes of going back to their homes, but the village leader stated that the IDPs in the informal settlements fear return,

as most of them are still traumatized by the incidents in Sinjar.<sup>236</sup> Yezidis residing in Khanke informal camp also indicate a will to return, yet this intention was driven less by personal attachment to their homes than by the lack of a better option, given the conditions of their displacement and their lack of financial means to emigrate.<sup>237</sup>

### **Territorial disputes and demographic change**

Even where areas are no longer under ISIS rule, access remains hindered by militias or other political or military actors. Jurf al-Sakhar, Babel, was taken back from ISIS in October 2014 but displaced residents have not been able to return. Similar delays have been reported in Diyala, Salahaddin and Ramadi.<sup>238</sup>

Views on return are also heavily influenced by social tensions, political conflict and the status of disputed territories. A Christian cleric at Ashti camp, Erbil, did not think that IDPs could return as it would only result in continued conflict between communities over land disputes.<sup>239</sup> On a broader level, many members of minorities feel betrayed by the larger ethnic or sectarian blocs in the country who they consider failed to protect them. An Iraqi NGO director believes that the fall of Mosul demonstrated that there is little commitment towards 'somebody else's land'.<sup>240</sup> Another public official and minority representative argued, 'The KDP [Kurdish Democratic Party] surrendered us to ISIS so the minorities can never go back under Kurdish rule.' Even the current territorial disputes over areas formerly held by ISIS present another set of disincentives for returns.

A Christian religious leader suggested that the KRG has made clear that when it frees an area from ISIS, it then assumes control over that territory: 'They are drawing the borders [of the KR-I] with blood.'<sup>241</sup> A senior Kurdish official also gave the impression of a KRG desire to expand its territory by stating that 'When I say Kurdistan, I also include the...[retaken] territories.'<sup>242</sup>

A senior member of the Migration and Displacement Committee of the Iraqi parliament emphasized the frustration among IDPs who want to return, but cannot. He held that displaced communities are demoralized due to movement restrictions. A year ago, they were comforted by government assurances, but today many IDPs – including those who intend to return and those who do not – are losing patience with return policies and restrictions, which are starting to generate further demographic changes in Iraq.

## Conditions required for return

According to the IOM, as of the end of May 2016, 726,336 individuals had returned to their area of origin. Trends in these returns are limited to the governorates of Anbar, Baghdad, Diyala, Erbil,

Kirkuk, Ninewa and Salahaddin.<sup>245</sup> However, the situation in areas of return has generated new vulnerabilities for returnees. Returning families face partial to complete physical destruction of infrastructure, homes and community facilities, if not the appropriation of these properties by others. Neighbourhoods are commonly riddled with booby-traps and IED contamination following ISIS occupation, placing returning individuals at high risk.<sup>246</sup> Furthermore, general security in such locations remains precarious, with the presence of several armed actors seeking or implementing *de facto* control over retaken territories and their residents.

The two key conditions for return that were repeatedly flagged by IDPs are security and services, but these must be combined with a defined strategy providing durable solutions for returnees which include the implementation of land and property rights, restitution and reconciliation efforts. The pace of returns is set by these factors.

## Security

### Armed force presence

The security situation in areas of return is often determined by the decisions or presence of different actors once the territory has been retaken

## Guiding principles on internal displacement

Unlike the situation for refugees, for whom there is also a well-developed international legal framework, there is no specific convention or binding set of laws relating specifically to IDPs. This is because the responsibility for the protection and promotion of their human rights, and their protection against international humanitarian law violations, remains with the state within whose borders they have been

displaced.<sup>243</sup> IDPs retain all the human rights and international humanitarian law protections they had before they were displaced; the challenge is that, given their situation, the exercise of those rights is more difficult than if they had not been displaced.

While there is no specific legal framework regulating the situation of IDPs, there is a set of *Guiding Principles on Internal Displacement*, published by the UN OCHA in 2004.<sup>244</sup> They are based on existing international humanitarian law and human rights instruments, which are the source for the legally binding nature

of much of the principles and standards set forth in the *Guiding Principles*. The innovation of the principles is that they bring together in one place the standards that apply for the protection of IDPs and provide useful guidance to states, humanitarian agencies, UN entities and others for providing assistance and protection to IDPs. While it is beyond the scope of this chapter to analyse the applicable law in detail, the *Guiding Principles* can be a useful tool to assess the responsibility of the state of Iraq with respect to the human rights challenges facing IDPs that are outlined elsewhere in this report.



from ISIS, including officials, Iraqi securing forces, and PMUs or other militias. Conclusions are quickly drawn regarding the affiliations of local residents as well as returnees, and retaliatory action is often arbitrary and brutal against those perceived to be ISIS sympathizers.<sup>247</sup>

Salahaddin is a particularly volatile region of Iraq and although Tikrit records the largest returnee figures, it also exhibits the most severe protection concerns in the region,<sup>248</sup> indicating an alarming positive correlation between the number of returnees and recorded human rights violations. The inter-agency Global Protection Cluster has deemed human rights abuses by state or non-state military or security actors to be at a critical level in both Tikrit and Baiji.<sup>249</sup> This includes abduction, arbitrary arrest, arbitrary detention and disproportionate restrictions on freedom of movement. Protection concerns in the above-named districts are also deemed high with regard to security incidents resulting in death or injury, including assault, murder and conflict-related casualties.<sup>250</sup>

As of early 2016, Salahaddin Governor Raed al-Jiburi (appointed by Iraqi Prime Minister Haider Al Abadi), along with the provincial council chair Ahmad Al Karayam, had not yet issued a single public criticism of the PMU militias. In a meeting with PMU Commission Deputy Commander Abu Mahdi al Muhandis on 22 January 2016, they did nevertheless submit a request for the return of IDPs to Baiji and the release of approximately 240 Sunnis detained by the PMU forces.<sup>251</sup> The circumstances of the governor's request illustrate the severe lack of control over the activities of the militias. Inadequate civilian control over irregular armed forces only serves to prolong instability in Iraq and deter returns, particularly for IDPs of a particular sectarian or ethnic identity who are at risk of persecution for perceived affiliation to parties to the conflict.

An Iraqi NGO director emphasized this view, asserting that, for instance, displaced Sunni Turkmen would not want to return to Salahaddin as there is a lack of central government rule in the region, and authority remains in the hands of PMUs:<sup>252</sup>

*If there were greater government involvement in the area then people would feel safer to return. The presence of the central government is weak*

*– the Kurds have presence there but the impression is that they only protect their own.'*

Other sources expressed the view in that provincial authorities not only lack effective control, but also a physical presence in the governorate. The governor and provincial council members reportedly only visit Tikrit around once a month. In doing so, provincial authorities are demonstrating a lack of interest in the affairs of Salahaddin and also potentially indicating to IDPs that the district of Tikrit is in fact not yet secure enough for return.<sup>253</sup>

As in Salahaddin, patterns of returns and abuses in Diyala governorate also illustrate that security incidents resulting in death and injury are at their highest where the number of returning families is greatest, namely in Al Khalis and Al Muqdadiya. In Al Muqdadiya, the severity of human rights violations by state or non-state military actors is also ranked as high.<sup>254</sup>

There has been a deterioration of security in Diyala in recent months with militias exerting control in a context of sectarian conflict. Hadi al-Ameri, Badr Organization Secretary General,<sup>255</sup> obtained authorization from former Prime Minister Al-Maliki in 2014 to oversee security matters in the governorate, and presently continues to exercise this 'authorization' in security affairs.<sup>256</sup> Thereby the central government has empowered militias over local authorities and ISF, creating a situation in which returning civilian IDPs are extremely vulnerable.

There are 20,000 police personnel, 5,000 PMU fighters,<sup>257</sup> and reportedly over 56 Shi'a militias operating in Diyala.<sup>258</sup> In January this year, at least nine mosques, stores and houses were burned down and a number of men were abducted and killed in Muqdadiya.<sup>259</sup> In the same district, residents have been threatened by militias, forcing new displacement, including that of returnee families. In areas such as this, even if IDPs are able to return, the prolonged sectarian conflict is simply not conducive to their ability to stay. This is a view echoed by a senior member of the Iraqi parliament's Migration and Displacement Committee, who asserted that 'The first step is to get the weapons only in the hands of the government ... not the PMUs.'<sup>260</sup>

Sinjar in Ninewa is another example of an area in which several armed forces are active, all in the name of protection. According to a senior local government official, the Peshmerga is the only prominent defence force protecting the predominantly Yezidi city of Sinjar and the claim that any other military influence exists is 'propaganda'. He nevertheless admitted that the borders between Syria and Iraq are open, enabling forces of the Yekineyen Parastina Gel (YPG), to shift between the two countries and have an active military presence in Sinjar.<sup>261</sup>

Ninewa is a unique case with regard to security for returns due to the richly diverse minority population originating from the governorate and the egregious abuses they have suffered, both historically and in the present conflict.<sup>262</sup> Even if the physical threat of ISIS is eliminated, disputes over territory between the GoI, the KRG and local communities will continue to place minorities at risk of further rights violations. The presence in the area of military forces of varying political affiliations is already an indication of disputes to come.

#### **Return procedures and requirements**

Returns thus far can be classified as either voluntary, forced or denied. In the past year there have been reports of forced returns to Salahaddin, Diyala, Ninewa and Anbar, typically occurring due to push factors in regions of displacement.<sup>263</sup> This includes authorities' use of evictions, confiscation of documents, harassment and arbitrary detention to coerce IDPs into leaving the areas of displacement, especially in relation to IDPs displaced in Kirkuk.<sup>264</sup>

OCHA reports that the eviction of displaced persons is increasing.<sup>265</sup> Host communities are anxious for IDPs to return, even where security conditions are unsafe, leaving IDPs feeling unwanted in areas of displacement, yet unwilling to return to the destruction and insecurity of their home towns. In some locations, IDPs have had to go through screening procedures to be permitted return. A security screening committee was established in Tikrit comprised of PMU, ISF, a representative of the governor's office and tribal sheikhs.<sup>266</sup> Background security checks were completed on all of the district's returnees. A similar committee was formed in Diyala for the clearance of return requests.

Denial of access to areas of origin has been reported in Salahaddin, where families or entire tribes perceived to be associated with ISIS were not granted entry, thus making return impossible. In Balad district, a return committee was formed using Tikrit as a model, but the Yathrib sub-district has seen few returns due to tribal opposition to the return of families whom they believe to be ISIS supporters.

Counter-insurgency measures to maintain security in areas of return are being used as justification for imposing restrictions on IDPs' freedom of movement – a right encoded in Iraq's National Policy on Displacement: 'no person will be arbitrarily or unlawfully forced to remain within a certain territory, area or region, nor shall he or she be made to leave a certain land, area or region'.<sup>267</sup> According to this policy, restrictions for the purpose of national security can only be imposed if maintained by law.<sup>268</sup> However, many decisions on denial of return have appeared arbitrary, discriminatory and sectarian in nature, and do not conform to the right of IDPs to freedom of movement, and hence return.

There is a systematic failure in the process of granting and facilitating returns. A senior international official in Baghdad expressed concern that over the past year discriminatory procedures have transitioned from being one-off practices to becoming the norm.<sup>269</sup> Despite the National Policy on Displacement stating that '[t]he governorates and local authorities shall not prevent IDPs from residing in their areas, and they shall not create obstacles to that effect',<sup>270</sup> rights of access and return are being negotiated on the ground by tribes and local authorities acting at their discretion.

Humanitarian workers in areas retaken from ISIS have also documented a pattern of displaced persons being denied the right to return home. Witnesses note that the Peshmerga has an agenda that goes beyond fighting ISIS – establishing the boundaries of a future Kurdish state and moving the previous inhabitants out. 'They want to change these villages demographically,' according to one Kirkuk-based aid worker interviewed for a Foreign Policy report. 'If they burn and destroy these villages, people won't come back. And they want the Arabs to go elsewhere.'<sup>271</sup>

Of great concern is the implication for changes in the demographic make-up of return areas, due to the imposition of such security measures. As a result, minorities could be marginalized even further.

