

report



minority
rights
group
international



Crossroads: The future of Iraq's minorities after ISIS





Yezidi girl, from Khanke camp, near Dohuk / Fernando Burgés

Acknowledgements

This publication is the result of a partnership with the Konrad Adenauer Stiftung, which has financed this project with our sincere thanks. Four organizations produced this report: the Institute for International Law and Human Rights (IILHR), Minority Rights Group International (MRG), No Peace Without Justice (NPWJ) and the Unrepresented Nations and Peoples Organization (UNPO). William Spencer, Fernando Burgés, Alessandro Manno, Mays Al-Juboori, and Alison Smith served as primary authors and researchers. Editorial support was provided by MRG's Peter Grant, with copy editing Sophie Richmond. IILHR's Iraq Director Najim Al Khaphaji, along with Athra Al-Juboori, also conducted extensive research and coordinated with Iraqi groups and leaders. Jibran Mansur oversaw translation.

For their support of the research, analysis, drafting and design that went into this report, Konrad Adenauer Stiftung, NPWJ, UNPO, MRG and IILHR would like to thank, in no particular order: Martha Hudson; the International Organization for Migration; Yezidi Human Rights Organization International; International Federation of Iraqi Refugees; the Hammurabi Human Rights Organization; the Turkmen Rescue Foundation; the UN Assistance Mission for Iraq; and the Office of the Speaker of the Iraqi Council of Representatives. Special thanks are due to Louis Marcus Ayoub and Yohanna Youssif for their extra effort.

In addition to the above named institutions, other individuals, government officials, parliamentarians and organizations provided extensive support and analysis. Their names are not listed here for security and privacy reasons.



This report has been produced with the financial assistance of the European Union, Government of the Netherlands and the Konrad Adenauer Foundation. The contents of this report are the responsibility of IILHR, MRG, NPWJ and UNPO and can under no circumstances be regarded as reflecting the position of the European Union, Government of the Netherlands or the Konrad Adenauer Foundation.

© 2017 IILHR, MRG, NPWJ and UNPO

ISBN 978-1-907919-86-2. **Published** June 2017. **Printed** Brussels, Belgium.

Crossroads: The future of Iraq's minorities after ISIS is published in Belgium by the Institute for International Law and Human Rights, Minority Rights Group International, No Peace Without Justice, and the Unrepresented Nations and Peoples Organization. All rights reserved. No part of this book may be reproduced in any manner whatsoever without written permission from the publisher, except in the case of brief quotations in critical articles and reviews.

Crossroads: The future of Iraq's minorities after ISIS

Contents

Acronyms	2
Key findings	3
Executive summary	4
1 Introduction	7
2 Background on affected minorities in the conflict zone	9
3 The treatment of minorities since the 2014 ISIS offensive	11
4 The current situation of IDPs	15
5 Ongoing challenges in areas retaken from ISIS	19
6 Approaches to transitional justice	25
7 Where next for Iraq's minorities?	32
8 Recommendations	44
Appendix: Violations of international criminal law	48
Notes	56
About the authors of this report	63

Acronyms

CTF	Consultation Task Force on Reconciliation Mechanisms	KRG	Kurdistan Regional Government
DDR	Demobilization, Disarmament, and Reintegration	KR-I	Kurdistan Region of Iraq
ERW	Explosive remnants of war	NGO	Non-governmental organization
EU	European Union	NPF	Ninewa Protection Forces
FARC	Revolutionary Armed Forces of Colombia	NPU	Ninewa Protection Units
GoI	Government of Iraq	OCHA	UN Office for the Coordination of Humanitarian Affairs
HHRO	Hammurabi Human Rights Organization	OHCHR	Office of the High Commissioner for Human Rights
HRP	Humanitarian Response Plan	PKK	Partiya Karkaren Kurdistan/Kurdish Workers' Party
HRW	Human Rights Watch	PMU(s)	Popular Mobilization Unit(s)
ICC	International Criminal Court	PPA	Provincial Powers Act
ICTY	International Criminal Tribunal for the former Yugoslavia	TRF	Turkmen Rescue Foundation
IDP(s)	Internally displaced person(s)	UN	United Nations
IED	Improvised explosive device	UNAMI	UN Assistance Mission for Iraq
IHEC	Independent High Electoral Commission	UNESCO	UN Educational and Scientific Organization
IHL	International humanitarian law	UNHCR	(Office of the) UN High Commissioner for Refugees
IOM	International Organization for Migration	WHO	World Health Organization
IQD	Iraqi dinar	YBS	Sinjar Resistance Unit
ISF	Iraqi Security Forces	YPG	Yekineyen Parastina Gel
ISIS	Islamic State of Iraq and al Sham		
KDP	Kurdish Democratic Party		

Key findings

Key findings

- | | |
|---|---|
| <ul style="list-style-type: none">• Despite the recent retaking of Iraqi territory from ISIS forces, minority populations – already disproportionately subjected to human rights abuses – continue to diminish. Amidst competing land claims, the absence of clear security measures to protect, rebuild and encourage returns, these groups – decimated by terror even before the fall of Mosul – fear for the future. | <ul style="list-style-type: none">• International reconstruction and stabilization efforts are hampered by a cumbersome contracting process that creates delays and difficulties in ‘scaling up’ reconstruction, and inefficient and unwieldy Iraqi government partners that sometimes pursue different agendas. Combined with insufficient resources, this has resulted in a situation where millions of civilians still have little or no access to adequate shelter, sanitation or basic services such as education. |
| <ul style="list-style-type: none">• Emigration from Iraq has continued at a steady rate among minority communities. Meanwhile, some observers predict as many as 600,000 to 1.2 million persons will be displaced as a result of the Mosul offensive. Returns to areas retaken from ISIS are very slow, due to an absence of adequate security and reconstruction assistance, as well as outright obstruction from political and military authorities in retaken areas. | <ul style="list-style-type: none">• The Iraqi government, Kurdish authorities and international community have so far failed to reach an agreement on accountability, peace-building and reconciliation in the aftermath of the conflict. While this may in part be due to a desire to avoid disturbing the fragile coalition of groups fighting ISIS, it has also led to uncertainty about the prospects of return for the millions displaced by conflict and the likelihood of a stable political settlement post-ISIS, and continues to hinder reconstruction efforts. |

Executive summary

Despite the apparent pushback of ISIS (Islamic State of Iraq and al Sham) forces from many areas until recently under their control, the future of Iraq's minority populations is far from secure. Amid competing land claims, the proliferation of different armed militias and serious human rights abuses by parties on all sides to the conflict, all indications point to further persecution and discrimination for Iraq's minorities once ISIS has been defeated.

Minority groups must contend with an Iraqi government that has yet to include them in post-conflict planning, a Kurdistan Regional Government that openly states that lands that were once homes for Iraq's minorities will be annexed to Kurdistan, and an international community that appears to be indifferent to their fate. Given the existential threat facing minorities, emigration from Iraq has continued at a steady rate among these communities. Returns to retaken areas are very slow, due to an absence of adequate security and reconstruction assistance, as well as outright obstruction from political and military authorities in retaken areas.

When families leave existing camps for internally displaced persons (IDPs), vacancies in the camps are quickly filled by new IDPs. The retaking of Mosul, which began in October 2016, has also created several hundred thousand new displaced persons: according to United Nations High Commissioner for Refugees (UNHCR), as of April 2017, at least 441,720 persons have been verified as displaced. Some observers predict as many as 600,000 to 1.2 million will be displaced as a result of the Mosul offensive. These new displaced are part of a total of more than 3 million internally displaced in Iraq since June 2014. Iraqi leaders estimate that the total number of those who have lost their homes is approximately 4 million persons, including unregistered IDPs, or more than 10 per cent of the estimated 2016 population of Iraq.

Meanwhile, as ISIS withdraws, evidence of atrocities continues to be uncovered. Mass grave sites, in some cases containing hundreds of bodies, have been discovered. The list of probable war crimes, crimes against humanity and acts of genocide committed by ISIS is broad; but efforts to preserve crime scenes and preserve evidence and testimony are minimal and fragmented. As the retaking of Mosul continues, ISIS continues to commit violations of international humanitarian and criminal law, including

mass executions of civilians and use of local citizens as human shields.

The military effort to oust ISIS from Iraq also has not been without controversy. Government forces, Popular Mobilization Units (PMUs), and Kurdish Peshmerga and intelligence units have all been accused of violations of international humanitarian and criminal law, including the wholesale destruction of retaken villages to ensure that former inhabitants do not return. The result is demographic change and restrictions on return. Improvised explosive devices (IEDs) and explosive remnants of war (ERW) litter the landscape.

In retaken areas, almost all forces – representing various groups in the conflict – have looted homes and villages. Personal security and safety are largely absent in the areas retaken from ISIS, and rebuilding and reconstruction assistance are not apparent. Security is currently controlled by diverse armed groups according to the different political and military presences in these areas, without unified command. In some areas retaken from ISIS, Kurdish security forces reportedly block displaced residents from return, as well as supplies of food, equipment and other essentials. Kurdish security forces are also reportedly blocking reinforcements and supplies to PMUs and other militias that are claiming to provide security in retaken areas.

International reconstruction and stabilization efforts are hampered by a cumbersome contracting process that creates delays and difficulties in 'scaling up' reconstruction, and inefficient and unwieldy Iraqi government partners that sometimes pursue different agendas. Combined with insufficient resources, this has resulted in a situation where millions of civilians still have little or no access to adequate shelter, sanitation or basic services such as education.

The Iraqi government, the Kurdish authorities and the international community have so far failed to reach an agreement on accountability, peace-building and reconciliation in the aftermath of the conflict. While this may in part be due to a desire to avoid disturbing the fragile coalition of groups fighting ISIS, it has also led to uncertainty about the prospects of return for the millions displaced by conflict and the likelihood of a stable political settlement post-ISIS.

Among Iraqi minorities, fears have shifted from responding to the immediate humanitarian crisis to larger

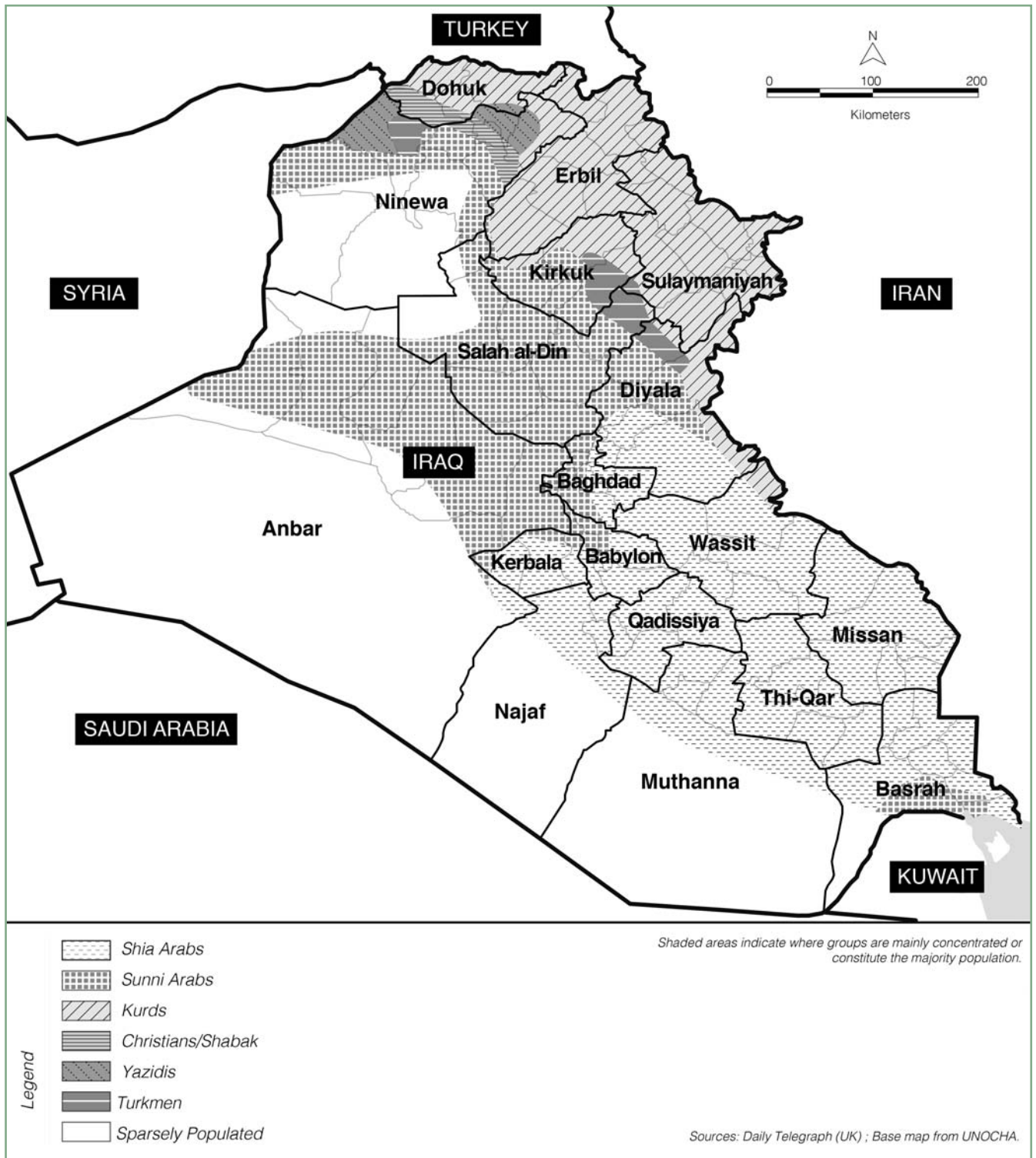
apprehensions about the future after ISIS. Some minorities advocate for various forms of autonomy, from establishing new, smaller governorates under their control, to implementing local administration provisions found in Iraq's Constitution of 2005, to establishing stand-alone 'autonomous zones' as buffers between Kurdistan and the rest of Iraq. Leaders from all Iraqi minority groups universally call for an energetic international role in safeguarding their post-ISIS homes and families.

This report argues that for any transitional justice effort to succeed, clear goals must be established that reflect the wishes of a broad swathe of Iraqi society, including minorities. Wide consultation on the goals and mechanisms of transitional justice, notwithstanding the inevitable logistical and operational challenges that would arise, is most likely the most effective initial tool to avoid a lasting legacy of inter-communal animosity in conflict-affected areas.

Recommendations

This report makes 63 specific recommendations directed at the Government of Iraq (GoI), the Kurdistan Regional Government (KRG) and the international community that can respond to the manifold challenges confronting Iraq's minorities. They address humanitarian, legal, asylum, accountability and other considerations. Key recommendations include:

- 1 Work to establish secure areas to allow for the return of affected minority groups to their original homes and lands. The GoI, the KRG, supporting governments, the European Union (EU), the Working Group on Stabilization of the International Coalition against ISIS and the United Nations (UN) should develop a comprehensive plan to include the following elements:
 - Define international support for the provision of security in the aftermath of the conflict, as well as responsible investment and infrastructure development.
 - Implement 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 those who were forced to flee ISIS.
 - Develop and implement plans for demobilization and reintegration of PMUs.
- 2 Allow civilians to return to their homes in areas unimpeded by security services, and allow civilians to rebuild their homes and communities. Ensure freedom of movement for returnees and relief and reconstruction assistance in retaken areas.
- 3 Develop a national strategy to address violations of international humanitarian and criminal law, and identify appropriate international and domestic resources. This strategy should:
 - Include broad national consultation on judicial and non-judicial approaches to accountability.
 - Ensure the protection of mass graves in formerly occupied areas.
 - Collect, aggregate and analyse accounts of human rights and international humanitarian and criminal law violations to document crimes.
 - Take steps to preserve evidence and exhume and identify remains.
 - Provide families and communities with appropriate information and assistance, including missing persons support.
- 4 Respond to the needs of Iraq's ethnic and religious minorities by promulgating legislation that safeguards their rights as citizens, including possible establishment of autonomy arrangements to better protect Iraqi components.
- 5 On an urgent basis, increase the provision of stabilization assistance and emergency relief, including food, water, tents, medical supplies and other essentials, in partnership with humanitarian agencies working with displaced families in Iraq, including the Kurdistan Region of Iraq (KR-I).
- 6 Accelerate the delivery of 'Rapid Response' reconstruction packages (such as windows, doors, roofing, and other basic supplies and equipment) that will allow returnees to make repairs to damaged and looted homes.
- 7 Prioritize humanitarian and reconstruction assistance for those most vulnerable, including minority groups, women and children.
- Work with civil society and regional and local authorities to mediate disputes between tribes, militias 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.



1 Introduction

'We will be the new Palestinians, destroyed by continuous conflict and without a home.'

Iraqi Shabak leader speculating about post-ISIS prospects, February 2017

Crossroads: The Future of Iraq's Minorities after ISIS is the third volume of a series of reports that seek to document the situation of Iraq's ethnic and religious minorities most affected by the violence that dramatically accelerated after the fall of Mosul in June 2014. The primary area of focus is on five ethnic and religious groups: Christians, Kaka'i, Shabak, Turkmen and Yazidis. This list is by no means exhaustive, and many other individuals and communities not addressed in this report are also in need of protection and support. That this report does not include these groups has no bearing on the legitimacy of their claims.

This publication, based on extensive interviews, fieldwork and research, seeks to complement other human rights reporting to highlight the situation of Iraq's

minorities. While the Western press seems to be focused on military events in Iraq and the campaign to defeat the Islamic State of Iraq and al Sham (ISIS)¹ itself, the victims of the conflict need urgent help. It is hoped that this report can reinforce the many voices calling for protection of and respect for Iraq's ethnic and religious groups.

Even before ISIS's depredations, the situation of Iraq's minorities was precarious, particularly for those living in the Ninewa plain and the territories disputed between the Kurdish authorities and the federal government. Before the fall of Mosul in June 2014, more than half of Iraq's religious and ethnic minorities had already fled the country following 2003, and those who remained were at risk of targeted violence, arbitrary arrest and detention, torture, harassment, intimidation, displacement, political disenfranchisement, and social and economic marginalization.

For example, Iraq's Christian community reportedly numbered around 1.4 million or even more in the 1990s. Today, the community is only a small fraction of this size.² While in some circles the beginning of the offensive to retake Mosul brought hope, emigration from Iraq continues among Iraqi minorities.³

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, and outrages on personal dignity. Cultural and religious heritage dating back centuries has been destroyed, while property and possessions have been systematically looted.

Meanwhile, the military effort has not been without controversy. Government forces, Popular Mobilization Units (PMUs), and Kurdish Peshmerga and intelligence units have all been accused of human rights and international criminal and humanitarian law violations, including the wholesale destruction of retaken villages to ensure former inhabitants do not return. The field team responsible for this report received accounts of looting by all factions involved in the conflict.

According to the United Nations High Commissioner for Refugees (UNHCR), as of April 2017, at least 441,720 persons have been verified as having been



BATNAYA AFTER BEING RETAKEN FROM ISIS, NINEWA GOVERNORATE/ ALESSANDRO MANNO

displaced since the commencement of the Mosul offensive on 17 October 2016.⁴ Military operations are ongoing at the time of writing, with some observers predicting as many as 600,000 to 1.2 million total displaced as a result of the new military activity.⁵

As some families leave camps for internally displaced persons (IDPs) in northern Iraq, the resulting vacancies are quickly filled by new families seeking assistance. As of April 2017 internal displacement since June 2014 exceeded 3,065,000.⁶ Iraqi colleagues 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. Meanwhile, many of those IDPs seeking to return to their newly retaken homes have been stopped by PMUs and Kurdish and other groups, who argue that security concerns prevent returns. In some areas an effective blockade of retaken territory must terminate immediately.

Most of those Christians, Kaka'i, Shabak, Yezidis and Turkmen in formal and informal IDP camps with the financial capacity have already left the camps. Left behind are those without the means or capability.⁷ Emigration from Iraq still continues nevertheless. While a year ago displaced persons moved to Lebanon or Turkey, this year Jordan has re-emerged as a popular option for emigration.⁸

While the humanitarian situation continues to deteriorate, any international or Iraqi effort to build the political, social and economic conditions for returns post-conflict is not publicly apparent, despite reports of serious discussions among Iraqi groups and regional and international actors proceeding quietly behind the scenes.⁹ Some international officials have stated that no serious talks about the post-ISIS future of retaken areas will

proceed until offensive operations are over, so as not to disturb the fragile coalition of groups fighting ISIS.¹⁰

While the displaced are being denied the opportunity to return to their homes, militias and local and regional authorities continue to exploit the security vacuum. Minorities have been offered several options by several different factions, ranging from outright absorption by the Kurdistan Region of Iraq (KR-I) to a Ninewa Plain zone that could be autonomous, between Kurdistan and the rest of Iraq.

Kurdish officials have continued to assert their intention to permanently annex areas previously considered Iraqi territory that are now under their control. 'These areas were retaken by the blood of 11,500 martyrs and wounded from the Peshmerga,' President Masoud Barzani has said, 'It is not possible after all these sacrifices to return them to direct federal control.'¹¹

Among Iraqi minorities, there is a palpable fear of the post-ISIS future, with one minority representative expressing the fear that the post-ISIS 'peace' could continue to be very dangerous for many communities. Many minority leaders and IDPs point out that Kurdish forces failed to protect them from ISIS in 2014, and while refuge in Kurdistan is appreciated, these acts of 'treachery'¹² will not be forgiven. Meanwhile, there is an almost complete lack of trust in the Iraqi government. Regional actors such as Iran, Turkey or Saudi Arabia are seen as spoilers, and the United States and other Western nations have stayed silent, according to minority leaders. This vacuum inevitably will be filled, but likely not to the benefit of Iraq's minorities – who have built their homes and raised their families in this region for millennia.

Scope and methodology

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 2017 forming the core of our approach. Data gathered for this report were obtained from the following key sources:

- interviews in Baghdad, Dohuk, Erbil and Ninewa governorate 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 the 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, non-governmental organizations (NGOs) and civil society activists;
- consultations with the Iraqi diaspora and members of the international community; and
- desk research from primary and secondary sources.

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'i to Yazidis. 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 Yazidis. This in no way minimizes the historic significance and current suffering experienced by other groups in Iraq, including among others Baha'i, Bedouin, Black Iraqis, Circassians, Faili Kurds, Jews, Mandaean-Sabeans and Roma (Dom).

Since 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, half or more of the pre-2003 Iraqi Christian community – thought to number between 800,000 to 1.4 million – had already left the country. This includes Armenian Catholics and Orthodox, Assyrian Church of the East members, Assyrian Orthodox, Chaldean Catholics and Orthodox, Evangelicals, Protestants, and Syriac Catholics and Orthodox.¹³ Many consider these



INTERNALLY DISPLACED PERSONS IN KHANKE INFORMAL CAMP, DOHIK / FERNANDO BURGÉS

denominations to be distinct ethnic groups as these communities speak their own languages, practise Christian traditions and do not identify as Arab.¹⁴ The 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. Now there are reportedly only around 300,000 Christians in Iraq,¹⁵ mostly in Baghdad, Mosul and the Ninewa plain, Kirkuk, Basra as well as the three governorates in the 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 south-east of Kirkuk and in the Ninewa plain near Daquq and Hamdaniya, with others also based in Diyala, Erbil and Suleimaniya.¹⁶ Reportedly approximately 75,000 Kaka'i remain in Iraq in 2017.¹⁷ They are sometimes claimed to be 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 and contains elements of Zoroastrianism and Shi'a Islam. Nevertheless, their distinct practices and beliefs have resulted in persecution. As a result, Kaka'i are secretive about their faith.¹⁸

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 200,000–500,000.¹⁹ The majority are Shi'a Muslims, with Sunni Muslims making up the remaining 30 to 40 per cent. However, some Islamic militias view Shabak as infidels and have targeted them as a result.²⁰

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.²¹ 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.²²

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 a range of between 500,000 and 600,000. 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.²³

During the Arabization campaign under the former Saddam Hussein regime, Turkmen, along with Kurds and Assyrians, were 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. Even 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.²⁴

Iraq's Turkmen community has close links to Turkey and 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 Yezidis are an ancient ethnic and 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, which is widely considered by both Yezidis and outsiders to be 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.²⁵

Despite their distinct identity, some community members as well as Kurds consider Yezidis ethnically Kurdish. Reportedly this has created conflict within the community, and pressure from Kurdish officials and Kurdish-identifying community members, as well as death threats.²⁶ 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.²⁷ Prior to June 2014, the 2005 population of 700,000 had reportedly fallen to approximately 500,000,²⁸ with thousands of families having fled to Syria, Jordan and other states. Even before the beginning of ISIS's offensive, numerous incidents of arbitrary arrest, discrimination and other abuses against the community were reported by human rights groups.²⁹

Minority women and children

Although little disaggregated data is available, it is essential to highlight the particular situation of minority women and children. Besides ongoing sexual violence and slavery in ISIS-controlled areas, minority women and children represent the most vulnerable groups 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. Conditions in IDP settlements have consistently been worse for women and children.

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.³⁰

Children have also been particularly targeted by ISIS forces for killing, sexual violence and recruitment. Training for child soldiers, known as 'cubs of the Caliphate', 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.³¹

3 The treatment of minorities since the 2014 ISIS offensive

ISIS's major military activity in Ninewa, accompanied by widespread destruction and displacement, occurred from June to September 2014.

ISIS and other allied groups began their offensive 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 GoI forces fled south from the fighting, Kurdish Peshmerga and other security forces occupied Kirkuk on 13 June 2014.

Following the ISIS occupation in Mosul, homes owned by Christians were painted with the Arabic letter abbreviating the term *Nassarah*, which means 'Christian.' This was accompanied by a statement that these homes were the property of the Islamic State. On 18 July the last Iraqi Christians fled Mosul following release of an ISIS statement saying that minorities should convert to Islam or pay a *jizya* (protection tax). Those who did not comply would be killed.

In the first two weeks of August, ISIS expanded its occupation of northern Iraq, capturing Sinjar, Mosul Dam, Kocho and other areas north and west of Mosul, as well as Qaraqosh and other towns and villages to the south and east. The group subsequently advanced to within 40 kilometres of Erbil, capital of the KR-I.