*'With the pattern of return policies or practices, there is a clearer demographic change in comparison to last year. It is a re-engineering of the country. Minority groups are not only mostly affected by this, but they are the most invested in what the future of their regions would look like.'*

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### **Improvised explosive device (IED)/explosive remnants of war (ERW) contamination**

Booby-traps planted by ISIS pose an extreme risk to life and limb of returnees in newly accessible regions. Reports suggest that IEDs have been neutralized or cleared in Sinjar, but many still remain.<sup>273</sup> In Baiji, Salahaddin, local authorities and forces including ISF, PMU, police and other tribal militias are not encouraging the return of internally displaced people until the area is cleared of IED/ERW contaminations.<sup>274</sup>

Although the immediate clearance of mines and IEDs with specialized assistance is critical before IDP returns are initiated,<sup>275</sup> many families undertake the risk of return nonetheless. The presence of landmines and other ERW not only presents an obvious physical danger, but it also prevents freedom of movement within returnee areas, accordingly hindering access to livelihoods, education and external aid deliveries, as well as post-conflict reconstruction.<sup>276</sup>

## **Services**

### **Livelihoods**

Even in areas witnessing the most significant returns, livelihood opportunities have been slow to pick up. Some sources indicate that in Tikrit, there are currently no job opportunities.<sup>277</sup> This situation is worsened by the widespread destruction to the Baiji refinery, on which 10,000 employees are dependent. Salaries continued to be paid to at least part of the refinery's workers as per mid February 2016, but this is not likely to be sustainable.<sup>278</sup>

Notably, the ability to resume employment is in many cases dependent on other factors such as security, infrastructure repairs and restoration of en-

ergy supplies. As it is, livelihood opportunities in areas of return are severely limited and could be a factor on preventing the return of IDPs. The situation is confirmed by OCHA, which reports that 'livelihoods in return areas are not functioning'.<sup>279</sup>

### **Health and public services**

In areas of return, basic sanitation facilities and water services are often unreliable and where infrastructure has sustained damage, water systems will require urgent restoration.<sup>280</sup>

Returned IDPs in Tikrit report that electricity lines have been damaged or destroyed by ISIS, and residents expect a further worsening of the situation, not only with electricity cuts, but also fuel and agricultural products shortages.<sup>281</sup> Similarly, electricity in the district of Sinjar has not yet been reinstated although the process of doing so has reportedly been instigated in coordination with the UN Development Programme (UNDP).<sup>282</sup> Returnees will nevertheless need the provision of alternative energy supplies until electricity can be restored.

Efforts to establish clinics and medical centres in areas retaken from ISIS are under way<sup>283</sup> but access to medical services for the treatment of chronic illnesses or major medical procedures is still limited. Hospitals in Tikrit were used as ISIS bases and destroyed, therefore those seeking more advanced medical treatment must travel to the nearest hospital, located in the next city, Samarra.<sup>284</sup>

Access to public services is an undeniable challenge for returnees, and many IDPs wait for these services to be reinstated before returning. A senior local government official predicts that if services are resumed in Sinjar, approximately 30 per cent of IDPs from the region will have returned by the end of 2016.<sup>285</sup>

### **Education**

Access to education remains a major challenge as a result of the ISIS insurgency. In Anbar, an estimated 130 schools are still occupied, but even once these grounds are vacated, the premises must be cleared of all explosive devices and remnants of war before schools can be reused again.<sup>286</sup>

Both during ISIS occupation as well as during the retaking of cities, buildings have been destroyed or damaged and require repair before learning

can resume. The University of Tikrit, for example, was reportedly held by ISF during hostilities, in an attempt to prevent ISIS from entering and destroying the facilities. While the building is still mostly intact, some university equipment is now missing or unusable. Nevertheless, according to a returnee employee at the University of Tikrit, schools and the academic institute have resumed activity with a delay of only one month to the current academic year. A large school for girls in Tikrit is also reportedly under the protection of ISF.<sup>287</sup>

In Ninewa, similar rapid resumption of learning is unlikely, although there are claims that schools have reopened in the Sinjar district.<sup>288</sup> Mosul University, the second largest research and educational institute in Iraq, has been closed by ISIS and its libraries pillaged, while thousands of students and professors were forced to flee.<sup>289</sup> There would need to be large-scale return of teachers and professors for services to resume, but with heightened protection concerns in the region, the prospects of return for minorities following a retaking of Mosul are uncertain.

Critical to achieving appropriate education for returnees is the revision of curricula in schools in areas previously under ISIS control. ISIS have reportedly maintained tight control of educational material, eliminating science, art, music, history and literature from the curriculum.<sup>290</sup> It is likely that in areas regained from ISIS, teachers will require retraining and students may need to relearn. A shocking indication of this was described by a Yezidi IDP whose relative, a 9-year-old boy, refused to be rescued from ISIS captivity due to the brainwashing he had undergone over the past year in an ISIS-run school.<sup>291</sup>

If education services do not resume swiftly in areas of return, there is a heightened risk of child labour and early marriage, while adolescents could be prone to political and social manipulation, hence exacerbating social conflicts and increasing recruitment to armed groups.

#### **Property rights and restitution**

In return areas, problems regarding property ownership and restitution are likely to arise. During ISIS occupation, many houses were looted or destroyed and allocated to ISIS supporters or fighters. In the process of retaking cities or towns, homes

have been further destroyed, pillaged and in some cases are newly occupied by militias or individuals claiming rights to the properties or land.<sup>292</sup>

According to IOM, 91 per cent of returnees have returned to their original homes, while 11 per cent who have returned to their areas of origin are residing in alternative shelter, including unfinished buildings (6 per cent), informal settlements (1 per cent) or rented housing (2 per cent).<sup>293</sup> However, it is likely that the majority of IDPs whose homes have been destroyed are simply not returning at all. In Sinjar for instance, video footage taken after the city's retaking showed the complete obliteration of infrastructure, homes and religious buildings, including due to air strikes, IEDs/ERW and even ISIS destruction with bulldozers.<sup>294</sup> Returns to Sinjar district have been reported, but the return to Sinjar city is plainly impossible in these conditions.

Some IDPs are at a loss as to what exactly has happened to their properties and are therefore unable to assess if return is even a possibility. A Turkmen woman displaced from Tal Afar expressed her uncertainty: 'we heard that everything was destroyed and all the houses were destroyed – we saw it on TV.'<sup>295</sup> When a group of displaced women were asked what conditions they require to return home, one woman merely stated that she needs to be provided with replacements for her homeware so that she could go about day-to-day life.<sup>296</sup> The expectations of compensation among IDPs were in many cases very low.

If returning IDPs are unable to access their homes, return will remain a near impossibility for many, particularly those who do not possess the means to obtain alternative accommodation in their areas of origin. Under the National Policy of Displacement, the GoI guarantees displaced persons their rights to property, ownership and compensation for property in case of displacement, demolition or destruction.<sup>297</sup> It holds that 'persons who were deprived of their homes shall have the right to have their property returned, and the government and all its security and military apparatuses shall respect this right.'<sup>298</sup> While compensation is sometimes provided, it is often driven by political considerations. Following a PMU demand for compensation, the provincial council of Salahaddin has budgeted one-fifth of

the entire 2015 provincial operating budget, equivalent to IQD 3 billion (approximately US\$2.7 million), to provide compensation for the death of 431 Shi'a residents at the hands of ISIS. This was a precondition, set by PMU leaders, in exchange for the return of IDPs to Yithrib.<sup>299</sup>

Similar patterns of compensation priorities have been reflected by parliament. On 2 February 2016 the Council of Ministers, with Prime Minister Abadi presiding, decided to award residential land plots to the families of those killed, wounded or disabled in the fight against ISIS, as well as land plots to members and training staff of the Iraqi national football team.<sup>300</sup>

The Migration and Displacement Committee, on the other hand, has begun work to develop a draft law on IDP returns, which will apparently feature compensation provisions.<sup>301</sup> Iraq's economic situation will however be a constraint on any compensation schemes it intends to develop. As noted by a senior international official, 'Iraq is often generous in its grant schemes, but laws and new policies are not easily implemented in Iraq. The government's desires and goals do not level with their capacity.'<sup>302</sup>

### Reconciliation

Several layers of social tension and conflict exist in Iraq. On one level, many minority IDPs believe that their circumstances and the failure to protect them against ISIS can partially be attributed to the negligence or political interests of the relevant authorities. There is often friction between IDPs (in areas of displacement as well as in areas of return) who side with, or support, such authorities and those who do not. Minority representatives argue that the long-standing persecution against minorities in Iraq has led to severe mistrust among minorities in the country, but that trust is a difficult but critical precondition for peace.<sup>303</sup> However, among communities who have suffered mass killings, abductions and sexual violence, the desire for revenge is often strong and may trump the call for justice. A prominent human rights activist noted that 'Yezidis don't speak of retribution or justice – they only speak of revenge for their honour.'<sup>304</sup>

On a more community-based level, there is a possibility of serious and protracted tensions be-

tween local communities and returning IDPs if reconciliation efforts are not initiated. There is a strong and often misguided perception among IDPs and officials alike that those who did not attempt to escape ISIS are either affiliated with or otherwise support the group. In Tikrit, it is said that ISIS sympathizers fled the area upon its re-taking, pre-empting potential conflict.<sup>305</sup> However, tensions remain.

There are also more optimistic voices. There is a feeling that in Salahaddin reconciliation is inevitable due to the diversity of its ethnic, religious, cultural and linguistic make-up before the ISIS occupation.<sup>306</sup> However, the targeted persecution of minorities, resentment of militia rule and continuing sectarian violence imply that reconciliation between communities will be a decades-long process, requiring dedicated efforts from local authorities, religious leaders and minority representatives, to prevent areas of return from spiraling into renewed conflict.

## Likely migration flows

Conflict and political instability in Iraq have resulted in decades of persecution and marginalization of minority communities. The country now faces a threefold crisis: the disintegration of national security, a humanitarian emergency and an economic breakdown. With few signs of improvement, Iraq is still experiencing new waves of displacement as well as growing rates of emigration.



Christian family exiled in Jordan. Matthew (left, not his real name) was kidnapped by members of ISIS when he refused to renounce his faith. *Jeff Gardner.*

## No place in Iraq

Minorities are increasingly losing their sense of belonging in Iraq. Potential legislative changes to the Nationality Law point to a national campaign to dilute minority identity among future generations. Minority communities believe that, as a result, there is no guarantee of a future for them in the country: 'I speak for Christians, Yezidis and Kaka'is when I say Iraq does not want us.'<sup>307</sup>

Religious leaders expressed concern about the absence of any compelling incentive for Christian communities to stay in Iraq, at least outside the KR-I, as there is yet to be a successful example of return and reintegration of Christian IDPs to their lands of origin.<sup>308</sup> The long wait for the fall of ISIS in Mosul has led Christians and other minorities alike to lose hope of return.<sup>309</sup> OCHA confirms that 'the number of Iraqis who see emigration as their best option is increasing in direct proportion to the number who see little hope in their future'.<sup>310</sup>

The practical limitations of living in displacement have also served as push factors for the return or emigration of IDPs. Due to limited employment opportunities, members of tribal Turkmen communities, who before ISIS had never left their village and demonstrated no desire to migrate, are now compelled to seek work abroad.<sup>311</sup> On another note, sources suggest that, in some regards, families renting accommodation in the KR-I are worse off than those residing in camps, due to increasing rent rates and lack of income.<sup>312</sup> Accordingly, many IDPs have decided to embark on the difficult journey abroad with what modest savings they have remaining, instead of waiting uncertainly for the opportunity to return home.<sup>313</sup>

Protection concerns have also had a major influence on migration flows. The emigration of Yezidi women who have escaped ISIS captivity is one example of this. Notably, activists have suggested that many Yezidi women are actually pressured to leave Iraq by their families, not only for their protection, but also due to the stigma attached to sexual violence survivors (although other Yezidi activists point to a high level of re-acceptance of survivors, led by statements from Yezidi religious leaders). If adequate services are not provided to ensure the in-country safety and well-being of survivors of gender-based violence,

then this is likely to constitute a further push factor for emigration.