IDP CHILDREN, NORTHERN IRAQ / ALESSANDRO MANNO

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

The scale of injury, displacement and death

'Deaths and injuries of thousands of civilians, destruction of essential life-saving infrastructure, the uprooting of entire communities, and the attempted annihilation of peoples and cultures – particularly perpetrated by ISIL [Iraqi State of Iraq and the Levant] and its takfiri doctrines – continue to be the shocking consequences of the ongoing conflict in Iraq.'
Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights

Partly on account of the large number of disappeared persons, total casualty figures in Iraq are subject to dispute and uncertainty. From January 2014 to September 2016, before the beginning of the Mosul offensive, the United Nations Assistance Mission to Iraq/Office of the High Commissioner for Human Rights (UNAMI/OHCHR) recorded at least 71,611 civilian casualties 'as a result of the non-international armed conflict, terrorism and other violence in Iraq': 24,243 killed and 47,368 wounded. Improvised explosive devices (IEDs) were the deadliest tactic used against civilians. UNAMI/OHCHR note that the actual number of civilians killed 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, people with disabilities and the elderly remain especially vulnerable.³²

A recent study published in the Public Library of Science journal *PLOS Medicine* states that at least 9,900 Yezidis were killed or kidnapped in August 2014 in the Mount Sinjar area, with around 3,100 Yezidis killed (more than half of whom were executed) and around 6,800 kidnapped to become sex slaves or fighters. These figures were the result of a peer-reviewed retrospective household survey to estimate the number and demographic profile of Yezidis killed or kidnapped. A

sensitivity analysis suggests the actual toll of killings and kidnappings may be underestimated in the study's data because of survival bias.³³

The number of displaced persons since January 2014 has been tracked by the International Organization for Migration (IOM): as of the end of April 2017, internal displacement exceeded 3,065,000.³⁴ Most of these have lost their homes and livelihoods as a result of ISIS action (especially Iraq's minorities), or the response to it. Today, as a result of the Mosul offensive that began on 16 October 2016, minority populations are further depleted. One senior Christian church representative predicted that after ISIS is ultimately expelled from Iraq, there will 'only be 30,000 Christians left in northern Iraq'.³⁵

The number of missing persons relating to the conflict remains an open question as well – there is reportedly neither a consolidated missing persons registry nor any comprehensive effort to document missing persons. One Yezidi leader estimated that there were 6,000 Yezidi missing as of March 2017.³⁶ Information for other groups was not available.

Since June 2014, ISIS has killed and kidnapped, 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. Most recently, in the Mosul offensive, ISIS fighters co-located with civilians or in civilian areas to shield fighters from attack.³⁷ For a legal analysis of violations of international law, see the Appendix.

Abductions

Since the fall of Mosul in June 2014, a large number of people have been abducted and deported while trying to escape or to hide, with young women and children being ISIS's preferred targets. Witnesses state that 'the elderly and disabled were abducted' by ISIS during the fall of Sinjar in August 2014; their whereabouts are unknown.³⁸ Most abducted young women and girls have become sex slaves for ISIS members or are sold for profit. Young boys are indoctrinated in Islamic schools, where they are brainwashed with ISIS propaganda.

Of particular concern is the fate of Yezidi women. While estimates are crude, approximately 2,500 Yezidi women are still being held captive.³⁹

Ransom

As a result of anti-ISIS coalition and Iraqi government efforts to diminish ISIS finances, ISIS has reportedly seen a loss of resources and incomes. Human trade now represents an alternative income stream.⁴⁰ Paying ransoms

are now in all likelihood the only viable way to free these hostages. These are usually paid by the families. In some cases, the KRG claims it has also paid ransoms;⁴¹ however, Yezidi leaders and Iraqi government officials emphatically deny these claims.

Sexual violence and slavery

Women abducted by ISIS tell stories of abuse ranging from forced labour to physical assault, rape, torture, forced marriage and sexual slavery.⁴² Women have faced sexual violence as a punishment and also as a reward to ISIS fighters. They have been exchanged by fighters as gifts, married by force with the purpose of rape,⁴³ and repeatedly raped.⁴⁴

While to date the international focus has been predominantly on crimes committed against Yezidi women and girls, 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 governorate.⁴⁵ Shi'a Turkmen kidnapped by ISIS from Tel Afar have also reportedly been subjected to sexual violence, including rape, before being brutally killed.⁴⁶ Additionally, as hundreds of thousands languish in IDP camps across the country for months, sexual violence inside the camps has remained widespread. In this case, it comes from within families.⁴⁷

But while victims and survivors urgently need physical and emotional support, only limited services have so far been made available by the Iraqi and Kurdish authorities, or by the international community. At the same time, the scale of the assault on the Yezidi minority has meant that community structures have struggled to cope with the needs of their members. 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 strong need of psychotherapy and counselling.⁴⁸

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 Iraqi Security Forces (ISF) members. The properties of those suspected of supporting or cooperating with the central government were seized or destroyed. One of several pretexts for mass executions was the allegation of conspiring and attempting to rise against ISIS members.⁴⁹

Most notoriously, following the recapture of Tikrit, mass graves containing the bodies of hundreds of Iraqi army cadets were identified in the nearby Camp Speicher. In mid-June 2014, as Tikrit was overrun by ISIS, several thousand Iraq Air Force cadets fled the base as ISIS approached, abandoning their uniforms and walking towards Baghdad. Outside the camp, the cadets were rounded up by ISIS fighters. Sunni and Shi'a were reportedly separated from each other: the former were given the possibility to 'repent' for their loyalty to the Iraqi government, while the latter were summarily executed en masse.⁵⁰

Another 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's attempts to forcibly convert hundreds of Yazidis, particularly targeted by ISIS as non-believers or heretics. Those who refused were executed.⁵¹

Generally speaking, after consolidating control militarily, ISIS progressed towards establishing its own religious police, stricter punishments and a concerted 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.⁵² In Iraq, there have been dozens of reports of executions and other extreme and unusual punishments meted out by these institutions, based on a broad spectrum of charges, from adultery to refusal to provide medical care for ISIS fighters.⁵³ ISIS regularly forces people to gather in public places to watch punishments imposed by these courts, including stonings and beheadings.

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 to ISIS in 2014, for example, Christians who wanted to remain in the city were asked to pay the *jizya* or 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.⁵⁴

'Cubs of the Caliphate'

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 alongside, rather than in the place of, adult males.⁵⁵ ISIS has trumpeted its use of children in photos and videos, calling them 'Cubs of the Caliphate'.⁵⁶

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'.⁵⁷

Training for child soldiers occurred at several dedicated camps in Iraq and Syria. There is at least one inside the city of Mosul, one outside Mosul and another in Tel 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.⁵⁸ 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.⁵⁹ Some of the indoctrinated children have returned to their families, who must deal with the attendant socialization issues and even violence from their children, without any significant outside support.⁶⁰

Chemical weapons

ISIS has also used or attempted to use chemical weapons, in many cases chlorine gas, most recently during the Mosul offensive. Among several examples, in March 2017, 12 people, including women and children, were treated for possible exposure to chemical warfare agents in Mosul. The World Health Organization (WHO) activated with partners and local health authorities an emergency response to treat victims of the attack.⁶¹

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. Since the November 2015 liberation of Sinjar, NGOs, Kurdish authorities and other groups have uncovered at least 50 mass grave sites – most likely the Yazidi victims of ISIS – and have identified dozens more mass grave sites in the city and surrounding district of Sinjar.⁶²

Mass graves have been found in western Ninewa (including a mass grave of approximately 600 bodies from Badoush Prison and Al Jadaa), west of Mosul in the al-Eiadhia area, and in the Samarra area in Salahaddin. The KRG Ministry of Martyrs and Anfal is working to investigate with extremely limited resources. ISF uncovered the largest single mass grave site to date at the Khasfa sinkhole, approximately 7 kilometres outside Mosul, reportedly containing an estimated 4,000 human remains.⁶³

Actions by 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, PMUs (or *al Hash'd al Shaabi*), KRG soldiers known as Peshmerga and Asayish (Kurdish intelligence officers), and coalition forces are also responsible for violations, especially since the beginning of the Mosul offensive in October 2016.

In the conduct of operations against ISIS, ISF and pro-government militias have in some cases shelled civilian areas and destroyed civilian infrastructure and property, as well as engaged in unlawful killing, abduction and damage of religious sites. Local residents have also been denied access to safe areas at checkpoints manned by PMUs or ISF units.

Humanitarian workers in retaken areas have also documented a pattern of displaced persons being denied the right to return home. Witnesses note that the Peshmerga have 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,’ said a Kirkuk-based aid worker. ‘If they burn and destroy these villages, people won’t come back. And they want the Arabs to go elsewhere.’⁶⁴

A complete blockade of Sinjar district enforced by Kurdish authorities began in May 2016 and is ongoing. Kurdish leaders claim that the remaining residents in Sinjar are ‘supporters of the PKK [Kurdish Workers’ Party]’ and seek to starve them out of what they consider to be Iraqi Kurdish territory. In fact, this blockade most affects the remaining Yezidi families that are opposed to Kurdish annexation of Sinjar.⁶⁵ ‘Even one litre of cooking oil is taken by the Peshmerga at the checkpoint,’ claimed one Yezidi.⁶⁶ Christian leaders claim that there is a blockade in Tel Eskof and Batnaya, north of Mosul, enforced by the Peshmerga.⁶⁷ Reportedly Kurdish forces are also causing severe delays for supplies, reconstruction and people at checkpoints between Erbil and the Hamdaniyah district of Ninewa.⁶⁸

Cultural heritage destruction

ISIS has pursued a programme of cultural heritage destruction that has taken the form of smashing artefacts in archaeological museums, iconoclastic breaking and bulldozing archaeological sites, dynamiting shrines, tombs and other holy sites of local communities, and burning libraries and archives. Prominent heritage sites include the Mosul Museum, and the archaeological sites of Ninewa, Nimrud and Ashur.⁶⁹ Satellite images have documented thousands of illegal excavations in Syria and Iraq.

During the field mission conducted for this report, team members received reports of cultural heritage sites and religious buildings used as training sites for ISIS fighters and weapons factories. These stories were corroborated at two different sites the field mission visited in the retaken town of Al Hamdaniya. The field mission also encountered PMU defacement of heritage sites retaken from ISIS. For example, a visit to the Mar Benham monastery revealed graffiti with PMU Babylon Brigade slogans and scribbling over ISIS graffiti, only adding to the existing defacement.

Generally, sites have been looted before they are destroyed. Estimates of revenues ISIS has received from looting and sale of antiquities range from USD 4 million to USD 7 billion; this analysis is extremely limited due to three factors: (1) there is no reliable quantitative data on the antiquities trade from the region, not even considering illegal sales; (2) experts do not know what artefacts the looted sites actually contained; and (3) there are no established means of calculating revenue from these sales.⁷⁰

Revenue estimates aside, some archaeologists believe that at least USD 300 million worth of antiquities are now on the market as part of ISIS transactions.⁷¹ ISIS ‘harvests the illegal artefacts and sells them to mafia networks in Turkey and Lebanon’, according to Iraq’s Deputy Minister of Culture.⁷² ISIS revenues from the sale of looted antiquities has rapidly evolved from collecting a 20 per cent tax from diggers and dealers operating on their territory to running their own archaeological digs and selling heritage directly.⁷³

Turkish crime networks in the border towns of Gaziantep or Akcakale have close links to ISIS.⁷⁴ Galleries in Western Europe, however, also play a role in providing a space for buyers to purchase stolen works.⁷⁵ Pre-Islamic objects reportedly go primarily to European and North American markets, while Islamic art finds purchasers in the Gulf.⁷⁶ Antiquities experts believe that many of the looted items are likely being hidden for the time being, to be sold at a later date.⁷⁷

Laws around the world are weak and inconsistent, with customs enforcement only able to screen a fraction of what crosses international borders.⁷⁸ International cultural property protection policy is currently structured around two conventions: the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (including its First and Second Protocols), and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. This policy has been summarized as one of ‘protection and recovery’, reflecting 1950s and 1960s postcolonial concerns of countries that lost artefacts during colonial rule – a policy that has conspicuously failed in the Middle East and elsewhere.⁷⁹

4 The current situation for IDPs

While the large-scale military offensive to retake ISIS-held areas advances steadily in Ninewa, the final battle for Mosul, Iraq's second largest city, has triggered yet another wave of mass displacement. As of late April 2017, more than 441,000 people had been displaced since the beginning of the operation, of whom around 105,000 have subsequently returned.⁸⁰

As the fighting continues, the situation in Ninewa remains volatile, with figures of IDPs soaring: April 2017 saw an increase of 10 per cent (53,832 persons) in the governorate, alongside a large number of returnees.⁸¹ Since January 2014, when ISIS seized large areas of Anbar governorate, as of April 2017 over 3.065 million people had been internally displaced across 106 districts and 3,660 locations in Iraq.⁸² Although the majority of IDPs are Sunni Arabs, a disproportionate number of the affected individuals belong to minority ethnic and religious groups, including Assyrians, Kaka'i, Shabak, Turkmen and Yezidis.

This section discusses some of the challenges that displaced minority members continue to experience in Iraq almost three years after the fall of Mosul to ISIS.



THE DESECRATED CHURCH OF THE IMMACULATE CONCEPTION IN QARAQOSH, USED BY ISIS FOR TRAINING FIGHTERS AND TARGET PRACTICE / FERNANDO BURGÉS

Besides visits to IDP camps in Dohuk, Ninewa and Erbil, the authors had access to closed military areas in the Ninewa plains that have been recently retaken from ISIS. The current situation in these towns varies, depending on the extent of the destruction left by the militant Islamist group and by coalition forces' military airstrikes. While in some cases entire villages were reduced to rubble, such as Batnaya, other nearby towns such as Tel Eskof have seen their infrastructure largely preserved.

Nevertheless, families have been prevented from returning to their houses amid claims by the KRG that security and basic services are not normalized. Against the backdrop of political disputes between Erbil and Baghdad, other subnational groups and regional powers, and in light of vested interests from the many actors on the ground, it could be years before Iraq's displaced families are able to return to their homes.

IDP statistics and movement

The concentration of IDPs remains highly disproportional in Iraq. As of the end of April 2017, out of the 18 governorates, currently only seven are hosting approximately 84 per cent of the total identified IDP population: Ninewa (20 per cent), followed by Dohuk (13 per cent) and Kirkuk (12 per cent), Erbil (11 per cent), Baghdad (11 per cent), Salahaddin (11 per cent) and Anbar (6 per cent).⁸³ The last stronghold of ISIS and the current stage for the ultimate operations in the country, Ninewa corresponds to the governorate where 49 per cent of IDPs originate.⁸⁴ The majority of these families, including Christians and Yezidis, have resettled in the KR-I, while the majority of Shi'a Muslim Turkmen and Shabak fled to the Najaf and Kerbala governorates in the south of the country, respectively.⁸⁵ As a result, there are virtually no minority groups left in Ninewa. The cost of displacement to families, lives, education, health and mental well-being is incalculable.

The actual number of individuals currently trying to flee areas recently retaken by the ISF and areas of west Mosul still under the control of armed groups is difficult to ascertain due to access limitations.⁸⁶ Trapped between the frontlines or in buffer zones, civilians in the Mosul area have seen their situation deteriorate sharply in the first months of 2017. Interviews conducted by UNHCR

Table: Type of IDP settlement, April 2017

Shelter type	Shelter grouping	No. in April 2017	% of IDPs	% of IDPs in groupings
Camp	Camp	115,115	22.67	22.67
Host family	Private dwellings	69,013	13.59	59.67
Hotel/Motel		1,614	0.32	
Rented Housing		232,432	45.77	
Informal settlements	Critical shelter arrangements	19,830	3.9	15.07
Religious buildings		15,500	3.05	
School buildings		2,396	0.47	
Unfinished/ abandoned Buildings		38,796	7.64	
Unknown/other	Unknown/other	13,161	2.59	2.59

SOURCE: IOM, APRIL 2017

with IDPs from areas still under the control of armed groups revealed that snipers and IEDs have only exacerbated the already dangerous scenario.⁸⁷

Types of settlements

Private dwellings

According to the IOM, 59 per cent of identified IDPs are settled in private dwellings.⁸⁸ The most common type are rented houses or host families, who are usually already familiar with, or related to, the family they host. This option is most popular in Anbar, Baghdad and Ninewa. Despite the fact that conditions in host families tend to be better than in any other type of settlement, overcrowding becomes decidedly problematic in the long run. Assyrian IDPs interviewed in Ainkawa revealed that up to five families share a single house.⁸⁹

For those who do not have established family or acquaintances in the region where they are displaced, renting a private house is the most common alternative. This is particularly the case in the KR-I and surrounding governorates.⁹⁰ However, as the conflict is prolonged, there is a downward trend in the number of rented private facilities due to financial hardship. This is especially critical for families whose sources of income stemmed exclusively from activities based in their hometowns. Several families from Al-Hamdaniya, for instance, had only three hours to leave their properties before ISIS took control, and were forced to leave livestock and other assets behind.⁹¹

Another serious constraint for some IDPs with regard to housing is lack of documentation, as they are unable to enter formal tenancy agreements without it.

Moreover, in some cases, non-Kurdish IDPs who are willing to buy or rent accommodation in Dohuk, Erbil and Sulaymaniyah find the process to be nearly impossible, despite being guaranteed access by the Constitution.⁹² Full of inconsistencies, the process often requires a support letter from the local mukhtar, an approval by the local Asayish and a residence permit to formalize a lease agreement.⁹³ The exception is for Christian IDPs, who are being offered residence permits by the KRG which will be renewed annually, although in practice this may mean having to attend Kurdish schools and being taught in Kurdish.⁹⁴

Critical shelters

Although the number of IDPs in critical shelters has declined for the second consecutive year, 15 per cent (457,188 individuals) continue to endure critical housing conditions. According to the IOM, as of the end of April 2017, 7 per cent are in unfinished buildings, 4 per cent are in informal settlements, 3 per cent are in religious buildings and less than 1 per cent are in school buildings.⁹⁵ Living in abandoned or unfinished buildings is the most common type of critical shelter arrangement, especially in the Kurdistan region, where the sudden interruption of the real estate boom by the Kurdish political and economic crisis has left numerous half-finished buildings and abandoned construction projects. For example, a large number of Yazidis have occupied unfinished buildings in the town of Ainkawa on the outskirts of Erbil. There are reports that the KRG has evicted IDPs from critical settlements in Dohuk, such as unfinished buildings, and forced them to move into camps afterwards.⁹⁶

The second most common kind of critical arrangement is the 'informal settlements', with inferior

conditions and inadequate access to essential resources and services. Reasons for IDPs to settle in informal camps include lack of capacity in formal camps and issues of ethnic affiliation. A growing number of IDPs have been utilizing this form of shelter in Anbar particularly, as the IDP population there has been displaced the longest and is running out of resources.⁹⁷

Conditions in camps and informal settlements

IDPs living in camps represent 24 per cent of the total IDP population in Iraq (734,580 individuals).⁹⁸ Due to the volatility of IDP movements, particularly high since the beginning of the Mosul offensive, planning new camps has been difficult. As a result, settlements often become overcrowded. This is not only problematic for those living in the camps themselves, but also for those seeking admission into these camps. An interview with the responsible person for the social department of Khanke camp, in Dohuk, revealed that the waiting list is long and the process is slow:⁹⁹

'The number of IDPs in this camp has not changed since last year. There is absolutely no space left. When someone leaves the camp, priority to occupy the vacant tent goes to those families in the camp who are currently sharing the same tent with eight people or more. Only then, after these cases are resolved, external IDPs on the waiting list are called.'

Camp official, Dohuk, February 2017

As a result of overcrowding, informal settlements, such as the one near the official Khanke camp, are widespread in Iraq. In addition to lack of capacity, a Yezidi IDP in the informal settlement claimed that his refusal to register as Kurd has prevented him from being admitted into the formal camp.¹⁰⁰ Conditions in the informal camp remain precarious, with no proper bathrooms nor any functional sewage system. A positive development has been the establishment of shops and small services – such as barbershops and food stalls – in the camps. In Ashti 1 and 2, in Erbil, stores can be rented by IDPs for a very low price. The initiative, supported by the French Government, flourished and the small network of commerce has created a new dynamic in the camp.

Humanitarian needs

'I was a taxi driver in Dohuk when ISIS began to seize territory in 2014. After a normal day at work, I was driving home and was met by ISIS. They stopped me, shot me several times and bulldozed my car while

I was still inside. They thought I was dead and left me there. I was left bleeding for 7 hours. To this day, my arm is still broken. Doctors here in Erbil told me that the surgery will cost IQD [Iraqi dinars] 4 million [approximately USD 3,500] to treat. I just don't have that kind of money.'

Christian IDP in Ashti camp, February 2017

More people are vulnerable now than at any time during the recent conflict. As of the end of April 2017, the UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that the affected population in need of humanitarian aid in Iraq had exceeded 11 million.¹⁰¹ Since the military operations aimed at retaking the city of Mosul began in October 2016 the governorate of Ninewa has witnessed an increase in humanitarian needs. Following three years of continuous conflict and economic stagnation, the most urgent needs are related to health and protection, as well as access to water, sanitation and hygiene. The situation for persons from west Mosul to Hammam Al-Alil has been particularly challenging, with the UNHCR reporting that some individuals had not been able to access drinkable water for as long as 45 days.¹⁰²

While the Iraqi government and some NGOs are distributing food in a small number of retaken neighbourhoods in west Mosul, heavy fighting makes it difficult to provide sufficient humanitarian assistance to many parts of the country. To make things worse, food shortages have resulted in sharp price increases and poorer families in Mosul are struggling to feed themselves. Since 2014 poverty rates in Kurdistan have doubled, and unemployment has reportedly tripled in many communities.¹⁰³ At the same time, agricultural production in areas formerly held by ISIS has reduced by around 40 per cent, undermining the country's food self-sufficiency. In this context, hundreds of thousands of civilians have been obliged to migrate to urban areas for income and assistance.¹⁰⁴

Sustainable livelihoods

In light of forced displacement and the loss of jobs and assets, IDPs are essentially losing their livelihoods. The impact of loss of livelihood on displaced people's psycho-social well-being and self-esteem,¹⁰⁵ combined with the other stress factors they are inevitably exposed to, can cause further tension in camps or settlements. Therefore, there is a profound need to generate income during displacement to improve the quality of life for these individuals, as well as to help avoid protracted dependency and further exposure to discrimination and abuse.¹⁰⁶

In this context, sustaining the local economy through cash-for-work schemes is vital in providing a measure of

long-term security for communities and preventing violent extremism, especially among the young.¹⁰⁷ Cash-for-work has become one of the most commonly used short-term interventions by assistance organizations to provide temporary employment to the most vulnerable crisis-affected population.

Prior to the conflict of 2014, the initiative had been tested by the World Food Programme (WFP) in Diyala and elsewhere, targeting the most vulnerable, including IDPs and returnees.¹⁰⁸ In Khanke camp, a cash-for-work scheme was implemented in 2016 and includes the clearing and rehabilitation of sewage, irrigation canals and improved sanitation.¹⁰⁹

Women and children

Conditions in IDP settlements have always been worse for women and children. In addition to living in physical danger, they struggle with lack of adequate health care and education. A study conducted with women and children, aged 15 and under, among a sample of this IDP population in Kirkuk, Baghdad and Karbala governorates, explored in-depth the main challenges they face. Among other things, it revealed the particularly problematic issue of maternal health. Pregnancy complications were worryingly common, with a quarter reporting anaemia and 22 per cent experiencing haemorrhage (antepartum or postpartum).¹¹⁰ Poor conditions at the time of delivery are also common, as confirmed by respondents for this report.

'My wife gave birth to our daughter in Erbil via caesarean. The doctors were rough through the procedure and they ended up breaking the baby's hips and injuring her arm. She risked not being able to walk any more, so we had to operate her. She is just a baby. We had to pay for the surgery and we spent everything we had to do it.'

Yezidi IDP, Khanke Camp, Dohuk,
February 2017

Findings of the study indicated that domestic violence against women is prevalent.¹¹¹ Other concerns include the capacity to ensure suitable sanitation facilities for people with disabilities and to ensure gender-segregated safe spaces for girls and women. Some formal camps have implemented nurseries exclusively accessible to children of female-headed households or orphans.

A women's Assyrian civil society organization in Dohuk further highlighted concerns regarding the psychological welfare of women in displacement.¹¹² Feelings of physical insecurity have become a common theme in their lives and often have an acute impact on

their mental health. For women who have been held captive by ISIS but managed to escape, stigma poses an additional challenge. In a positive move to foster collective and individual recovery, a 2014 religious decree stated that any Yezidi woman or girl who returns from ISIS remains a Yezidi.¹¹³ Furthermore, many husbands have taken their wives back willingly, and some young Yezidi men have chosen to marry survivors of sexual violence to foster internal community reconciliation.¹¹⁴

Youth represent a particularly high percentage among the forcibly displaced, with OCHA estimating that 5.1 million of the 11 million civilians in need in Iraq are under the age of 18.¹¹⁵ They remain particularly vulnerable to violence, exploitation and other rights abuses, including many killed or injured. In February 2017 alone, the Iraq Monitoring and Reporting Mechanism (MRM) confirmed 15 separate violations of child rights, including 16 children dead and another 8 wounded, primarily by IEDs.¹¹⁶

Education also remains inaccessible for more than 2 million displaced children and children from host communities who are currently out of school. Language barriers pose a distinct challenge when it comes to educating the IDPs. In the KR-I, school curricula are followed in the Kurdish language, whereas the curriculum in central government-run schools is in Arabic. This is a major issue for the large number of non-Kurdish IDPs in the KR-I. For example, an Assyrian IDP reported that in order to keep his children in Assyrian schools, he has had to spend USD 35 per month on transportation because the only schools near his family were Kurdish. Many families chose to enrol their children in government-run schools that teach in Arabic simply to avoid having a Kurdish education.¹¹⁷

5 Ongoing challenges in areas retaken from ISIS



A VACANT TEL ESKOF STREETSCAPE / WILLIAM SPENCER

The focus of much recent media coverage has been the steady rollback of ISIS forces from its former territory, with military and paramilitary forces regaining control of large swathes of the Ninewa plains in the latter months of 2016 and the ongoing battle to secure the remaining areas of ISIS-occupied Mosul. On the face of it, this would suggest that the atrocities and mass displacement that began with the group's sweep across northern Iraq in the summer of 2014 could soon come to a close.