## Future by emigration

*I asked three of my classes in secondary school (year 10, 11 and 12) 'Who here wants to emigrate?' In year 10, just less than half wanted to leave but in years 11 and 12, over 50 per cent wanted to. I asked these students, 'Why do you want to leave?' and they proceeded to list thought out and extensive reasons for emigration. I then asked the students who chose to stay 'Why don't you want to leave Iraq?' These students struggled to answer, only giving emotive attachments for their decision. It's interesting that when we flip the question, we see that even children can't think of a substantive incentive for staying in Iraq.'*<sup>314</sup>

The European Union (EU) delegation in Iraq emphasizes that hundreds of thousands of Iraqis have already left the country, and tens of thousands are in Greece and Turkey 'waiting to be smuggled across the border'.<sup>315</sup> Records show that Iraq is the third most common country of origin of refugees who fled to Europe in 2015–16, with a staggering 98,982 arrivals to the region from Iraq.<sup>316</sup> Meanwhile, the number of Iraqi refugees who return remains very small.<sup>317</sup>

Minorities make up a large proportion of those who emigrate. One Iraqi NGO suggests that in Baghdad, only 15 per cent of the governorate's original Christian residents remain, with 85 per cent either displaced to other areas of Iraq, or forced to flee the country altogether. The same organization estimates that 80 per cent of the entire Iraqi Christian population has fled, and those who do not simply lack the financial means to do so.<sup>318</sup> A Christian leader claims that no more than 250,000 Christians are now left in Iraq.<sup>319</sup>

The manager of the 'Ashti' IDP camps, composed of approximately 1,200 Christian IDP families, predicted that by the end of 2016, 400 of the 1,200 families in Ashti camp would be gone.<sup>320</sup> A Christian cleric at the settlement also anticipates a large rise in emigration in the coming months, given that 'most IDPs in the camp are talking about it'.<sup>321</sup>

*'My brother has been living in Germany for the last six years and my other brother joined him*

*three months ago. I have two children and so I plan to do the same when the temperature increases, by walking through Turkey.'*<sup>322</sup>

There is a sense among EU officials that the influx of Iraq's migrants to Europe will rise further in the future due to 'economic downturn, further military operations in Ninewa, general security and corruption'.<sup>323</sup> OCHA confirms that after protracted violence, abuse and poor humanitarian conditions, many displaced families are concluding that their only option is to leave Iraq.<sup>324</sup>

Patterns of migration are inevitably affected by the security situation of areas of origin and areas of displacement.<sup>325</sup> Ongoing violence and oppression under ISIS occupation, as well as high-intensity operations to retake areas from the group, have caused further waves of mass displacement. As mentioned earlier in this report, following the fall of Mosul, August 2014 resulted in the *second* largest proportion of IDPs (23 per cent or 763,800 individuals), whereas the highest percentage of IDPs were in fact displaced more recently, between April 2015 and February 2016 (24 per cent or 779,508, individuals).<sup>326</sup>

With impending plans for a Mosul offensive, thousands of families are at further risk of being caught between the front lines of opposing forces, as the government attempts to retake Iraq's second largest city. Given the history of displacement patterns in Iraq during military operations, it is anticipated that a new battle for Mosul will result in up to a further 1 million displaced individuals. This estimate has been confirmed by a senior international official in Baghdad, representatives of the Kurdish government, and by Iraq's Migration and Displacement Committee, all of whom predict a further 500,000 to 1 million IDPs, depending on the intensity of the fight in Mosul.<sup>327</sup>

Planning for this new wave of displacement should begin immediately, but, according to a senior member of the Iraqi parliament's Migration and Displacement Committee and Kurdish officials, no steps have yet been taken to ensure that Iraq will be able to respond to the expected addition to the IDP crises.<sup>328</sup>

Given the conditions in areas of return, areas of displacement and the lack of prospects for a future

in Iraq, some sources indicate that as many as one in five IDPs feel that they have no choice but to embark on the dangerous journey to flee the country.<sup>329</sup> Given that anticipated displacement from a possible effort to retake Mosul in the coming months may bring Iraq's IDP total above 4 million this year, the international community could witness the flight of hundreds of thousands of further refugees from Iraq in 2016 alone.

If the GoI, the KRG and the international community do not act quickly, millions of displaced Iraqis will fall further into destitution this year, or they will choose to escape the country altogether, with irreparable damage to Iraq's once rich and diverse religious, cultural and ethnic tapestry.

# 6

## Violations of international criminal law

This chapter focuses on individual criminal responsibility for prohibited acts under international law in northern Iraq between June 2014 and February 2016. Aside from individual responsibility, there is also the question of state responsibility for violations of the rights of minorities and IDPs, which is covered elsewhere in this report.

The bulk of crimes described in this report are alleged to have been committed by ISIS forces and commanders; their acts certainly outstrip those of any other actor on the ground in terms of their brutality, contempt for human life and intention to terrorize. That said, several other armed forces, including official state and regional armed forces, have also allegedly committed violations that are no less serious to the victims, not least because they were carried out by those with a responsibility to protect. To date there has been little serious effort to bring any of the perpetrators of the acts detailed in this report to justice.

Iraqi jurists and government officials freely concede that the Iraqi judicial system is unable to prosecute these crimes successfully, and point to international prosecution as a way to provide a legitimate and impartial path for justice for their fellow citizens.<sup>330</sup> This is all the more pressing when taking into account the sentiments expressed by many that the desire for justice is steadily being replaced by the desire for revenge.<sup>331</sup> It is imperative that action be taken to avoid that and instead to promote accountability, redress and reconciliation, all of which are sorely needed for minorities in Iraq.

Based on the facts uncovered in this report, it appears that:

- ISIS forces and commanders have committed war crimes prohibited under international law applicable in Iraq at the relevant time, during which there was an armed conflict non international in nature;

- other forces, including those on the government side, have committed war crimes prohibited under international law applicable in Iraq at the relevant time;
- ISIS forces and commanders have committed almost all of the underlying acts for crimes against humanity as part of widespread and systematic attacks against the civilian populations in northern Iraq; and
- information exists which would support a *prima facie* case that ISIS forces have committed the crime of genocide against religious minorities in northern Iraq.

The legal basis for these findings is explored in detail in the rest of this section.

### Applicable law

Iraq has ratified all the major international humanitarian law treaties, including the four 1949 Geneva Conventions and their two Additional Protocols of 1977, the 2000 Optional Protocol on the involvement of children in armed conflict and others on prohibited weapons and means of warfare. These treaties are applicable across the territory of Iraq whenever there is an armed conflict in any part of the country. Iraq has also ratified the 1987 Convention Against Torture.

Iraq is also bound by customary international law on war crimes, which is reflected in Article 8 of the Rome Statute of the International Criminal Court (ICC, or Court). Much of Article 8 codifies pre-existing treaties to which Iraq is already a party and provides a useful guide in terms of substantive applicable criminal law. Iraq has ratified the Genocide Convention and is bound by customary international law on crimes against humanity, both of which apply irrespective of the existence of an armed conflict. For crimes against humanity, Article 7 of the Rome Statute codifies customary international law and therefore provides a useful guide in



terms of substantive applicable criminal law. Though Iraq is not yet party to the Rome Statute, nor has it accepted exercise of the Court's jurisdiction under Article 12(3), the Statute nevertheless provides a useful guide to the elements of crimes that may already apply in Iraqi territory due to their customary international law status.<sup>332</sup>

With the exception of genocide and crimes against humanity, there needs to be an armed conflict for international humanitarian law to apply and for individual criminal responsibility for war crimes to be imposed. An armed conflict exists whenever armed force is used between states or there is protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.<sup>333</sup> Whether an armed conflict is international or non-international in nature depends on the parties to the conflict. In essence, a conflict will be 'international' when it is conducted between two or more states and will be 'non-international' when it is conducted between a state and a non-state armed force, or between such forces.<sup>334</sup>

International humanitarian law applied to all parties to the conflict during the relevant time.

The question remains whether the conflict was international or non-international, namely whether any of the forces involved were acting on behalf of a foreign state or states. One issue is whether the involvement of the US or other states in the conflict is sufficient to classify it as an international armed conflict. US forces were acting under the authority and control of the US, but they were acting in support of Iraqi forces and only attacking

ISIS targets, not engaging the forces of another state.<sup>335</sup> Similar considerations apply to other states involved in the conflict in Iraq, including Australia, Canada, Iran, Jordan, Turkey and the United Kingdom. As such, their involvement is probably not sufficient to render the conflict international in nature. Another issue is whether ISIS is acting on behalf of a foreign state. Applying the three rules needed to show control,<sup>336</sup> this does not appear to be the case. Some of the top leaders of ISIS are not Iraqi, as many of its fighters are not, and it seems to have received funding from wealthy individuals in the Gulf region. However, there are no indications that ISIS is under the control of, or receiving instructions from, a foreign power. That said, ISIS is an organized armed group with a recognized command structure and controls territory that enables them to carry out sustained military operations and to implement international humanitarian law. While this falls within Additional Protocol II to the Geneva Conventions, ISIS has its headquarters in Syria, not in Iraq, which complicates the question of the nature of the armed conflict, as does the question of whether they could be considered an occupying power within the meaning of international humanitarian law. This report therefore errs on the side of caution in considering those crimes and legal elements that apply irrespective of the nature of the conflict.

## War crimes

At least ten war crimes – comprising thousands of individual counts – apply to the territory of Iraq between 1 June 2014 and February 2016, when the interviews for this report were conducted, in-

cluding those in common Article 3 to the Geneva Conventions and other treaty law, plus the customary international law crimes reflected in Article 8(2)(e) of the Rome Statute. For an act to qualify as a war crime, there are two overall requirements: it must take place in the context of and have been associated with the armed conflict; and the perpetrator must have been aware of the factual circumstances that established the existence of the armed conflict.

The first overall requirement stems from the fact that international humanitarian law does not protect persons against crimes unrelated to the conflict.<sup>337</sup> An armed conflict must have played a substantial part in the perpetrator's ability to commit the crime, his or her decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, establishing that the perpetrator acted in furtherance of or under the guise of the armed conflict would be sufficient to conclude that the acts were closely related to the armed conflict. There are a number of factors to assist in determining this: the perpetrator is a combatant; the victim is a non-combatant; the victim is a member of the opposing party; the act serves the ultimate goal of a military campaign; and it was committed as part of or in the context of the perpetrator's official duties.<sup>338</sup>

For the second overall requirement, the perpetrator need not make a legal evaluation of the existence of an armed conflict,<sup>339</sup> or its nature. The perpetrator need only be aware of the fact that there is fighting and that there is a link between that fighting and his or her conduct.<sup>340</sup>

The analysis below looks at whether the elements that constitute the crime in question appear to be satisfied.

## ISIS crimes

Based on the facts uncovered for this report, it appears that ISIS forces and commanders committed most of the war crimes prohibited under international law applicable in Iraq at the relevant time. This section, which focuses on crimes against civilians, takes examples from the facts described in this report; it does not seek to be exhaustive, but to show the broad picture of crimes committed in Iraq by ISIS during the relevant pe-

riod. Some of these crimes overlap, while many facts show the commission of one or more crimes, which were generally large-scale in nature. The similarity of these crimes, together with public statements from ISIS declaiming their ideology and operational methodology, go to demonstrate that the crimes were committed as part of a plan or policy.<sup>341</sup>

### **Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture**<sup>342</sup>

As ISIS swept across northern Iraq, they killed thousands of people and the killing of men, women and children has continued unabated since then. Some people were killed during bombardments, some when ISIS forces entered towns and villages, others as reprisals, when people refused to convert to Islam or when people tried to flee, or help others to flee. Killings were frequently preceded by being kept in inhumane conditions and being subjected to beatings and other similar treatment. None of the killings appear to be justified by law and some bodies appear to have borne signs of torture. Overall, the *modus operandi* of ISIS forces appears to have been brutal and cruel, including the infliction of physical and mental pain and suffering.

### **Committing outrages upon personal dignity, in particular humiliating and degrading treatment**<sup>343</sup>

This crime consists of acts that humiliate, degrade or otherwise violate the dignity of a person to such a degree 'as to be generally recognized as an outrage upon personal dignity',<sup>344</sup> such as enduring the constant fear of being subjected to physical, mental or sexual violence<sup>345</sup> and other acts of a similar nature. Such acts were committed in abundance, apparently with the intention to humiliate and degrade victims and their communities. Striking examples include dressing civilians in ISIS clothes to act as human shields,<sup>346</sup> forced marriage to ISIS fighters, public executions and women being sold into sexual slavery.

### **Taking of hostages**<sup>347</sup>

Hundreds of people were abducted by ISIS forces and many of them were kept either in prisons or in makeshift detention facilities. Men and boys were mainly killed, while many women and girls were kept for sexual or domestic purposes. The

purpose often seems to have been creating a climate of fear and intimidation; increasingly, it has been done for the purpose of collecting ransoms. It therefore appears that civilians were captured for the purpose of compelling someone to act or refrain from acting as a condition for the safety or the release of those civilians.<sup>348</sup>

**The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable<sup>349</sup>**

ISIS has established so-called courts in areas under its control, which impose sentences such as stoning, beheading, flogging and amputation for alleged breaches of the regulations and rules established by ISIS. However, these courts do not appear to be independent or impartial, which means they are not regularly constituted, nor do they operate according to any standards of due process, which means they do not afford any judicial guarantees which are generally recognized as indispensable.

**Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities<sup>350</sup>**

As ISIS forces swept across northern Iraq, they often captured towns and cities following prolonged bombardment with mortar shelling and sniper fire. Upon entering the towns, ISIS forces often attacked the civilian population directly, killing some people and causing others to flee. These prolonged violent attacks, which have continued until at least February 2016, when the interviews for this report were conducted, appear to be part of an ongoing, sustained and intentional drive to capture civilian towns and cities throughout northern Iraq. They had the consequence of causing death and injury to civilians and damage to civilian objects, including homes, and do not appear to be justified by military necessity.<sup>351</sup>

**Intentionally directing attacks against buildings dedicated to religion, education ... historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives<sup>352</sup>**

Numerous buildings, monuments and other sites of immense religious, cultural and historical im-

portance have been destroyed by ISIS forces, including churches, mosques, museums, tombs and other holy sites and ancient manuscripts and texts. Sites are generally looted before they are destroyed. All Christian institutions in Mosul have been destroyed, occupied or converted to mosques. These attacks appear to be intentional, and none of the buildings or sites appear to be military objectives.

**Pillaging a town or place, even when taken by assault<sup>353</sup>**

'Pillage' is the appropriation of property for personal or private use without the consent of the owner and with the intention to permanently deprive the owner of that property. Appropriations justified by military necessity (for which a receipt should be given) cannot constitute the crime of pillaging.<sup>354</sup> ISIS forces often took people's homes and personal property and either used it or distributed it among ISIS forces and their sympathizers. It is difficult to say whether the taking of property was done for personal or private use, in which case this element of the crime would be satisfied, or if the property was taken for the conduct of military operations, in which case the acts may be legally justified. The elements of this crime therefore may be satisfied, although further investigation is warranted concerning the use of the pillaged property.

**Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence<sup>355</sup>**

Throughout northern Iraq, ISIS forces raped and exercised powers of 'ownership' over women, such as selling, lending or bartering them and giving them out as 'gifts', as well as forcing them to 'marry' ISIS fighters. Women were kept in detention facilities and 'given' out, apparently for some pecuniary or other advantage.<sup>356</sup> ISIS forces committed several other acts of a sexual nature against women and girls, often in places of detention. None of the victims appear to have consented, although consent cannot be inferred when the victim's ability to give voluntary, informed consent is undermined or where the victim is incapable of giving genuine consent, for example due to age.<sup>357</sup> There is no information in this report on enforced sterilization or enforced pregnancy.

### **Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities<sup>358</sup>**

This crime consists of three types of acts committed against children under the age of 15: forced conscription into armed forces or groups; 'voluntary' enlistment into armed forces or groups; or the use of children to participate actively in hostilities, whether or not they are formally enrolled. Active participation includes participation in combat and in other military activities, such as operating checkpoints.<sup>359</sup> While customary international law sets the age at 15, Iraq has ratified the Optional Protocol to the Convention on the Rights of the Child that sets the age at 18, which is therefore applicable in the territory of Iraq. Children as young as 14 were recruited into ISIS forces, whether forcibly or voluntarily, including being sent by their parents; children who may or may not have been recruited were used to fight in the front line as human shields and carry out other acts of a military nature, including operating checkpoints and undertaking patrols. Children have also increasingly been used to carry out acts of extreme brutality, including acting as executioners in firing squads and beheadings.

#### **The use of chemical weapons**

Iraq is a State Party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, which bans the use of chemical weapons by States Parties. Article 7 of the Convention provides for individual criminal responsibility for the use of chemical weapons when committed on the territory of States Parties or by nationals of States Parties, and obliges all States Parties to afford the appropriate form of legal assistance to implement that individual criminal responsibility. The use of chlorine and mustard gas against fighting forces and civilians appear to satisfy the elements of this crime.

## **War crimes committed by other forces**

Based on the facts uncovered for this report, it appears that the ISF, PMUs, Peshmerga and other forces may have committed war crimes prohibited under international law applicable in Iraq at the

relevant time. Coalition forces have also been accused of alleged violations of international humanitarian law. This section, which focuses on crimes against civilians, takes examples from the facts described in this report. However, it is difficult to demonstrate that the crimes as a whole were committed as part of a plan or policy,<sup>360</sup> or that the principles of distinction and proportionality were violated, which may negate the characterization of many of these acts as war crimes.

### **Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture<sup>361</sup>**

There are allegations of killings by each of the forces mentioned above, some apparently in retaliation for suspected collaboration with ISIS and some due to the religious identity of the victims. Heavy casualties as a result of airstrikes have also been reported, although it is difficult to determine in specific cases whether this is collateral damage, given the propensity of ISIS to base itself in civilian areas, and the lack of access for investigation.<sup>362</sup> The elements of this crime therefore may be satisfied, although further investigation is warranted to determine the reasons for the deaths.

### **Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities<sup>363</sup>**

ISF, PMUs and Kurdish forces allegedly destroyed villages inhabited by minorities, causing death and injury to civilians and damage to civilian objects, including homes and shops, actions which do not appear to be justified by military necessity.<sup>364</sup> There are also reports of Kurdish security forces conducting raids and arbitrary arrests and of other forces carrying out killings and abductions, apparently in retaliation for perceived support of ISIS.

### **Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities<sup>365</sup>**

This crime consists of three types of acts committed against children under the age of 15: forced conscription into armed forces or groups; 'voluntary' enlistment into armed forces or groups; or the use of children to participate actively in hostilities, whether or not they are formally enrolled.

Active participation includes participation in combat and in other military activities, such as operating checkpoints.<sup>366</sup> While customary international law sets the age at 15, Iraq has ratified the Optional Protocol to the Convention on the Rights of the Child that sets the age at 18, which is therefore applicable in the territory of Iraq. Children have been recruited, trained and used in battle by Shi'a militias.

**Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand<sup>367</sup>**

In a number of cases, displaced persons have not been allowed to return home and some IDPs have been removed from some areas by Kurdish forces, while others have been denied access to safe places or forced out of their villages by PMUs. This report does not have information on whether these displacements were ordered or not, although it is likely that they were. It is not possible, however, to assess whether the displacements involved the security of civilians or if there were imperative military reasons for the displacements, although in some cases it has been suggested that the goal is to change the demographic of those villages. The elements of this crime therefore may be satisfied, although further investigation is warranted concerning the giving of orders and the reasons for which those orders may have been given.

## Crimes against humanity

Crimes against humanity mean any of the following acts when committed as part of a widespread or systematic attack against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) persecution against any identifiable group or collectivity on specified grounds, in connection with a crime under international law; (i) enforced disappearance of persons; (j) the crime of apartheid;

(k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>368</sup>

There are two sets of elements for crimes against humanity, the 'contextual' elements, that is, those in the chapeau, and the underlying acts, that is, those found in paragraphs (a) to (k) above, both of which must be met for an act to constitute a crime against humanity. The contextual elements are first, that there is an attack against a civilian population,<sup>369</sup> and, second, that the attack is either widespread or systematic.<sup>370</sup> The act must also have been committed as part of the attack; and the accused must have known of the broader context in which his or her act is committed. For crimes against humanity, there is no requirement of a minimum number of victims: what must be widespread or systematic is the attack itself.<sup>371</sup>

The Rome Statute requires that the attack be carried out pursuant to or in furtherance of a state or organizational plan or policy to commit the attack.<sup>372</sup> Jurisprudence from international courts, however, suggests this is not required under customary international law.<sup>373</sup> While a widespread or systematic attack can be evidence of a pre-existing policy or plan, and in practical terms would likely be necessary for an attack to be carried out in a widespread or systematic manner, such a policy or plan is not a necessary element.<sup>374</sup> Since Iraq is not a party to the Rome Statute, this report proceeds on the basis that it is not necessary to prove the existence of a state or organizational plan or policy to satisfy the elements of crimes against humanity.

Based on the facts uncovered for this report, it appears that ISIS forces and commanders committed each of the underlying acts, with the exception of apartheid.<sup>375</sup> All the acts described below were carried out as part of a widespread and systematic attack against civilian populations across northern Iraq, thereby satisfying the contextual elements of crimes against humanity. This section takes examples from the facts described in this report; it does not seek to be exhaustive, but to show a broad picture of the crimes committed in Iraq by ISIS during the relevant period.

As noted in the earlier section on war crimes, some of these crimes overlap, while many of the

facts demonstrate the commission of one or more crimes, which were generally large-scale in nature. The similarity of these crimes, together with public statements from ISIS declaiming their ideology and operational methodology, go to demonstrate that the crimes were also committed as part of a plan or policy, even if this is not a customary law requirement for crimes against humanity.

While the acts undertaken by forces other than ISIS may satisfy the underlying acts, there is insufficient information to conclude that those forces were committing a widespread or systematic attack against a civilian population. This section therefore focuses only on potential crimes against humanity committed by ISIS.

#### **Murder**

As ISIS swept across northern Iraq, they killed thousands of people and the killing of men, women and children has continued unabated since then. Some people were killed during bombardments, some when ISIS forces entered towns and villages, others as reprisals, when people refused to convert to Islam or when people tried to flee, or help others to flee. None of these killings appear to be justified by law.