However, just as violence against minorities in the region long pre-dates 2014, instability and division will likely persist even if ISIS itself is successfully routed. This chapter, drawing on primary field research by the authors of this report in retaken areas of Ninewa including Al-Hamdaniya,

Al-Hamdaniya after ISIS – a town still living with catastrophe

Originally a Christian town, Al-Hamdaniya is located 30 kilometres east of Mosul in the direction of Erbil. Kurdish forces, in cooperation with a Christian defence force, managed to defend the city against ISIS's attacks in June 2014. At the time, some of its inhabitants fled to Erbil, returning shortly after. Two months later, on 6 August, faced with a renewed offensive by ISIS, Kurdish forces withdrew. Informed with just a few hours' notice, the local population was forced to flee in haste, following the departed Peshmerga, bringing with them nothing but the clothes they were wearing.

'In 2014, when Mosul fell, Al-Hamdaniya was still not occupied. The Kurds came to protect our town. They promised us that "ISIS would take the city over their dead bodies". However, when ISIS came, the Kurds withdrew without firing a single bullet. They did not warn or tell civilians or the people of Al-Hamdaniya that ISIS were coming and that they were withdrawing. They left silently. We eventually heard rumours that ISIS was coming and within three hours the whole city evacuated. When we fled, however, we found that the Kurds had closed the roads behind them and had placed obstacles so that ISIS couldn't follow. The problem is that we couldn't pass the obstacles easily either. You can't imagine the

*conditions these IDPs suffered. They survived hunger and thirst, and were mistreated at the checkpoints.'*¹¹⁹
Assyrian IDP from Hamdaniyah

The town was retaken in December 2016 by the Iraqi military's 9th Division, local and federal police, with the support of the Ninewa Protection Units (NPU). But like many other towns and cities until recently held by ISIS, the trauma and devastation of its rule will take a long time to reverse. With some estimates suggesting that as much as 80 per cent of its infrastructure has been destroyed,¹²⁰ including destruction to a majority of residential homes,¹²¹ it is now a landscape scarred by tunnels, trenches and buildings burnt to the ground. In those houses standing, many covered in graffiti left by ISIS, the smell of burning is still too strong to allow some families to return months after the city has been retaken.¹²² According to the local NPU, all of the properties in the town have been looted, either before or after the departure of ISIS, and the local hospital lacks basic equipment and medicine.¹²³

As elsewhere in areas formerly controlled by ISIS, restoring the town's physical infrastructure, not to mention the social fabric of its community, will require a sustained investment of resources and assistance if residents are to be able to resume their lives there.

Karemlesh, Tel Eskof, Khidr Ilyas, Al Qosh and Batnaya – access to which from the KR-I is still closed by the Peshmerga¹¹⁸ – highlights the profound shortfalls in basic services and infrastructure left by the conflict, the continued humanitarian needs and the risk of further social division to come. Beyond the military dimensions of the current crisis, there will also need to be a wide-reaching intervention in the region to secure its long-term security and stability.

Lack of services and infrastructure

Throughout the areas retaken from ISIS, infrastructure has been severely damaged. Either as a result of coordinated attacks by ISIS or of coalition airstrikes, some blocks have been completely flattened. As of February 2017, water and electricity had not yet been restored.

Even where the visible damage to physical infrastructure was relatively limited compared to neighbouring areas, such as the Christian town of Tel Eskof, substantial problems are still evident. An interview with one of the few families that had returned to the town revealed that basic services were still not functional, despite some electricity at night.¹²⁴

‘There are no water tanks, and electricity is needed in order to run the wells. The generator is used to fill tanks with water from wells. What’s more, the pipes are broken so even if the generator works the water is not consistent.’

Christian returnee to Tel Eskof, February 2017

The destruction of schools and hospitals is seen by IDPs as one of the major deterrents to returning. Health centres, when still intact, operate under critical conditions. In Tel Eskof, for example, the centre is empty.¹²⁵ In light of the urgent needs of the newly retaken cities, the UN Development Programme (UNDP) established in June 2015 the Funding Facility for Stabilization. Originally designed as a single channel for immediate stabilization – known as the Funding Facility for Immediate Stabilization (FFIS) – the programme was later broken down into multiple channels, to be overseen by the Iraqi prime minister’s chief of staff.¹²⁶ Although USD 85 million has been allocated to support vulnerable populations in terms of public works, light infrastructure rehabilitation, livelihoods, capacity support and community reconciliation under the FFIS framework, up to the publication of this report, no actual work has been initiated in towns retaken from ISIS.¹²⁷

Security and the political manipulation of militias

Security in retaken areas is ensured by diverse armed groups according to the different political and military

presences in the territory. Besides Iraqi Security Forces and the Peshmerga, numerous militias that reflect the affiliation of local residents patrol the sites. At the time of the visit, Al-Hamdaniya was controlled by NPUs formed in late 2014 mainly by Assyrian Christians. In the area surrounding Batnaya, Tel Eskof and Al Qosh, the territory is militarily controlled by the Peshmerga. Bartella and the outskirts, in turn, are controlled by Iraqi Security Forces. Shabaki and other Shi’a militias control the areas closer to Al Khidhir through the Babylon Brigade. Throughout the entire region, numerous checkpoints, some just a few meters away from each other, have different groups from various ethnic and religious affiliations in control. The wider region and most of the key checkpoints in the Ninewa plains, however, are controlled by the Peshmerga, which imposes restrictions on movement.

The limited strength of minority-based militias means that in practice they are affiliated or receive support from either the GoI/Iraqi Security Forces or from the KRG/Peshmerga. This leads to allegations of political manipulation, particularly in the latter case. For example, the GoI has reportedly supported the (Christian) NPUs, and funding to Yezidi militia, the Protection Force of Êzîdxan, arguably sending a message that minority participation in the implementation of military strategies is an essential bridge between it and prospective minority returnees.¹²⁸ The KRG also purports to be acting in the interests of minorities and their future. The KRG has established Shabak and Christian KDP-affiliated military groups,¹²⁹ such as the Ninewa Protection Force, although their presence in some regained territories is small enough to be symbolic. Christian religious authorities based in the KRG publicly support these militias, although this has provoked controversy. The KRG responds to these complaints by claiming a responsibility to secure areas regained from ISIS.

The district of Sinjar, in Ninewa, remains a complex area due to the presence of several different armed groups representing different affiliations. While in February 2016 a senior local government official in Northern Iraq claimed that the Peshmerga was the only prominent force protecting the local population in the area,¹³⁰ recent developments reveal a standoff between Yezidi militia fighters and Kurdish Democratic Party (KDP) Peshmerga. On 2 March 2017, KDP-sponsored Syrian fighters (‘Rojava Peshmerga’ of the Syrian Kurdish National Council) moved towards Khanasor village, a key road junction occupied by Yezidi fighters trained and advised by the Turkey-based Kurdistan Workers Party (PKK). Although it was not clear whether the KDP-backed force sought to occupy the village or simply to pass through it towards the Syrian border,¹³¹ heavy fighting broke out, resulting in a number of fatalities on both sides.

Meanwhile in the Kurdistan Region of Iraq

The current political and economic situation in the KR-I also provides important context for post-ISIS Ninewa and other retaken areas.

The term of the incumbent president of the region, Masoud Barzani, expired in 2015 after a two-year extension. His rule has not had an official mandate since. On 12 October 2015, the Speaker of the Kurdistan Regional Parliament was prevented from entering the Kurdish capital in Erbil, and sessions of the parliament have not been held since then. Other opposition party members are regularly blocked at Erbil checkpoints from coming to the parliament. Meanwhile, a referendum on independence from Iraq could be held as early as October of this year, subject to agreement on the terms of the referendum among Kurdish political parties.

Ninety per cent of all Kurdish government revenues come from the oil and gas sector. Allegations of

corruption are widespread, including regarding missing oil revenues. Many Kurds note that the oil sector lacks transparency and the flow of oil and petrodollars cannot be monitored. Others point out that currency exchanges from oil revenue from US dollars to Iraqi dinars have been monopolized by Kurdish family dynasties.

Meanwhile, the KR-I has reportedly amassed as much as USD 20 billion in debt and been forced to cancel thousands of projects to reduce this figure, while government salaries have been slashed and public payments to contractors have fallen into arrears.¹³⁵ These crises have been exacerbated by the burdens of hosting IDPs who fled ISIS, keeping the Kurdish region on a war footing to protect recent territorial gains, and a depressed price for oil in international markets. This has resulted in severe disruptions, demonstrations and unrest, and further emigration from the KR-I.

On 26 March 2017, a significant number of Yazidi Sinjar Resistance Unit (YBS) members reportedly left the group to join KDP-affiliated forces in Sinjar,¹³² despite the earlier clashes.¹³³ In addition, what was the last remaining militia in Iraq without political affiliations, the Protection Force of Êzîdxan, also declared its association with KDP-affiliated security forces in March 2017.¹³⁴ The extent to which these moves were a submission to external pressures or a decision based on the protection of minority futures is unknown.

Looting of property in retaken areas

'They took everything. Copper cables, plasma TVs, they even burnt books. If you had new wood in your house, they would strip it to make fire.'

Assyrian Christian from Bartella, February 2017

Though the departure of ISIS forces from many areas is welcome, the security of many residents remains precarious as the militias and security forces that have replaced them have also been implicated in abuses. Throughout the retaken areas, widespread looting by the forces that fought ISIS has been reported. In Tel Eskof, Christian IDPs reported that after the town was retaken, they travelled back to check on their properties and found their homes with minimal damage and with most of their personal items still there. After surveying their property, they locked them and returned to Erbil. Weeks later, upon

another visit to the town, they found that locks were broken and items looted. This situation happened several times: 'I spent over USD 200 dollars on locks and have lost USD 35,000 worth of property.'¹³⁶

Impunity for perpetrators is another difficult issue. An IDP reported that a neighbour returned to check on his property, to find his fertilizer being loaded onto a truck.¹³⁷ when he took the culprit to the Kurdish authorities, the looter was merely requested to return the fertilizer without any penalty for his crime.

A similar report was shared by an IDP from Kharabat Sultan. After his town was retaken in summer 2016, he returned to check on his land and property and found that everything was normal. Fifteen days later, he returned to find that the trees and plants had been uprooted from the farms, some houses were demolished and others had been taken over as bases by the Peshmerga, including his home: 'The Peshmerga are creating a situation that does not permit return.'¹³⁸

Investigations by other organizations have corroborated these accounts. In the south-west of Mosul, satellite imagery reviewed by Human Rights Watch (HRW) has documented the destruction of hundreds of buildings in a number of villages through use of explosives, heavy machinery and fire that occurred after anti-ISIS forces regained control, with no evidence to suggest that these demolitions were undertaken for legitimate military purposes.¹³⁹

Bribes to collect personal items in retaken towns have also been reported. Interviewed IDPs in Dohuk and Erbil

explained that at several times, the transit of goods from the retaken towns to the camps required the payment of bribes to armies and police along the way.¹⁴⁰

IEDs and explosive remnants of war

Iraq is now ‘one of the most contaminated countries in the world’,¹⁴¹ with thousands of explosives littering the landscape of the northern governorates. Experts claim that some explosive devices cannot be moved and have to be destroyed where they were originally placed. The village of Basheer in the governorate of Kirkuk, captured by ISIS in 2015, still contains large amounts of unexploded ordnance. According to local Peshmerga, the town of Batnaya’s soil is heavily contaminated with landmines, yet during the Field Mission’s March 2017 visit to Batnaya, several Peshmerga and Asayish walked about the town without apparent concern for IEDs and explosive remnants of war (ERWs).

A senior Kurdish official claimed that the Peshmerga have only a few specialists who are able to clear the path for their movement. Capacity training and funds for demining are desperately needed, but so far, the KRG claims that it has not received international support to this end.¹⁴²

Demographic change and restrictions on return

‘All our lives we have known no Kurdish. We have never spoken their language and we have never worn their clothes.’

Christian IDP in Ashti camp, Ainkawa,
February 2017

Since the withdrawal of US troops from Iraq and the operations to retake areas from ISIS, relations between the GoI and KRG have proven fragile in terms of resolving the status of disputed territories, which include Khanaqin, Kifri and Baladrooz districts of Diyala governorate, Tuz district, which is currently part of Salahaddin governorate, and Badra district, which is currently part of Wassit governorate. KRG’s ambitions to expand its areas of control in the so-called disputed areas face strong opposition by the Arab and Turkmen communities in the concerned areas, as well as by the GoI. Currently, in addition to the three existing governorates within Iraqi Kurdistan (Erbil, Dohuk and Sulaymaniyah), Kurds control parts of Ninewa governorate, Kirkuk governorate, Salahaddin governorate and Diyala governorate. The GoI controls other parts of those four governorates, some parts of which are also claimed by the Kurds. Ninewa includes Aqra district and the northern part of Al-Shikhan district,

which have been under Kurdish control since 1991, and the three districts of the Ninewa plain of mainly Assyrian, Yezidi and Shabak population, as well as Sinjar town and Tel Afar district, of mixed Arab and Yezidi population.