#### **Extermination**

In addition to the mass killings, ISIS forces inflicted conditions of life that appear to be intended to destroy part of the population.<sup>376</sup> One example is hostages kept in captivity in very poor conditions, with little food and no care. These acts appear to have been directed towards a numerically significant number of people, either with the intention of killing them or with the knowledge that death was likely to result.<sup>377</sup>

#### **Enslavement**

The indicia of enslavement include control of someone's movement, control of their physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.<sup>378</sup> It can include the trafficking of persons and deprivation of liberty that reduces a person to a servile status.<sup>379</sup> ISIS forces abducted numerous people and held them without the possibility of leaving; on occasion, they transferred people, including children, from one place to an-

other, although it is difficult to determine whether these people were being trafficked. It is also unclear to what extent people were forced to work for ISIS forces, although women were held as sexual slaves and some were required to carry out domestic duties. Some people were held pending the payment of a ransom. The elements of this crime therefore appear to be satisfied, although further information is required on conditions in places of detention and the purpose for which people were transferred.

#### **Deportation or forcible transfer of population**

Deportation is the movement of persons across national borders, while forcible transfer is the movement of persons within national borders;<sup>380</sup> they are often referred to as 'forced displacement'.<sup>381</sup> The displacement must be involuntary in nature, in that people had no real choice whether or not to leave an area in which they were lawfully present.<sup>382</sup> Over 750,000 people across northern Iraq left the places in which they lived to move to other places in Iraq as a direct consequence of the oncoming ISIS forces and the violence, fear and intimidation they brought with them. In this sense, those who left had no real choice whether to do so or not: either directly or indirectly, ISIS forces indicated that people needed to leave, abandon their identity and way of life, or be killed.

#### **Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law**

This crime encompasses two elements, namely that an individual is deprived of his or her liberty and that no legal basis can be invoked to justify the deprivation of liberty.<sup>383</sup> As noted, hundreds of people were abducted by ISIS forces; many were kept in prisons or other makeshift detention facilities, with no apparent legal basis to justify it.

#### **Torture**

There are several reports of torture taking place in detention, against children in training camps and against women being held for the purposes of sexual slavery. Under customary international law, the crime against humanity of torture does not require that the torture be inflicted for an official purpose.<sup>384</sup> The only requirement is that severe physical or mental pain (according to the level of intensity of the pain or suffering) was inflicted on a person under the control of the perpe-

trator and that the pain was not inherent in or incidental to lawful sanctions. The elements of this crime therefore appear to be satisfied, although further information is required on the nature of the violence and whether it was carried out pursuant to lawful sanctions.

**Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity**

Throughout northern Iraq, ISIS forces have raped, enslaved and forcibly married women and girls, although it is unclear whether this was done primarily for financial gain.<sup>385</sup> The victims do not appear to have consented, although as mentioned consent cannot be inferred when the victim's ability to give consent is undermined or where the victim is incapable of giving genuine consent, for example due to age.<sup>386</sup>

**Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... or other grounds**

The material element of persecution, in addition to the requirement that the acts be carried out on discriminatory grounds, is that there is a gross or blatant denial of a fundamental right laid down in customary or conventional law.<sup>387</sup> The acts that constitute persecution need not themselves be physical acts and must be evaluated in context by looking at their overall cumulative effects. Discriminatory intent is not itself sufficient; the act must also have discriminatory consequences.<sup>388</sup> The whole basis of the violence unleashed by ISIS forces in northern Iraq appears to be the denial of fundamental human rights based on people's perceived religious affiliation. The victims are clearly identifiable as groups and both the acts themselves, including the imposition of severe restrictions on people's way of life and attacks against objects of religious and cultural significance, as well as statements by ISIS, clearly demonstrate the discriminatory grounds on which the acts were carried out.

**Enforced disappearance of persons**

The crime of enforced disappearance encompasses the arrest or detention of individuals, coupled with a refusal to give information about that arrest or detention, or about the fate of the per-

sons detained or arrested.<sup>389</sup> It requires the intention to remove individuals from the protection of law for a prolonged period of time.<sup>390</sup> Thousands of people were arrested or detained by ISIS forces in northern Iraq; for many, their fate remains unknown. It is not clear whether ISIS forces refused to give information on the arrests or detentions or on the fate of the missing persons, or whether requests for such information were made. The elements of this crime therefore may be satisfied, although further information is required on whether there was a refusal to give information about the arrested or detained people.

**Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health**

This is a 'catch-all' provision that covers all other acts of similar gravity that are not otherwise enumerated in paragraphs (a) to (j). There must be some nexus between the act and the suffering of the victim, which does not necessarily require physical injury to the victim. Mental injury consequent on witnessing acts committed against other people may constitute an inhumane act if the perpetrator intended to inflict suffering on the victim or knew such suffering was likely to occur and was reckless as to whether it would result.<sup>391</sup> ISIS forces committed numerous inhumane acts against the civilian population in northern Iraq, including the infliction of an atmosphere of fear and terror and the public humiliation of women, men and children.

## Genocide

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; or (e) forcibly transferring children of the group to another group.<sup>392</sup>

There are two sets of elements, namely the 'contextual elements' and the underlying prohibited acts. The contextual elements are that acts are car-

ried out against a national, ethnical, racial or religious group and that the acts be done with the intent to destroy, in whole or in part, the targeted group.<sup>393</sup> While attacks against the culture or identity of the group would not in and of themselves be sufficient to constitute genocide, they may be evidence of the specific intent to destroy the group in whole or in part.<sup>394</sup> To constitute genocide, the attacks must be carried out based on or because of a person's membership in one or more protected groups; likewise, the actual target of the attack must be the group, intending its destruction in whole or in part, as opposed to members of that group as individuals.<sup>395</sup>

The intention or *mens rea* requirement for the crime of genocide is both what sets it apart from other crimes and what makes it more difficult to prove. It has, nonetheless, been recognized that the intention to destroy a group in whole or in part may be inferred from the circumstances. Factors to consider include the general context, the perpetration of other acts systematically directed against the same group, the scale of atrocities, the systematic targeting of victims on account of their membership of a group, or the repetition of destructive and discriminatory acts.<sup>396</sup> If intent must be inferred – in the absence, for example, of specific statements or documents demonstrating intent – then the standard required is that it be the only reasonable inference that can be drawn under the circumstances.<sup>397</sup>

Based on the facts uncovered during research undertaken for this report, it appears that ISIS forces and commanders have committed most of the underlying acts for genocide. These acts were carried out against specific minority groups in northern Iraq, apparently based on their religious identity, as evidenced by the requirement that individuals convert to Islam or be deported or executed. ISIS forces imposed a reign of terror and oppression on minority communities, inflicted punishments for those seeking to preserve their culture and identity and carried out mass killings, expulsions and other acts for which the consequences taken to their logical conclusion would be purging areas under their control of ethnic or religious diversity. These constitute factors from which it can be inferred that ISIS intends to destroy, in whole or in part, those ethnic and religious groups under attack.<sup>398</sup>

The underlying acts for genocide have been described in previous sections of this report, including killing members of the group; causing serious bodily or mental harm to members of the group; and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. This section does not describe those facts again, save to note that the similarity of the crimes, together with public statements declaiming ISIS's ideology and operational methodology, go to demonstrate that the crimes were also committed as part of a plan or policy, which is an additional factor from which the required special intent can be inferred.

Given these factors, information exists which would support a prima facie case that ISIS forces have committed the crime of genocide against religious and ethnic minorities in northern Iraq. At the very least, further investigation is warranted to determine whether those forces, or those planning, ordering, instigating or otherwise directing the commission of those attacks, had the intention to destroy one or more of northern Iraq's religious or ethnic groups in whole or in part.

## Mass graves

Mass graves are of particular importance for the investigation and prosecution of crimes under international law. Their presence in conflict zones may signal the commission of widespread or systematic crimes and provides important evidence to uncover the truth. More importantly, they can be the only chance for relatives of the missing to find out what happened to their loved ones and to provide a proper burial for family members. It is therefore of the utmost importance that mass graves are identified, preserved and processed properly; failure to do so places vital evidence at risk in future court proceedings and can be heartbreaking for the families, as experiences from the former Yugoslavia, Libya and elsewhere show.

Since the retaking of formerly ISIS-controlled areas, many mass graves have come to light. While, as noted, some of these are being investigated by Iraqi and KRG authorities and others, there are question marks over who has the authority and capacity to do what, including who has legal authority over the territory in and around Sinjar, where many of the mass grave sites are lo-



cated. There are also concerns regarding security, given ISIS proximity and IEDs and other ordnance left behind in areas retaken from ISIS.

There are several priorities with respect to mass graves: (1) mapping of all the mass graves in the relevant territory, irrespective of their origin, giving priority to recent graves because they are more exposed to destruction; (2) organizing the relatives of the victims for a proper ante mortem collection of data, and for addressing their doubts, expectations, etc.; (3) defining the human resources and infrastructure needs for the exhumation, storage and analysis of recovered remains; (4) proper exhumation of bodies and associated evidence; and (5) forensic analysis of the recovered bodies and evidence, in order to establish identification and cause of death. These activities need to be carried out by the proper authorities, with assistance from the International Committee of the Red Cross, which has representatives both in Baghdad and in Erbil, and others who are able to provide expertise and support, to the highest international standards and in coordination with the relevant authorities. It is critical that forensic expertise and assistance is coordinated under one umbrella, to avoid misunderstandings, overlapping roles and responsibilities, and to ensure that the work is carried out according to consistent protocols and procedures.

The relevant authorities need to be in a position to coordinate the varying forensic expertise that is on offer, to identify gaps in that expertise and to seek out additional assistance that may be required, based on a workable plan and sustainable protocols. At the same time, the authorities need to develop short-, medium- and long-term priorities and strategies for this work, bearing in mind the link between the search for the missing and the collection of evidence that may be required for future criminal and transitional justice processes. Until the authorities are in that position, sending forensic experts to assist with exhumations on the ground would result in a confusing, complex and ultimately damaging situation, including the use of different protocols and different ways to identify the bodies and work conducted under questionable legal authority.

# 7

## Recommendations

### General Recommendations

1. All parties to the ongoing conflict must strictly comply with applicable international humanitarian law and respect international human rights law. They must take all feasible precautions to protect civilians from the effects of hostilities, and take all necessary measures to respect, protect and meet the basic needs of the civilian population.
2. Planning should begin immediately for the post-ISIS era, including gaining agreement on the establishment of security to allow for the return of affected minorities to their original homes and lands. The Government of Iraq, Kurdistan Regional Government, supporting governments, the European Union, the Working Group on Stabilization of the International Coalition against ISIS and the United Nations should develop a comprehensive plan to include the following elements:
  - establish international support for the provision of security in the aftermath of the conflict, as well as responsible investment and infrastructure development;
  - develop a comprehensive strategy to support returns, including clear sources of funding, infrastructure needs assessments and community-based reconciliation mechanisms, to enable those who fled their homes and those who remained to reintegrate;
  - facilitate rebuilding strong and inclusive local governance representing communities of both IDPs and those currently under ISIS control;
  - support the reconstitution of local governance structures, such as the Mosul Provincial Council, and ensure they have a leadership role in reconstruction and post-conflict stabilization;
  - develop and implement plans for demobilization and reintegration of Popular Mobilization Units into the Iraqi army or local security groupings;
  - work with civil society and regional and local authorities to mediate disputes between tribes, militia and returning populations to avoid revenge, forced or denied return and renewed displacement;
  - support domestic and international humanitarian agencies and organizations to plan and implement a transition from humanitarian programming to recovery programming, not only focused on reconstruction but also on reconciliation, compensation and social cohesion; and
  - ensure education is an immediate priority for school-age children who have been displaced by the violence or trapped in ISIS-held areas.
3. Work to convene an international conference involving representatives of Iraqi components, officials from regional and federal levels of government, and international actors to ratify post-ISIS plans and ensure agreement on withdrawal from occupied areas, security and human rights issues, and restoration of infrastructure.

### Recommendations to the Federal Government of Iraq

#### Humanitarian issues

4. Identify and provide adequate resources to support, as the primary responsible actor, displaced Iraqis and develop a comprehensive strategy with implementable policies to address Iraq's humanitarian emergency.

5. Allow, on an emergency basis, for identity documents and other credentials to be issued for displaced persons in their current governorate, with greater emergency access to government rations and other services.
6. Ensure equitable distribution of aid and services to displaced families residing in informal settlements, unfinished buildings and other difficult to reach areas with limited access to international organizations and government relief.
7. Establish, with adequate resources, a National Missing Persons Registry as a first step to provide answers to families of the missing. Support efforts to begin registration of missing person claims.
8. Initiate prompt, independent and impartial investigations of corruption in the procurement and delivery of humanitarian assistance, and prosecute those found to be responsible.
9. Provide psychosocial and other specialized services to families and victims of sexual violence.

### Preventing future abuses

10. Immediately halt ongoing violations of human rights and international humanitarian law – including the destruction of civilian homes and property – by elements of Popular Mobilization Units and other security forces.
11. In planning for future military operations, ensure that civilian lives and property are protected to the fullest possible extent.
12. Ensure that all units of Iraqi armed forces, including Popular Mobilization Units, operate transparently and accountably under the command and control of the Iraqi government. Ensure that all other militia groups operating in Iraq fall under the command and control of the Iraqi government.
13. Ensure that all military action conforms with international humanitarian law and international human rights law, including prohibiting indiscriminate attacks and any attack expected to result in a disproportionate loss of civilian life or damage to civilian objects.

### Restoration and reconciliation

14. Halt the forced displacement of civilians except for their own security or when justified by imperative military reasons.
15. Cease arbitrary and discriminatory security procedures against those fleeing violence in recaptured areas, including arrest, separation and extrajudicial killings.
16. Allow civilians whose homes have been damaged or destroyed to rebuild or provide them with comparable alternative housing. Collect applicable property information. Provide support for a reparations process for civilians whose homes or property have been destroyed or appropriated or looted by security forces.
17. Establish a transparent process to assess and document damage and destruction in captured towns and villages and inform displaced residents of the status of their towns and villages, and the procedures and requirements for residents to be allowed to return to their homes.
18. Investigate unlawful destruction of homes and property, forced displacement and other violations of international humanitarian law, re-

move those suspected of responsibility for such violations, and bring to justice those for whom there is sufficient evidence to prosecute.

19. Immediately accede to the Rome Statute of the International Criminal Court and, furthermore, make a declaration under the Rome Statute's Article 12(3) to accept the exercise of jurisdiction by the Court from the beginning of the current conflict.
20. Amend Iraqi criminal law to grant domestic courts jurisdiction over international crimes committed in Iraq.
21. Develop a strategy to address international humanitarian law issues, and identify appropriate international and domestic resources. This strategy should:
  - ensure the protection of mass graves in areas retaken from ISIS occupation;
  - take steps to preserve evidence and exhume and identify remains;
  - provide families and communities with appropriate information and assistance;
  - facilitate the deployment of forensic teams and other international criminal justice technical expertise to investigate possible war crimes in areas retaken from ISIS.

### **Institutions and legislation**

22. Respond to the needs of Iraq's ethnic and religious minorities by promulgating legislation that safeguards their rights as citizens and combats discrimination, including possible establishment of special autonomy arrangements to better protect Iraqi components.
23. Enact legislation codifying protections for internally displaced persons in Iraq, as well as review and amend the current legal framework to identify remedies in protection and emergency response. Consider developing a broad national emergency/crisis response law for Iraq that could establish better parameters for future emergencies.
24. Strengthen the representation of minorities in Iraqi security and police forces, and establish a special police unit for dealing with hate crimes or those motivated by ethnic, religious or sectarian bias.

## **Recommendations to the Kurdistan Regional Government**

### **Humanitarian issues**

25. As a primary responsible actor to support displaced Iraqis, develop a comprehensive strategy and implementable policies to address the humanitarian issues facing the country on an emergency basis, coordinated with the federal government. Ensure that adequate resources are provided to implement this strategy over the long term through government funding and international support.
26. Immediately halt ongoing violations of human rights and international humanitarian law – including the destruction of civilian homes and property – by Peshmerga, Kurdistan Regional Government entities and political parties, and other security forces.
27. Halt the forced displacement of civilians except for their own security or when justified by imperative military reasons.
28. Allow civilians whose homes have been damaged or destroyed to rebuild or provide them with comparable alternative housing. Collect applicable property information. Provide support for a reparations process for civilians whose homes or property have been destroyed or appropriated or looted by security forces.
29. Establish a transparent process to assess and document damage and destruction in captured towns and villages and inform displaced residents of the status of their towns and villages, and the procedures and requirements for residents to be allowed to return to their homes.
30. Cease the discriminatory allocation of essential services and take action against state officials and others who discriminate against members of minority communities for choosing not to identify themselves as Kurds or affiliate themselves with Kurdish political parties, in accordance with Article 19 of the draft Kurdish Constitution.
31. Allow for the free movement of food and other assistance to populations in areas re-

taken from ISIS, and freedom of movement for these residents.

32. Investigate unlawful destruction of homes and property, forced displacement and other violations of international humanitarian law, remove those suspected of responsibility for such violations, and bring to justice those for whom there is sufficient evidence to prosecute.
33. Harmonize entry procedures at checkpoints to allow displaced persons fleeing violence to enter the KR-I without discrimination on the basis of ethnicity or religion. Allow general access to KR-I for all Iraqi citizens.
34. Continue to provide humanitarian support for internally displaced persons seeking refuge inside the KR-I. Cooperate with international organizations and donor governments to establish adequate and winterized living arrangements for the displaced.
35. Initiate prompt, independent and impartial investigations of corruption in the procurement and delivery of humanitarian assistance and prosecute those found to be responsible.
36. Abolish the practice of listing religious or ethnic affiliation in all registration documents for displaced persons. In particular, discontinue immediately the practice of providing displaced with forms already completed indicating 'Kurdish' nationality.
37. Provide priority psycho-social and humanitarian assistance to victims of sexual violence.

### Restoration and reconciliation

38. Ensure the protection of mass graves and other possible sites of international humanitarian law violations, while ensuring that steps are taken to preserve evidence and exhume and identify remains. Ensure that families and communities are provided with appropriate information and assistance.
39. Respond to the needs of KR-I's ethnic and religious minorities by promulgating legislation in the KR-I that safeguards their rights as citizens, and combats discrimination, including establishment of special autonomy arrangements to better protect Iraqi components.
40. Recognize Yezidi and Shabak as distinct identities, and extend Articles 5, 14, 35 and 36 of the Kurdish Constitution accordingly.

## Recommendations to the International Community

41. Provide investigative and technical support to the Iraqi government and Kurdistan Regional Government to hold perpetrators of human rights violations and war crimes accountable.
42. Publicly condemn unlawful practices of all security forces that violate international humanitarian law.

### Humanitarian issues

43. Increase immediately the provision of emergency relief including food, water, tents, medical supplies and other essentials, in partnership with humanitarian agencies working with displaced families in Iraq, including the KR-I.
44. Provide urgent financial support and other forms of assistance to international humanitarian actors, including the United Nations system, the Red Cross/Red Crescent Movement and international NGOs that are working to support an Iraqi-government-led response.
45. Provide assistance to Iraqi-based NGOs engaged in humanitarian operations.
46. Provide priority assistance to victims of sexual violence.

### Preventing future abuses

47. Ensure that any international military action taken against ISIS and other fighters in support of the Iraqi government adheres to international humanitarian law and to international human rights law.
48. Ensure that any international military support includes liaison with minority organizations and the sharing of intelligence relevant to the security of minority populations.
49. Take concrete measures to prevent the transfer of financial and material support to ISIS and other armed groups.

### Restoration and reconciliation

50. Respond to the needs of Iraq's ethnic and religious minorities by supporting promulga-

tion of legislation in Iraq and the KR-I that safeguards their rights as citizens, including establishment of special autonomy arrangements to better protect Iraqi components.

51. Develop a comprehensive strategy to support returns, including specific budget line items, assessment of infrastructure redevelopment needs and community-based reconciliation mechanisms to enable those who fled their homes and those who remained to reintegrate.
52. Refer the situation in Iraq to the International Criminal Court.

## Asylum issues

53. Commit to longer-term protection and resettlement of minorities displaced in the current conflict. Adjust asylum criteria, background checks and other policies, while accelerating resettlement efforts, recognizing the conditions of the conflict and inconsistent identity documentation.
54. Allow entry of Iraqi refugees fleeing persecution and prohibit refoulement or the return of refugees to Iraq when their lives or freedom are at risk.

## Endnotes

- 1 United States Commission on International Religious Freedom (USCIRF), *Annual Report 2013*, April 2013, Washington, DC, USCIRF, p. 88.
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- 241 Interview with minority religious leader, 8 February 2016.
- 242 Meeting with Dindar Zebari, Head of the High Committee to Evaluate and Respond to International Reports, KRG, 9 February 2016.
- 243 UNHCR, 'Internally displaced people: on the run in their own land', available at: <http://www.unhcr-centraleurope.org/en/who-we-help/internally-displaced-people.html>.
- 244 UN, *Guiding Principles on Displacement*, *op. cit.*
- 245 IOM, DTM 46, May 2016, *op. cit.*
- 246 OCHA, *Iraq Humanitarian Needs Overview 2015*, June 2015, p. 5.
- 247 OCHA, 2016 *Humanitarian Response Plan – Iraq*, December 2015, p. 8.
- 248 Global Protection Cluster, 'Iraq Protection Cluster: Salah al-Din returnee profile', 7 February 2016, as viewed by authors.
- 249 *Ibid.*
- 250 *Ibid.*
- 251 *Inside Iraqi Politics*, no. 125, 19 February 2016, p. 5.
- 252 Interview with Iraqi NGO director, Baghdad, February 2016.
- 253 Interview with Turkmen returnee, northern Iraq, February 2016.
- 254 Global Protection Cluster, 'Iraq Protection Cluster: Diyala returnee profile', 7 February 2016.
- 255 Badr Brigade forces are part of the Badr Organization and identified generally as a PMU, or Hashd al-Shaabi. Badr forces receive extensive support from the government of Iran; the Badr Brigade was originally the Iran-officered military wing of the Iran-based Shi'a Islamic party, Supreme Council for Islamic Revolution in Iraq, formed in 1982.
- 256 *Inside Iraqi Politics*, no. 124, 6 February 2016, p. 4.
- 257 *Ibid.*
- 258 *Ibid.*, p. 5.
- 259 Global Protection Cluster, 'Iraq Protection Cluster: Diyala returnee profile', *op. cit.*
- 260 Interview with senior member of the Iraqi parliament's Migration and Displaced Committee, Baghdad, February 2016.