As a result of the dispute between the KRG and the GoI, demographic change has been one of the central points of concern for minorities in Iraq. Coupled with the feeling that people have not been able to return due to the political ambitions of Erbil, Baghdad and other actors, the overwhelming perception among the displaced is that the ability to return is not in the hands of IDPs themselves.¹⁴³ One Christian leader interviewed in northern Iraq in February 2017 stated that, beyond cultural assimilation, the agenda of the KRG is to create a legion of supporters of the Peshmerga. As many IDPs have pointed out, to establish the boundaries of a future Kurdish state, demographic manipulation is a tentative first step to achieve this goal.

Checkpoints show clear evidence of Kurdish control throughout large areas of the Ninewa plains. Although Alqosh, Batnaya, Tel Eskof and surrounding areas are originally Christian towns, the ability to control access from the KR-I is entirely in the hands of the Peshmerga. Senior Kurdish officials interviewed in Erbil claimed that restrictions on access are purely for security reasons. Considering the GoI’s failure to react effectively when ISIS swept across the region, the KRG ‘filled the vacuum’ and now holds the responsibility to secure the area. This, in the official’s view, explains the impossibility of simply withdrawing from the region.¹⁴⁴

‘Every war has a consequence. Every war results in demographic change. The pre-2014 format is over.’

Senior Kurdish official, Erbil, March 2017

Sinjar district and northern parts of Tel Afar district and the Ninewa plain are currently under the control of the KRG, as are Aqra, Al-Hamdaniya, Al-Shikhan and Tel Kaif districts. In Sinjar, where approximately 360,000 Yezidis lived before June 2014, it has been reported that the KRG has imposed disproportionate restrictions on the movement of goods into and out of the district. Although the region is, in theory, under the Iraqi central government administrative control, the PKK and allied militias are present on the ground, while the KRG controls the main roads from Sinjar to other parts of Iraqi Kurdistan. Severe screening, which is seen as disproportionate to security needs, has undermined access to food, water, livelihoods and other basic needs.¹⁴⁵ Aid agencies have reported repeated obstructions since 2014 by KRG Peshmerga and Asayish security forces of humanitarian shipments of food and medicine into Sinjar, even when they have had permission already issued by Kurdish authorities.¹⁴⁶

Kirkuk has seen tensions between its multiple ethnic and religious components escalate over the past year. Following the success of ISIS's 2014 offensive in northern Iraq, the Iraq army withdrew and all of Kirkuk governorate was taken by Kurdish forces. Since then, the administration of Kurdish-dominated has been districts added to Erbil and Sulaymaniyah governorates, while Arab districts have been incorporated into Kirkuk governorate and Turkmen villages added to Diyala and Salahaddin governorates.

As the dispute remains unresolved, minorities are increasingly concerned about the future of their original lands. One displaced Christian interviewed in Erbil expressed fears that 'the military borders will become political borders'.¹⁴⁷ In the words of a former Turkmen MP, the trauma of those who experienced ISIS horror has impacted collectively on the community and that 'without UN action to protect minorities, people will not return'.¹⁴⁸

Batnaya and Tel Eskof

A Kurdish commander stated that their intention is to encourage IDPs to return and said that already 150 families have returned to Tel Eskof.¹⁴⁹ However, the numbers are disputed by Christian IDPs, who claim that the few Christians – six families in total – who were allowed to return are KDP supporters.¹⁵⁰ In Batnaya, the presence of another Christian militia, the Ninewa Protection Forces (NPF), seems to be merely symbolic.

This militia is largely controlled by the KDP. A local Christian commander of a competing militia reports that there are Peshmerga sitting on the front lines not getting paid for two or three months, while there are NPFs 'who are sitting at home and receiving salaries'.¹⁵¹

In Al-Hamdaniya, Ninewa Protection Unit (NPU) forces, not affiliated with the KRG, who are on rotation are regularly delayed at KRG checkpoints when attempting to return to Ninewa. For example, whereas a commander was prevented from entering for 17 days, due to restrictions at surrounding Kurdish checkpoints.¹⁵² The lack of manpower to protect areas where the NPU is responsible has a direct effect on security and returns.

The international response

The large-scale conflict, the fall in the price of oil and the continuing political issues in Baghdad have increased the demand for humanitarian assistance. As the pushback against ISIS advances, post-conflict recovery and peace-building entail hefty costs, especially in light of Mosul being Iraq's second largest city with a population of around 1.5 million.

In 2016, international agencies such as the UNDP worked to support government actors in supporting recovery programmes in various parts of Iraq.¹⁵³ OCHA has already called for at least USD 985 million for the 2017 Iraq Humanitarian Response Plan (HRP), to

Meanwhile in Syria

With no sign of the Syrian crisis abating, the country's civil war has now left an estimated 13.5 million people in need of humanitarian assistance, including 4.6 million in hard-to-reach areas.¹⁵⁸ Close to seven out of ten Syrians (69 per cent) are currently caught in extreme poverty, with around half of these facing abject poverty and lacking access to even essential food needs.¹⁵⁹ Syrian refugees in Iraq now number more than 230,000, with the overwhelming majority – as many as 97 per cent – hosted in the KR-I.¹⁶⁰

Throughout the conflict in Syria, minorities, women, young people and children have been targeted by all parties involved in the conflict. In particular, the severe human rights violations inflicted on the country's Yazidi population, ranging from mass executions, the separation of families and displacement to torture, sexual slavery and inhumane treatment, have been described by the Independent International Commission of Inquiry on the Syrian Arab Republic and others as amounting to genocide.¹⁶¹

Moreover, local truces and pacification plans carried out by warring parties in various Syrian provinces are primarily aimed at reinforcing the hold of the Syrian government in contested areas by removing populations perceived to not be aligned with the Damascus regime. 'Evacuation agreements' between different warring parties without consultation of local residents in the affected areas, have often amounted to ethnic cleansing.

As it is clear that civilians belonging to all communities are suffering from violence and human rights violations, it appears that 'the most urgent, life-threatening needs do not vary between religious majority and minority groups'.¹⁶² Under the protracted war, Muslims, Christians and others have endured gross human rights violations, including the torture of religious figures and the destruction of mosques and churches.¹⁶³ Meanwhile, the Assad regime continues to target Arab Sunni Muslims and other individuals or groups that oppose it, including through indiscriminate bombings, sieges, starvation and the use of chemical weapons.¹⁶⁴

provide the approximately 6.2 million highly vulnerable people in Iraq with essential humanitarian assistance.¹⁵⁴ A total of 11 million people have been identified by the HRP as in need of humanitarian assistance, including as many as 3 million in Ninewa as a result of conflict-related displacement caused by the Mosul offensive.¹⁵⁵

The US government has already provided an additional USD 198 million to support of conflict-affected Iraqis, meaning its total humanitarian assistance since 2014 for the Iraq crisis now exceeds USD 1.3 billion.¹⁵⁶

The European Union

The EU continues to be an important humanitarian actor, donating €309 million in humanitarian aid since 2015, including a recent aid disbursement of €42.5 million in 2017, following more than €159 million in aid for food, health, sanitation and other service provision in 2016.¹⁵⁷ A chart of the funding provided by individual states is featured below.

Table: Humanitarian funding and requirement per cluster, May 2017

Cluster	Funding Requirements (US\$)	Actual Funding (US\$)	Percentage Covered (%)
Rapid Response Mechanism (RRM)	\$18,000,000	\$419,012	2.30%
Camp Coordination and Camp Management (CCCM)	\$18,694,000	\$1,769,300	9.50%
Coordination and Common Services	\$16,089,139	\$12,013,666	74.70%
Education	\$69,946,877	\$13,889,659	19.90%
Emergency Livelihoods - Social Cohesion	\$20,031,306	\$3,447,263	17.20%
Emergency Telecommunications Cluster (ETC)	\$2,701,261	\$0	0%
Food Security	\$235,000,000	\$91,086,360	38.80%
Health	\$109,641,716	\$43,386,031	39.60%
Logistics	\$11,870,344	\$0	0%
Multi-Purpose Cash Assistance	\$61,398,275	\$5,408,105	8.80%
Not specified	\$0	\$32,593,400	0%
Protection	\$106,752,112	\$36,452,344	34.10%
Shelter - NFI	\$175,313,707	\$36,767,807	21%
Water, sanitation and hygiene (WASH)	\$139,208,327	\$29,965,813	21.50%
Total	\$984,647,064	\$307,198,760	31.20%

SOURCE OCHA MAY 2017

6 Approaches to transitional justice



DESTROYED CHURCH BUILDING, TAL KAIF DISTRICT, NINEWA GOVERNORATE / MAYS AL-JUBOORI

While it is certainly a matter of the utmost urgency to provide humanitarian assistance to populations affected by the war and to meet their security needs, it is equally crucial to address the root causes of the conflict.¹⁶⁵ In this way, the international community can assist in finding lasting political solutions by addressing the grave injustices that caused it. Transitional justice – defined by the UN as ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’¹⁶⁶ – is an important vehicle to achieve this. Possible approaches to achieve these ends in Iraq are explored further in this section.

Basic assumptions on the transitional justice process

A transitional justice approach has two general objectives: to provide justice and redress for victims, and therefore also eliminate the desire for revenge on the part of individuals; and to stop ongoing human rights abuses and prevent future ones by strengthening possibilities for democracy, peace and reconciliation. However, concrete

Transitional justice worldwide – an overview of recent developments

A wide range of transitional justice processes have been established in the past. For instance, in the former Yugoslavia, the UN established a criminal tribunal to prosecute those responsible for war crimes that were committed during the Balkan conflict in the 1990s. The first international tribunal since Nuremberg, this paved the way for similar processes in other places and facilitated the creation of the International Criminal Court, allowing the international community to provide avenues for leaders suspected of mass crimes to be brought to justice.

Transitional justice can also include non-judicial measures. The Truth and Reconciliation Commission in South Africa, for example, aimed to heal the relationships between offenders and victims by disclosing past abuses, giving each individual the opportunity to share their perspectives on apartheid and the struggle to overthrow it, by offering conditional amnesties for those who participated in the process.¹⁶⁹

Recently, a growing debate has taken place on how the concept of transitional justice can adopt a more comprehensive and people-centred approach to justice.¹⁷⁰ New mechanisms of transitional justice see reparative and criminal aspects of justice as complementary and try to include both local and international stakeholders in reconciliation processes. For instance, hybrid criminal tribunals, as established in Sierra Leone and Cambodia, were an attempt to integrate local stakeholders and traditions and ensure that a wide range of stakeholders could identify with the peace process.¹⁷¹

Other than truth commissions and criminal prosecutions, transitional justice mechanisms have also aimed to restore a balance of justice through compensation and reparations, institutional reforms, memorials or days of remembrance, and public apologies.¹⁷² In sum, each situation will require a specific solution based on the identified goals, as there is no ‘one size fits all’.

goals may vary depending on a range of factors, including the political context, social background and the nature of the abuses. It is therefore crucial to start transitional justice processes by answering the following questions:

- *Why* such a process is needed: concrete goals could be ending impunity and ongoing violations, prosecuting those responsible for abuses, removing violators from political positions or state institutions and establishing a record of past violations, just to list a few examples. Furthermore, redress and compensation for victims could help to restore their integrity and dignity, prevent private justice or revenge, and support national reconciliation and unity. Identifying goals clearly is essential, as it will determine the nature of the mechanisms to implement.¹⁶⁷
- *For whom* this process is intended: transitional justice processes address a wide range of potential beneficiaries; both individuals and communities or whole countries can be involved. Further sub-categories, such as geographic location, gender or ethnicity should be considered in order to identify more specifically the needs and demands of participants. Relevant stakeholders have to be identified carefully because an inaccurate choice risks reinforcing feelings of resentment among those involved and/or those who feel excluded.

At this stage of the process, there needs to be a holistic perspective on the situation, taking into account complex political, cultural and social contexts and being aware of

the fact that victims can also be perpetrators.¹⁶⁸ The next questions, which must necessarily be tempered by practical realities including security considerations, are:

- *When* to initiate the process: starting the process earlier rather than later potentially ensures a better quality of relevant data, evidence and testimonies, and certainly gives a signal to the affected community that the restoration of justice and rule of law has begun and is important.
- *Where* to hold proceedings: be it in the country undergoing transition or elsewhere, the consideration of location helps define the process by bringing in factors such as security, participation of stakeholders, involvement of the international community or other states, effectiveness and efficiency.

The final step is to consider and evaluate all the potential outcomes of a particular measure, desired or otherwise, taking into account geographical, social or logistical issues that might come into play. For example, local trials aimed at involving the population could be useless if the venue is not accessible to everyone or security is not sufficient to allow people to attend hearings safely.