- 261 Interview with senior local government official, northern Iraq, February 2016.
- 262 The Yezidi village of Sorka, for example, has been destroyed and rebuilt three times since 1963, following Arab-Kurdish conflicts. Interview with IDPs in informal settlements in Sorka (Semel city), Dohuk, February 2016.
- 263 OCHA, *Iraq Humanitarian Needs Overview 2015*, *op. cit.*, p. 10.
- 264 Global Protection Cluster, 'Iraq Protection Cluster: Diyala returnee profile', *op. cit.*
- 265 OCHA, *2016 Humanitarian Response Plan – Iraq*, *op. cit.*, p. 8.
- 266 Global Protection Cluster, 'Iraq Protection Cluster: Salah al-Din returnee profile', *op. cit.*
- 267 National Policy on Displacement, 2008, Ministry of Displacement and Migration, s. 6.9.
- 268 *Ibid.*
- 269 Interview with senior international official, Baghdad, February 2016.
- 270 National Policy on Displacement, 2008, *op. cit.*, s. 6.9.
- 271 For more information, see Williams, S.E., 'Destroying homes for Kurdistan', *Foreign Policy*, 23 July 2015.
- 272 Interview with senior international official, Baghdad, February 2016.
- 273 Interview with senior local government official, northern Iraq, February 2016.
- 274 Global Protection Cluster, 'Iraq Protection Cluster: Salah al-Din returnee profile', *op. cit.*
- 275 OCHA, *Iraq Humanitarian Needs Overview 2015*, *op. cit.*, p. 5.
- 276 *Ibid.*, p. 10.
- 277 Interview with Turkmen returnee, northern Iraq, February 2016.
- 278 *Inside Iraqi Politics*, no. 125, 19 February 2016, p. 6.
- 279 OCHA, *Iraq Humanitarian Needs Overview 2015*, *op. cit.*, p. 13.
- 280 *Ibid.*, p. 16.
- 281 Interview with Turkmen returnee, northern Iraq, February 2016.
- 282 Interview with senior local government official, northern Iraq, February 2016.
- 283 Such as in Sinjar district where a medical facility has reportedly opened. *Ibid.*
- 284 Interview with Turkmen returnee, Northern Iraq, February 2016.
- 285 Interview with senior local government official, northern Iraq, February 2016.
- 286 OCHA, *Iraq Humanitarian Needs Overview 2015*, *op. cit.*, p. 20.
- 287 Interview with Turkmen returnee, northern Iraq, February 2016.
- 288 Interview with senior local government official, northern Iraq, February 2016.
- 289 OCHA, *Iraq Humanitarian Needs Overview 2015*, *op. cit.*, p. 20.
- 290 *Ibid.*
- 291 Interview with Yezidi IDP in informal IDPs settlement, Sorka (Semel district), Dohuk, February 2016.
- 292 A senior member of the Iraqi parliament's Migration and Displaced Committee stated that many IDPs cannot return until the militias occupying their homes depart. *Ibid.*
- 293 IOM, DTM 46, May 2016, *op. cit.*
- 294 Video footage taken by a senior local government official from his car, driving around Sinjar city. Footage shown on his personal device, during interview. Interview with senior local government official, northern Iraq, February 2016.
- 295 Interview with six Shi'a Turkmen IDP women, settled in Islamic Shi'a building 'husainiyya', Kerbala, February 2016.
- 296 *Ibid.*
- 297 National Policy on Displacement, 2008, *op. cit.*, s. 6.5.
- 298 *Ibid.*
- 299 *Inside Iraqi Politics*, no. 125, 19 February 2016, p. 5.
- 300 *Ibid.*, p. 9.
- 301 Interview with senior member of the Iraqi parliament's Migration and Displaced Committee, Baghdad, February 2016.
- 302 Interview with senior international official, Baghdad, February 2016.
- 303 Interview with Iraqi NGO director, northern Iraq, February 2016.
- 304 Interview with Iraqi NGO director, Baghdad, February 2016.
- 305 Interview with Turkmen returnee, northern Iraq, February 2016.
- 306 Interview with Turkmen returnee, northern Iraq, February 2016.
- 307 Interview with religious figure, northern Iraq, February 2016.
- 308 *Ibid.*
- 309 *Ibid.*
- 310 OCHA, *2016 Humanitarian Response Plan – Iraq*, *op. cit.*, p. 8.
- 311 Interview with Iraqi NGO director, Baghdad, February 2016, and interview with Shi'a Turkmen IDP women, settled in Islamic Shi'a building 'husainiyya', Kerbala, February 2016.
- 312 Interview with Christian religious leader, northern Iraq, February 2016 and interview with Christian religious figure, northern Iraq, February 2016.

- 313 Interview with Christian religious leader, northern Iraq, February 2016.
- 314 Senior educator, Dohuk, February 2016.
- 315 Interview with Delegation of EU to Republic of Iraq, Baghdad, February 2016.
- 316 Emergency Response Coordination Centre (ERCC), 'Refugee Crisis – Countries of Origin 2015–2016', Daily Map, 24 February.
- 317 Interview with Delegation of EU to Republic of Iraq, Baghdad, February 2016.
- 318 Interview with Iraqi NGO director, northern Iraq, February 2016.
- 319 Interview with Christian religious leader, northern Iraq, February 2016.
- 320 *Ibid.*
- 321 *Ibid.*
- 322 Interview with IDPs in informal settlements in Sorka (Semel city), Dohuk, February 2016.
- 323 Interview with Delegation of EU to Republic of Iraq, Baghdad, February 2016.
- 324 OCHA, *Iraq Humanitarian Needs Overview 2015*, *op. cit.*, p. 4.
- 325 Interview with employee at an IDP medical centre, northern Iraq, February 2016.
- 326 IOM, DTM 46, May 2016, *op. cit.*
- 327 Interview with senior international official, Baghdad, February 2016 and senior member of the Iraqi parliament's Migration and Displaced Committee, Baghdad, February 2016.
- 328 Interview with senior member of the Iraqi parliament's Migration and Displaced Committee, Baghdad, February 2016; interview with senior Kurdish official, northern Iraq, February 2016.
- 329 Interview with employee at an IDP medical centre, northern Iraq, February 2016.
- 330 IILHR/UNPO interviews with senior Iraqi government official and MP, November 2014.
- 331 Interview with Iraqi civil society leader, Baghdad, February 2016.
- 332 References to the applicability of substantive international criminal law in the Rome Statute must be distinguished from the applicability of provisions relating to the ICC as a judicial institution, including those on cooperation with the Court. Because it has not yet ratified the Rome Statute, Iraq is not bound by the cooperation provisions unless there is a Chapter VII UN Security Council Resolution requiring states to cooperate with the ICC. The substantive international criminal law provisions of the Rome Statute, however, are different. During the negotiations for the Rome Statute in 1998, and those that followed on the elements of the crimes, states indicated that they would only accept what reflected customary international law. As such, the crimes within the jurisdiction of the ICC, found in Articles 6–8, are the best possible indication of customary international law as of July 1998, as are their Elements of Crimes, which were adopted in September 2002. See Politi, M. and Nesi, G. (eds), *The Rome Statute of the International Criminal Court: A Challenge to Impunity*, Aldershot, Dartmouth Publishing Co., 2001, p. 25 and Lee, R.S. (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence*, Ardsley, NY, Transnational Publishers, 2001, pp. 5, 8 and, generally, chapter 6, 'Reflections on the elements of crimes'. While there is some debate as to whether the Rome Statute and the Elements of Crimes entirely reflect customary international law, they are used in this report as the most authoritative statement of customary international law to date, due to their manner of negotiation and adoption.
- 333 *Prosecutor v. Tadic*, Case No. IT-94-I, International Criminal Tribunal for the former Yugoslavia (ICTY) Appeals Chamber, Jurisdiction Decision, 2 October 1995, para. 70.
- 334 *Prosecutor v. Kayishema*, Case No. ICTR-95-I, ICTR Trial Chamber, Judgment, para. 170.
- 335 See Pictet, J. (ed.), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 1958, 1994 reprint edn, p. 20 (emphasis added): 'Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict.' See also *Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute, 14 March 2012, p. 247.
- 336 The character of a conflict can change during its course from being non-international to international in nature. A conflict that is *prima facie* internal may be regarded as involving forces acting on behalf of a foreign power, thereby rendering the conflict international in nature, depending on three factors: (1) overall control of an armed group or individuals; (2) specific instructions to an armed group or individuals; and (3) actual behaviour of an armed group or individuals, irrespective of any specific instructions. See *Prosecutor v. Tadic*, Case No. IT-94-I, ICTY Appeals Chamber Judgment, 15 July 1999, point IV.B.3.
- 337 *Prosecutor v. Semanza*, Case No. ICTR-97-20, ICTR Trial Chamber, Judgment, 15 May 2003, paras 368–9.
- 338 *Prosecutor v. Kunarac*, Case No. IT-96-23&23/1, ICTY Appeals Chamber, 12 June 2002, para. 58.
- 339 See for example the ICC Elements of Crimes, Introduction to Article 8, p. 13.
- 340 *Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute, 14 March 2012, p. 438.

- 341 See Article 8(a) of the Rome Statute regarding exercise of ICC jurisdiction, although since Iraq is not a State Party to the Rome Statute, the ICC would not be able to act unless Iraq accepts the exercise of jurisdiction for the relevant time period; or alternatively, those ordering, carrying out or otherwise allegedly criminally responsible for the crimes are nationals of an ICC State Party. See Article 12 of the Rome Statute on preconditions for the exercise of jurisdiction by the ICC.
- 342 Rome Statute, Article 8(2)(c)(i).
- 343 *Ibid.*, Article 8(2)(c)(ii).
- 344 ICC Elements of Crimes.
- 345 *Kvočka et al.*, ICTY Trial Chamber, 2 November 2001, para. 173.
- 346 *Aleksovski*, ICTY Trial Chamber, 25 June 1999, para. 229.
- 347 Rome Statute, Article 8(2)(c)(iii).
- 348 See ICC Elements of Crimes, Article 8(2)(c)(iii) and *Blaskic*, ICTY Trial Chamber, 2 March 2000, para. 187.
- 349 Rome Statute, Article 8(2)(c)(iv).
- 350 *Ibid.*, Article 8(2)(e)(i).
- 351 See, for example, *Kordic and Cerkez*, ICTY Trial Chamber, 26 February 2001, para. 328.
- 352 *Ibid.*, Article 8(2)(e)(iv).
- 353 *Ibid.*, Article 8(2)(e)(v).
- 354 See ICC Elements of Crimes, Article 8(2)(e)(v) and the corresponding footnote.
- 355 Rome Statute, Article 8(2)(e)(vi).
- 356 ICC Elements of Crimes, Article 8(2)(e)(vi)-3, war crime of enforced prostitution.
- 357 See Rules of Procedure and Evidence of the Special Court for Sierra Leone, rule 96 and Rules of Procedure and Evidence of the ICC, rule 70.
- 358 Rome Statute, Article 8(2)(e)(vii).
- 359 See Smith, A., 'Child recruitment and the Special Court for Sierra Leone', 2004, 2 *Journal of International Criminal Justice*, pp. 1141–53.
- 360 See Article 8(a) of the Rome Statute regarding exercise of ICC jurisdiction, although since Iraq is not a State Party to the Rome Statute, the ICC would not be able to act unless Iraq accepts the exercise of jurisdiction for the relevant time period; or alternatively, those ordering, carrying out or otherwise allegedly criminally responsible for the crimes are nationals of an ICC State Party. See Article 12 of the Rome Statute on preconditions for the exercise of jurisdiction by the ICC.
- 361 Rome Statute, Article 8(2)(c)(i).
- 362 For information on thousands of civilian deaths due to bombardment, see Ceasefire Centre for Civilian Rights and MRG, *Civilian Deaths in the Anti-ISIS Bombing Campaigns 2014–2105*, *op. cit.*
- 363 Rome Statute, Article 8(2)(e)(i).
- 364 See, for example, *Kordic and Cerkez*, ICTY Trial Chamber, 26 February 2001, para. 328.
- 365 Rome Statute, Article 8(2)(e)(vii).
- 366 See Smith, *op. cit.*
- 367 Rome Statute, Article 8(2)(e)(viii).
- 368 *Ibid.*, Article 7.
- 369 The 'attack against a civilian population' means a course of conduct involving the multiple commission of acts enumerated in paragraphs (a) to (k) (see the preamble to the ICC Elements of Crimes). The 'attack' does not refer to an armed conflict as such, or even to an armed or military attack, but refers to the prohibited acts; the attack does not need to be physical but can consist of other forms of inhumane mistreatment of a civilian population (see, for example, *Prosecutor v. Semanza*, Case No. ICTR-97-20, ICTR Trial Chamber, Judgment, 15 May 2003, para. 327). A 'civilian population' is a population that is predominantly civilian in nature, that is, that the people comprising the population do not take a direct part in the hostilities or no longer take a direct part in hostilities (see, for example, common Article 3 to the Geneva Conventions and the Additional Protocols). The presence of non-civilians will not deprive that population of its civilian character (*Prosecutor v. Tadic*, Case No. IT-94-I, ICTY Trial Chamber, Judgment, 7 May 1997, para. 638). The civilian population must be the primary object of the attack, although it is not necessary that the entire population of a territory is victimized (*Prosecutor v. Bagilishema*, Case No. ICTR-95-1, ICTR Trial Chamber, 7 June 2001, para. 80) or that each victim is a civilian, provided the attack is carried out against a civilian population (*Mrkšić*, Appeal Judgment, paras 25–33).
- 370 To fulfil the contextual elements for a crime against humanity, an attack must be *either* widespread *or* systematic, but does not have to be both, even if in reality, many attacks are both widespread and systematic. 'Widespread' means that the attack takes place on a large scale and is perpetrated against a number of victims; 'systematic' refers to an organized pattern of conduct. See, for example, *Prosecutor v. Akayesu*, Case No. ICTR-96-4, ICTR Trial Chamber, Judgment, 2 September 1998, para. 580.
- 371 *Mrksic, Radi and Sljivancanin*, Review of the Indictment pursuant to Rule 61, 3 April 1996, para. 30.
- 372 Rome Statute, Article 7(2)(a).
- 373 SCSL, AFRC Trial Judgment, para. 215; SCSL RUF Trial Judgment, para. 79; ICTY, *Kunarac et al.* Appeal Judgment, para. 98; ICTY, *Blaškić* Appeal Judgment, para. 120.

- 374 *Prosecutor v. Kunarac*, Case No. IT-96-23&23/1, ICTY Appeals Chamber, 12 June 2002, para. 98.
- 375 The Rome Statute, in Article 7(2)(h) defines the crime of apartheid as 'inhumane acts ... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime'. While the facts demonstrate an institutionalized regime of systematic oppression and domination, this was done on religious and ethnic grounds, not racial grounds, so does not satisfy the definition.
- 376 See ICC Elements of Crimes, Article 7(1)(b).
- 377 See, for example, *Stakic*, ICTY Trial Chamber, 31 July 2003, paras 641-642.
- 378 *Kunarac, Kovac and Vokovic*, ICTY Appeals Chamber, 12 June 2002, para. 119.
- 379 See ICC Elements of Crimes, Article 7(1)(c).
- 380 See *Brdjanin*, ICTY Trial Chamber, 1 September 2004, para. 554 and *Stakic*, ICTY Trial Chamber, 31 July 2003, para. 67.
- 381 See ICC Elements of Crimes, Article 7(1)(d).
- 382 *Simic, Tadic and Zaric*, ICTY Trial Chamber, 17 October 2003, para. 125.
- 383 *Ibid.*, para. 64.
- 384 See ICC Elements of Crimes, Article 7(1)(f). This can be contrasted with the war crime of torture, which does require that the violence be inflicted for some official purpose, such as extracting a confession, punishment, intimidation or coercion of some form: see, for example, ICC Elements of Crimes, Article 8(2)(c)(i)-4.
- 385 ICC Elements of Crimes, Article 8(2)(e)(vi)-3, war crime of enforced prostitution.
- 386 See Rules of Procedure and Evidence of the Special Court for Sierra Leone, rule 96 and Rules of Procedure and Evidence of the ICC, rule 70.
- 387 *Kupreskic*, ICTY Trial Chamber, Judgment, 14 January 2000, para. 751.
- 388 *Krnjelac*, ICTY Trial Chamber, Judgment, 15 March 2002, para. 432. See also *Stakic*, ICTY Trial Chamber, Judgment, 31 July 2003, para. 733.
- 389 See ICC Elements of Crimes, Article 7(1)(i).
- 390 ICC Rome Statute, Article 7(2)(i).
- 391 *Kayishema*, ICTR Trial Chamber, Judgment, 1 June 2001, para. 153. This is reflected in Article 30 of the Rome Statute of the ICC, dealing with the *mens rea* of the perpetrator.
- 392 Genocide Convention, Article 2; Rome Statute, Article 6.
- 393 See, for example, *Krstic*, ICTY Trial Chamber, 2 August 2001, para. 550. This crime protects national, ethnic, racial or religious groups, although it has been recognized that these are not distinct categories; rather, they correspond roughly to what are also known as 'national minorities' and the lines between them may be blurred. See, for example, *Brdjanin*, ICTY Trial Chamber, 1 September 2004, para. 682.
- 394 See, for example, *Krstic*, ICTY Trial Chamber, 2 August 2001, para. 580.
- 395 See *Krstic*, ICTY Trial Chamber, 2 August 2001, para. 561 and *Jelusic*, ICTY Trial Chamber, 14 December 1999, para. 7. It is this 'special' intention, also known as *dolus specialis*, that distinguishes the crime of genocide from the crime against humanity of persecution, in which group members are targeted because of their identity but where the destruction of the group is not the intended result. It is not necessary that the group actually be destroyed, whether in whole or in part: what matters is that the perpetrator intended the destruction to take place. *Stakic*, ICTY Trial Chamber, 31 July 2003, para. 522.
- 396 *Jelusic*, ICTY Appeals Chamber, 5 July 2001, para. 4.
- 397 *Krstic*, ICTY Appeals Chamber, 19 April 2004, para. 41.
- 398 See also the UN Commission of Inquiry on Syria Report, "They came to destroy": *ISIS Crimes Against the Yazidis*, UN Doc A/HRC/32/CRP.2. While this report covers acts committed in Syria, they are strikingly similar to acts committed against Yazidis in northern Iraq and appear to have been committed with the same underlying intention to destroy the Yazidis as a group as such.



## The Institute for International Law and Human Rights (IILHR)

IILHR is a non-profit charity registered in Washington, DC, Baghdad, Iraq and Brussels, Belgium. IILHR helps states in the early stages of democracy develop the capacity to strengthen the rule of law and build respect for human rights. With a staff of diplomats, parliamentarians, human rights activists and attorneys, IILHR has a strong track record of implementing successful programmes that help local partners strengthen support for human rights and the rule of law.

IILHR staff have been a strong, supportive presence in Iraq since July 2005. IILHR collaboratively engages with leaders to strengthen approaches to human rights issues by (a) developing draft legislation; (b) working to enact that legislation; (c) helping local partners in and out of government to develop the capacity to advocate for change as well as to assess, develop and draft legislation; and (d) building consensus on priorities, tactics and

strategies for achieving strong systems of law and human rights protection.

Currently, IILHR actively supports human rights in Iraq through several ongoing government and civil society initiatives. As well as work on gender issues, including collaboration on a draft law on domestic violence and publication of an assessment of Iraq's legal framework, *Women and the Law in Iraq*, IILHR has brought together minority civil society leaders and parliamentarians from Iraq, forged links among minority members of parliament, and conducted outreach on minority issues in Iraq – seeking to build capacity to pursue a legislative and advocacy agenda for the benefit of minority rights. IILHR has also worked to establish a viable High Commission for Human Rights and undertaken rule of law and justice projects, including a programme on safeguarding and protecting judicial archives and records throughout Iraq and judicial administration.

## Minority Rights Group International (MRG)

MRG is an NGO working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. Our activities are focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations, which represent minority and indigenous peoples.

MRG works with over 150 organizations in nearly 50 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights (ACHPR). MRG is registered as a charity and a company limited by guarantee under English law. Registered charity no. 282305, limited company no. 1544957).

## No Peace Without Justice (NPWJ)

NPWJ is an international non profit organization that works for the protection and promotion of human rights, democracy, the rule of law and international justice. It undertakes its work within three main thematic programmes: international criminal justice; female genital mutilation; and Middle East and North Africa democracy, including specific work on Iraq.

In advocacy activities, NPWJ raises awareness and fosters public debate through explicitly political campaigns and the implementation of key programmes, such as international and regional meetings, often co-hosted and co-organized with

the government of the country in which they are held, fostering partnerships between public institutions, NGOs and other actors. NPWJ also undertakes wide-ranging technical assistance, through the secondment of legal experts to governments for the drafting of legislation and to assist in negotiations on international human rights instruments. Finally, NPWJ has acquired unique field experience in 'conflict mapping' and wide scale documentation of violations of international humanitarian law in areas affected by conflicts, and in implementing outreach programmes engaging local communities in conflict and post-conflict areas on issues of international criminal justice.

## The Unrepresented Nations and Peoples Organization (UNPO)

UNPO is an international, non-violent and democratic membership organization founded in The Hague in 1991. Its members are indigenous peoples, minorities, and unrecognized or occupied territories that have joined together to protect and promote their human and cultural rights, to preserve their environments, and to find non-violent solutions to conflicts which affect them.

Although the aspirations of UNPO members differ greatly, they are all united by one shared condition – they are not adequately represented at major international forums, such as the United Nations. As

a consequence, their opportunities to participate on the international stage are significantly limited, as is their ability to access and draw upon the support of the global bodies mandated to defend their rights, protect their environments and mitigate the effects of conflict. UNPO works therefore to address the consequences of marginalization, by promoting democratic causes; providing information through thematic reports, conferences and trainings; and articulating creative and non-violent strategies to ensure the voices of its members are heard on an international level.

## Ceasefire Centre for Civilian Rights

The Ceasefire Centre for Civilian Rights is a new initiative to develop 'civilian-led monitoring' of violations of international humanitarian law or human rights, to pursue legal and political accountability for those responsible for such viola-

tions, and to develop the practice of civilian rights. The Ceasefire Centre for Civilian Rights is registered as a charity and a company limited by guarantee under English law; charity no: 1160083, company no: 9069133.



# No Way Home: Iraq's minorities on the verge of disappearance

## In brief

*No Way Home: Iraq's minorities on the verge of disappearance* seeks to document the situation of Iraq's ethnic and religious minorities most affected by the violence that escalated after the fall of Mosul in June 2014. It is a follow-up report to *Between the Millstones: The State of Iraq's Minorities since the Fall of Mosul*, published in March 2015.

Since June 2014, many thousands of persons belonging to minorities have been murdered, maimed or abducted, including unknown numbers of women and girls forced into marriage or sexual enslavement. ISIS forces and commanders have committed war crimes, crimes against humanity and the crime of genocide, including summary executions, killing, mutilation, rape, sexual violence, torture, cruel treatment, the use and recruitment of children, outrages on personal dignity, and the use of chemical weapons.

Cultural and religious heritage dating back centuries continues to be destroyed, while property and possessions have been systematically looted. These abuses are ongoing at the time of writing and appear to be part of a conscious attempt to eradicate Iraq's religious and ethnic diversity. It should also be stressed that as the latest phase in the conflict reaches a two-year benchmark, forces fighting ISIS have also apparently committed human rights and international humanitarian law violations, including Iraqi Security Forces, Popular Mobilization Units and Kurdish Peshmerga.

The millions of displaced still remain in camps, and there are no serious returns to areas retaken from ISIS. As of March 2016, internal displacement exceeded 3.3 million. Iraqi sources estimate the total number of those who have lost their homes and are internally displaced at more than 4 million, factoring in those IDPs not registered.

Currently, there appears to be no serious Iraqi or international effort to build the political, social and economic conditions for the sustainable return of those who lost homes and livelihoods as a result of the conflict. Militias and unscrupulous local authorities are exploiting this vacuum.

This report is called 'No Way Home' to highlight the despair Iraqi ethnic and religious communities feel about prospects for return. This perspective is rooted both in a sense of hopelessness about the prospect of return and frustration with the continued deterioration of humanitarian conditions. There is a lack of trust that the government, regional actors, local officials or the international community will provide the necessary support to facilitate returns, locate missing persons, provide justice, facilitate the difficult process of reconciliation and ensure the return of looted possessions and homes. The result will be another Iraqi lost generation, radicalized by homelessness and depredation, repeating the cycle that created ISIS.