The right process

The UN Secretary-General's 2004 report on transitional justice emphasized that it is not just a technical concept but a complex political and social process, while

Views on the ground – the perspectives of different minority communities

Research for this report, conducted in February and March 2017, uncovered a socially heterogeneous context and a wide range of views on the future of Iraq. While the fieldwork was only able to touch on these diverse viewpoints, the findings did appear to illustrate broader trends that would be worth exploring further in future research.

One major concern among minorities is the right to live peacefully in their own homes. With ISIS pushed back from many areas under its control, close to 1.5 million IDPs have returned to their areas of origin. However, some minorities question the feasibility of return when military operations are still ongoing and believe specific conditions must be in place before they can countenance return. A central concern was the assurance that recent abuses against their communities would not be repeated in future, through the implementation of special protections to guarantee their safety and the distancing of perpetrators, aiders and abettors.

This appears to be the case for Christians, many of whom seem to be considering safe return as the only alternative to fleeing the country. There is little agreement about the establishment of autonomous regions, special zones or an international 'safe haven', but there seems to be a common consensus that some form of international protection is necessary, clearly signalling distrust and concern for national and regional forces and authorities. On the other hand, accountability for crimes appeared to be less of a priority in its own right, aside from being seen as a potential means to improve the security of a particular area and support the case for future special treatment.

Since 2003, the Christian community has been dramatically affected by emigration out of Iraq. The numbers have shrunk further as a consequence of the violence committed in the region. Flight is still considered among many Christians from outside the KR-I as the only

Views on the ground – the perspectives of different minority communities (continued...)

viable option, given the perceived failure of both Iraqi and Kurdish forces to protect them. Demographic change and land grabbing both pre-date the ISIS invasion, meaning the recent crimes and violations suffered by Christians are seen by many as just the latest episode in a long history of abuse and intimidation. Although the perpetrators are new actors, the responsibilities are perceived as lying with the central and regional authorities, both of which have neglected the protection of Yazidis' fundamental rights.

Among Yazidis, however, there appeared to be a slightly different perspective on what the priorities were for a meaningful reconciliation process. Mass graves in retaken areas have been uncovered and, while forensic analysis has not been carried out yet, the Yazidi community is already trying to focus on accountability for these and other serious crimes. However, most are strongly convinced that there is little official interest within Iraq in ensuring truth and justice for Yazidi victims, given the long-standing discrimination the community has faced. Consequently, Yazidis clearly see the need for international jurisdiction as they have no faith in the Iraqi justice system.

Among the different groups, one common denominator appears to be an 'autonomy plan', with

Turkmen, Assyrian and Yazidi organizations officially advocating for it. In March 2017, the Yazidi Independent Supreme Council, the Turkmen Rescue Foundation and the Mesopotamian Organization, launched the National Coalition for Al Rafidein Region, aiming at establishing a 'region of multiple Iraqi nationalities, religions, and cultures, free from any racial or sectarian entrenchment'.¹⁷⁶ The territory encompasses Sinjar, Tel Afar and the Ninewa plain, and the whole plan is intended to comply with the Iraqi Constitution, which allows the formation of new regions and governorates, and gives the right to all nationalities coexisting in Iraq to self-administration and the protection of heritage, culture and civilization.¹⁷⁷

The different needs and fears of each community therefore require distinct solutions. The outcome of any transitional justice process directly depends on the capacity to identify the affected stakeholders, consult them about their needs and goals and to involve them in the whole process. Determining the exact objectives of the transitional justice process is essential in order to identify the most effective mechanism and how it should be implemented.

reaffirming that peace efforts need to be responsive to local contexts and dynamics.¹⁷³ In this respect, transitional justice not only aims to support peace efforts leading to democratic elections, it should also: contribute to breaking cycles of violence; counter narratives of denial and victimization; and reduce resentment and the desire for revenge – emotions which are often strongest in the immediate aftermath of conflicts.¹⁷⁴ While transitional justice must address the root causes of conflicts and tensions, any such process must take the individual victim's experiences, emotions, perspectives and needs into account.¹⁷⁵ Transitional justice is therefore not a static concept, but should be thought of as an imaginative and flexible tool that is constantly reviewed and adapted.

While these are some of the goals, the aims of transitional justice may be much broader, depending on the type of transition (such as conflict to peace, political violence to rule of law) and the dynamics at play in the country undergoing transition. This is particularly relevant for Iraq, where ethnic and cultural tensions and high levels of loss, trauma and mistrust among the population have created an environment of fear and instability. Since the ISIS offensive in June 2014, a broad range of crimes have been committed, targeting in particular minorities

residing in the areas they seized. The extent of these abuses, including war crimes, crimes against humanity and genocide – outlined in more detail in the Appendix to this report – have been corroborated by NGOs, UN agencies and other actors on the ground.

Popular consultation and transitional justice

While the Mosul offensive is still ongoing at the time of writing this report, the need to ensure accountability, justice and reconciliation in its wake is already pressing. In order to move forward, a transitional justice process needs clear goals, proper planning, sufficient means, the support of strong and unbiased authorities, and a scrupulous assessment of the situation on the ground of the crimes allegedly committed and of victims' needs.

The first step, as previously mentioned, is to consult the population, particularly those involved in the recent violence, collect their opinions and evaluate them. This would give the people the opportunity to be heard, giving the whole process more legitimacy and enabling it to achieve its goals while maximizing its positive impact on the greatest number of people. Understanding local

attitudes towards transitional justice and social reconstruction is a crucial element in the formulation of legitimate and meaningful strategies.¹⁷⁸ Properly managed, it would also likely contribute positively to avoiding division, hierarchies and future resentments. At the same time, it is important to recognize and acknowledge any dissatisfaction or distrust that may arise among civilians as a result of previous failed transitional justice processes, as was reportedly the case in Iraq.¹⁷⁹

More recent examples of national consultation linked to transitional justice could provide some useful elements about the challenges of such a process. A first case is represented by the Truth and Reconciliation Commission established in Nepal after the civil war, which ran from 1996 to 2006. This was subsequently criticized for failure to involve or consult victims in the transitional justice process, so impeding their ability and willingness to understand, engage and finally trust the process. As a result, a decade after the end of the conflict, there still remains a significant gap between the transitional justice that was offered and the transitional justice that victims are seeking¹⁸⁰ – a situation that could have been avoided by a more comprehensive consultation process at the beginning.

In Colombia, on the other hand, where the peace process is still ongoing between the Colombian government and the armed opposition Revolutionary Armed Forces of Colombia or FARC, the victims' participation has been enshrined by a number of laws¹⁸¹ that set a framework recognizing the grievances of victims and their need to participate actively in the process. However, the frameworks set up by the Colombian state¹⁸² with the help of the international community leave some practical burdens on the victims. While victims are officially provided with state support and an historic opportunity to participate, they face obstacles such as difficulties in being officially accredited as victims.¹⁸³ Moreover, it seems that the focus is entirely on victims' participation in trials rather than involving them in the shaping of the transitional justice process.¹⁸⁴ As such, important opportunities to engage victims fully appear to have been lost.

The case of Sri Lanka is, for the purpose of this report, the most interesting one. The political change following

the general election in 2015 led to a new government, which undertook a transitional justice process by establishing a truth-seeking mechanism, an Office for Missing Persons, an Office for Reparations, and a Judicial and Accountability Mechanism. Moreover, wide-ranging and inclusive consultations with victims and citizens in general have been a key element of the whole process.¹⁸⁵ A Consultation Task Force on Reconciliation Mechanisms (CTF), composed of civil society leaders, was conducted throughout the country and was further expanded by Zonal Task Forces, which enabled contacts with all regions and districts. With over 7,000 submissions, the CTF was able to produce a report highlighting the views of all stakeholders regarding the transitional justice mechanisms to be established in the country.¹⁸⁶ While it is still too early to evaluate the extent of their contribution – indeed, some argue that so far very little has been done in practice to address people's needs¹⁸⁷ – the CTF process itself represented an important milestone for justice and reconciliation in the country.¹⁸⁸

These and other examples demonstrate that any transitional justice process is likely to yield more concrete results and engender more public support if it is preceded by broad consultations with affected communities. Building on these experiences, both positive and negative, a proper transitional justice process in the post-ISIS Iraq should develop gradually, starting with the establishment of a proper, independent state authority, and involving the participation of all relevant actors and segments of society.

Potential transitional justice options

Every consideration relative to transitional justice options in post-ISIS Iraq should be informed by a vast array of variables, some of which are yet to be defined as the situation on the ground remains unstable. In particular, it will be crucial to avoid a rapid 'victor's justice', such as prosecutions motivated by political considerations rather than achieving full accountability and redress for victims: that would risk exacerbating pre-existing tensions instead of defusing them, as happened with mechanisms established by the US after the fall of Saddam Hussein.

Ongoing discovery of mass graves

While the KRG has reportedly initiated investigations at as many as four mass gravesites, dozens of mass graves have been identified as the Mosul offensive continues. These are crime scenes that are steadily degrading, impeding the preservation of evidence.

Reportedly, the KRG has established judicial panels that have interviewed victims in Dohuk governorate. There is apparently no comprehensive effort under way to identify and register missing persons.

Prosecutions and accountability process in Iraq to date

The GoI has yet to request international assistance on accountability and justice processes. International support is further complicated by Iraqi enforcement of the death penalty and a reluctance to allow all sides of the conflict to be prosecuted, including for violations or crimes allegedly committed by government or pro-government forces.

There is no real legislative framework to domestically prosecute violations of international humanitarian and

criminal law. In Baghdad, some prosecutions have proceeded under the Counter Terrorism Law No. 13 of 2005 and in the KR-I under the Criminal Code. This is problematic. Under the Counter Terrorism Law there is no specification as to actual offences, merely a generic charge; and some crimes under the Iraqi Criminal Procedure Code require the victim to initiate criminal proceedings, which in many cases victims are unwilling to do.

The hasty, all-encompassing ‘de-Ba’athification’ of Iraqi politics resulted in inefficient prosecution, political instrumentalization of the courts and subversion of pre-existing power relations, and may have fed the ranks of the insurgency with well-trained recruits.

A survey conducted in 2003¹⁸⁹ found widespread support among Iraqis across ethnic and regional boundaries for public trials of those responsible for human rights abuses during the years in which Saddam Hussein was in power. However, in subsequent years a variety of transitional justice measures were implemented with little success, in large part because the processes were used to settle old scores. Lack of international participation, poor training, political manipulation, security problems and other issues helped undermine the work of the Iraq tribunals. As a result, transitional justice initiatives to date have failed to alleviate tensions and even at times jeopardized stability.

Consequently, any future transitional justice process should first ensure a wide popular consultation, encompassing all the country’s ethnic, linguistic and religious minorities, to understand what Iraqis want and expect. This would also provide an important insight into the future prospects of Iraq as a unitary state after years of conflict, and help to identify the main goals of transitional justice in the eyes of the Iraqi people.

In this respect, one important consideration is that the human rights and humanitarian law violations that have occurred in Iraq give rise to certain obligations on the part of the Iraqi state to investigate and prosecute those violations. This would need to be factored into any transitional justice plans, especially if the population is calling for amnesties, to ensure that Iraq’s legal obligations can be met while meeting the needs of the people. This is important also for pragmatic reasons: if the goal of a transitional justice mechanism is to preserve rule of law and accountability for perpetrators, it should be wary of those options that might undermine this by relying

exclusively on ‘soft’ power and overly optimistic good governance solutions.

Criminal prosecutions

For criminal prosecutions, Iraqis should be asked whether they trust their own judicial system enough to carry out impartial investigations and prosecutions of the most serious crimes. The need to survey the opinions of the Iraqi people is paramount, especially since any effort towards transitional justice should avoid imposing ‘special’ tribunals without first assessing their perceived legitimacy among the population. The opinions of Iraqi jurists and judges, regardless of their affiliation or their belonging to a particular community, should be surveyed to avoid past mistakes and contribute towards the legitimacy of future criminal proceedings.

While necessary, criminal prosecutions alone are unlikely to reach the goals of a transitional justice process for Iraq, particularly given the needs as expressed during the field research for this report. For example, while removing some perpetrators from areas where violations have been committed through convictions and imprisonment, criminal prosecutions alone cannot create the necessary conditions to ensure safe return for those displaced by the conflict.

It is therefore likely that in developing their transitional justice plan, Iraqis will need to consider a mix of different mechanisms and processes, including symbolic or economic compensation, especially to foster the return of displaced people and to facilitate harmony between communities, different militias and warring factions.

Non-judicial approaches

One important step is to consider how the different mechanisms and processes can support rather than undermine one another, as has happened elsewhere. While none of the previous cases can be defined as an unreserved success, a comprehensive and integrated approach to justice with the employment of non-judicial mechanisms

alongside judicial ones can make a tangible and significant contribution to the process of achieving accountability, as in the case of South Africa or East Timor.¹⁹⁰

An investigative or truth commission might work closely with a court and international actors to unveil crimes, providing a necessary transition between a chaotic, post-conflict state and the presumptive legal mechanisms that should be the outcome of consultation. In particular, such a commission or intermediary body could act as a filter that collects evidence of very serious crimes to later refer to a higher court. This would require both prior agreements and a willingness of each body to work together: where this has not happened, as in the case of Sierra Leone,¹⁹¹ the path to accountability has been much more difficult than it otherwise needed to be. This filtering or investigative role necessitates that a truth commission must have robust standards for handling any evidence that it collects, including witness testimonies and forensic evidence, in order to ensure that later court cases are not prejudiced by sloppy procedures.

A truth commission or a provisional assembly of representatives of various communities may provide the right arena to manage and potentially resolve conflicts, investigate past crimes, and organize and mobilize resources to reconstruct the country. Such a mechanism may be a desirable outcome of any preliminary consultation and could contribute towards a local narrative, owned by the Iraqi people themselves. However, a truth commission alone, without prosecutions of at least the most serious cases, could be an unsatisfactory option in such a divisive context, especially given the anecdotal and circumstantial evidence of its varying impact as a method of reconciliation in previous cases around the world.¹⁹²

Although there is no consensus on their long-term political and social implications, whether positive or negative, truth commissions can contribute to rebuilding society in a variety of ways.¹⁹³ Their impact may be realized in terms of reconciliation, or at a minimum acknowledgement of suffering and contribution towards healing. Beyond that, truth commissions can act as a deterrence by discrediting perpetrators, and advancing democracy by strengthening the rule of law and demonstrating a commitment to human rights.¹⁹⁴

The creation of a broader and more inclusive historical narrative than the record resulting from criminal prosecution is often one outcome of truth or investigative commissions.¹⁹⁵ Additional non-judicial initiatives to meet other goals, such as redress for victims on a broader scale than prosecutions can offer and guarantees of non-repetition, might include various forms of reparation, such as apologies, public acknowledgement and restitution, depending on the resources available.

Nonetheless, a participatory approach that relies on instruments such as truth commissions can still perpetuate distorted or unequal power relations that are among the underlying causes of conflict. In fact, they may aim at being representative of all parts of the population but only include exclusively well-off members of each community, keen on keeping their own status intact, while the needs of others who are regularly victimized in conflict, such as women, children and LGBT persons, are not represented.

Evidence also suggests that truth can, at the individual level, rekindle anger and trigger post-traumatic stress among victims and, at the aggregate, may generate resentment and insecurity. For victims, lack of punishment may seem a travesty of justice and for perpetrators the proceedings may be threatening to reputations and social position, thereby leading both sides potentially to extra-constitutional tactics in support of their interests.¹⁹⁶

While the research uncovering these challenges has been focusing mainly on truth commissions, similar concerns can arise in respect of other accountability mechanisms and processes. For example, the payment of reparations in Argentina to victims of the military junta and their families generated resentment, with some feeling they were being offered 'blood money' in exchange for the lives of their loved ones.¹⁹⁷ The potential unintended consequences, alongside the warnings offered in the previous paragraph, should therefore be considered carefully in respect of any part of an overall transitional justice process considered for Iraq, including how the different parts of the process may interact with one another.

Which mechanisms can work?

What is clear is that a single mechanism seems unable to provide all the answers and meet all of a society's accountability needs. A combination of non-judicial and judicial mechanisms, shaped after a careful assessment of the objectives, would probably realistically pursue more objectives and contribute to the goals of transitional justice.¹⁹⁸

If the objective of the transitional justice process is accountability for the crimes committed, an amnesty would probably be inappropriate. A judicial mechanism which includes trials and convictions should therefore be considered. But to prevent and deter new crimes, structural reforms are necessary that ensure a closer link between minority groups and those state sectors providing security and protection. If the future governance arrangements in Iraq include an autonomous area or areas with some special protection for minorities, a full disclosure of all violations, and all perpetrators and collaborators, could provide a useful basis for resolving disputes over territory and the

security arrangements required for the future. A truth-seeking mechanism with proper incentive to disclosure may be more effective in this case, but would do little to address the demands for justice.

Through these brief examples alone, it is clear that putting together a transitional justice process that meets all goals and expectations of society is going to be a complex task. Despite the many possible issues that emerge from imagining possible post-conflict scenarios of an Iraq on the path to reconciliation, accountability for crimes must be stressed as a priority. Regarding the method through which to obtain accountability and possibly reconciliation, the principle of participatory, inclusive action should be at the top of the guiding

principles to create a legitimate process for transitional justice in the country.

What must be considered as an absolute priority is the real and broadest possible representation of the whole society, especially including minorities. A wide consultation, notwithstanding the inevitable logistical and operational challenges that would arise, is most likely the most effective tool to avoid mischaracterization of the population itself and gross oversimplifications of the situation on the ground.

Such an approach would also be consistent with the need to avoid 'one size fits all' approaches¹⁹⁹ and move Iraq towards a transitional justice process that can achieve lasting peace in the country.

The international community on transitional justice

Outside Iraq, several nations are developing their own approaches to transitional justice in the post-ISIS era. Key states, including the United Kingdom, France, Germany and the European Union are evaluating options that address both judicial and non-judicial accountability mechanisms, to build what UN Secretary General Guterres called 'effective accountability' on a 30 March 2017 visit to Iraq.

North American and European governments continue to recognize that any approach to prosecutions must have the support of the Iraqi government. States that want to see Iraq address accountability issues have offered technical support for the domestic prosecutions of violations of international humanitarian and criminal law, and reportedly have been waiting for a response to their offers from the Iraqi Prime Minister's Office since at least December 2016.²⁰⁰

There is disagreement over the scope of what crimes should be addressed: Some states argue that only ISIS crimes should be prosecuted; legal experts respond by

noting that choosing one group as perpetrators is problematic and in many respects not in conformity with international humanitarian and criminal law.

The United Nations Assistance Mission for Iraq is also working to develop a comprehensive accountability strategy that supports the GOI, while stressing the need to keep all parties to the conflict accountable and noting concerns about Iraq's use of the death penalty. This work includes collecting documentation and evidence where possible and the provision of legal assistance to allow for an appropriate legal framework that is currently absent. It envisions also providing technical support to GOI justice mechanisms, including prosecutorial and forensic assistance.²⁰¹

Where possible, European and North American governments are seeking to pursue prosecution of ISIS foreign fighters where their nationals are involved; for example, the Government of France has reportedly identified and 'prepared dossiers' on as many as 300 French nationals affiliated with ISIS.²⁰²

7 Where next for Iraq's minorities?

One result of the battle against ISIS is a reignited power struggle between larger factions of Iraqi society over disputed territories. Social and political tensions over land have exacerbated the vulnerabilities of minority groups and reaffirmed popular beliefs that minorities hold a secondary status in Iraq; a perspective that leaves them little space to determine their own future within it.

Iraq now faces a threat to its once rich ethnic, religious and linguistic composition. Deeply entrenched discrimination, long-standing marginalization from political, economic and social life, as well as mass violations against minorities in the current conflict have led to a dramatic increase in emigration. While there is no official data on the numerical size of minority communities that remain in Iraq, early 2017 figures indicate that 100,000 Yazidis have already left the country, with a further estimated 100–200 people continuing to leave each day.²⁰³ Iraq's Christian community, numbering 1.4 million people in 2003, has declined to no more than 300,000.²⁰⁴

Christians, like other minorities, have been described as a 'collective community', with strong family networks. As one family decides to leave Iraq, other relatives are reportedly encouraged to join, leading to domino effect migration. The size of many minority populations is rapidly diminishing as communities abandon hopes for a secure, peaceful and dignified existence within Iraq.

Minority representatives originating from Ninewa expressed a deep sense of betrayal by neighbouring communities, abandonment by Kurdish forces, and neglect by the central GoI. The trauma experienced by many groups has led to a deep distrust in national and regional institutions and protection measures.

'We lost everything and we are not ready to bargain again. The GoI promised us before they would defend us, and the KRG withdrew its forces from our lands before a single shot was fired.'

Christian military commander, Dohuk,
March 2017



KHANKE INFORMAL CAMP, DOHUK / FERNANDO BURGÉS

Yet such experiences have not diminished the immense value that many minority communities attach to 'the land'. For some it is simply a source of revenue and livelihood, while for others it is the physical emblem of community, family and ancestry. Deeply embedded in the territories inhabited by minority groups are their faith, culture, heritage and even identity. While this deepens the loss and suffering experienced by minorities in the conflict, it is also the element restricting many families from severing the last remaining thread to 'home', and commencing a life outside of Iraq.

'We feel that Iraq is our homeland and we purely serve the land. Christians are the only component inhabiting all of the governorates, which shows that Iraq truly is our home. But since 2003 Iraq has not treated us as first class citizens.'

Christian military commander, Dohuk,
March 2017

Despite strong territorial attachments, the future of minorities in Iraq can only be shaped by those protections that will be afforded to targeted groups in a post-ISIS era. Christians, Shabak, Turkmen and Yezidis are some of the many minorities demanding legislative guarantees and constitutional reforms. According to a senior Yezidi leader, the loss of trust in 'Muslims and Kurds' means that Yezidis will not remain in Iraq without secured protection and rights.²⁰⁵

'Every day that passes with no solutions, no development and no hope, minorities will continue to flee the country.'

Christian civil society representative, Dohuk,
March 2017

A common perception among several minority representatives is that the KRG and GoI will not seek minority points of view or prioritize minority concerns in the post-ISIS phase. Minorities report feeling used for 'propaganda' to market the political agendas and ambitions of larger components and political factions, while being excluded from genuine decision making regarding their futures.²⁰⁶ In order to defend themselves, minority communities have begun to seek consociational arrangements that will separately protect their own communities.

Most are eagerly looking to the international community for support, for the most part in the political sense,²⁰⁷ but are disappointed by the lack of international commitment or action taken on behalf of minority groups so far.

'Minorities have been left with too little. How can the world expect minorities to be powerful and strategic

when we just experienced genocide? The international community must stop making excuses.'

Yezidi civil society leader, Dohuk, March 2017

While the ambiguous future for minorities is often described as 'blind',²⁰⁸ the message to a perceived-to-be idle international community is clear: 'Do not just sit there and watch Iraq, only to cry for us [minorities] in a 100 years' time. Help us now.'²⁰⁹

Actions and commitments of the GoI

The GoI is at a critical juncture of the conflict and its actions and commitments towards minorities will determine their future in the country. Minority communities require reassurances of their valued and equal place in Iraq; this will require both immediate protection and long-term legal and policy efforts, with the consultation of minority groups, to address structural discrimination, impunity, unrepresentative governance, and legislative shortfalls.

Iraq is state party to international conventions which protect the rights of minorities. These include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC).

The 2005 Iraqi Constitution explicitly recognizes Iraq's ethnic and cultural diversity. Its provisions afford protections and guarantees to minority groups ranging from political representation to freedom of religion. However, Article 2 of the Constitution prohibits the enactment of legislation that contradicts the laws of Islam. This has concerned religious minorities – who would favour a more secular constitution – as a potential restriction to their religious rights and freedoms.²¹⁰

Indeed, the National Identity Card Law (2015) is an alarming indication of where Article 2 has already disadvantaged minorities. While Article 26 of the law affirms the right of non-Muslims to convert to Islam, it does not afford the same conversion rights to Muslims. It further states that minors will be legally deemed Muslim, after either parent converts to Islam. Yet perhaps most concerning, particularly for instances of rape, the law asserts that a child born to both Muslim and non-Muslim parents shall assume the Muslim religion. Although the law was not reportedly intended to target minorities, but rather to facilitate administrative formalities,²¹¹ it contradicts the principles of the Iraqi Constitution and effectively legalizes discrimination against minorities.

The need for fair representation

'As a representative of Ninewa, and as someone close to the government and the PMU, the problems we have are in implementation.'

Iraqi MP, Baghdad, March 2017

Under-representation remains a serious problem for Iraq's minorities, despite a 2010 Federal Supreme Court ruling which held that the number of seats reserved for Yazidis in the Council of Representatives was not proportionate to the size of their population and contravened the constitutional requirement of Article 49 that the ratio in the council be one seat per 100,000 Iraqi people.²¹² As it stands, only 8 of the 328 parliamentary seats are reserved for minorities, 5 of which are allocated to Christians and 1 seat each to Sabeen-Mandaeans, Shabak and Yazidis. All remaining minority groups are excluded from the reservation altogether.²¹³

Minority groups are now calling for fairer representation in all levels of governance in the post-ISIS transitional phase and thereafter, and are not satisfied that their rights will be secured otherwise.²¹⁴ In December 2016, Prime Minister Al-Abadi decreed the establishment of a directorate to address minority issues within the National Reconciliation Commission.²¹⁵ While this was a welcome development, minority representatives are requesting the formation of a Minority Council with higher powers and responsibilities.²¹⁶ Such a body would ideally play a role in overseeing necessary legislative amendments, integrating minority rights in government policy, and acting as a platform for minority voices in governance.²¹⁷

A draft to 'Protect diversity and combat discrimination', endorsed by many Members of Parliament, could be passed in the current legislative session and is a further positive step in realizing constitutional protections for minorities. The Bill, submitted for its first reading in October 2016, seeks to promote and protect religious and ethnic minority group rights.²¹⁸ Notably however, these rights have been composed under the framework of anti-discrimination against all Iraqi components, as opposed to minorities specifically – meaning that minorities could be sidelined in its implementation.

Actions and commitments of the KRG

Legal frameworks for minority rights in the KR-I are also available. Prime Minister Barzani has asserted that minority groups shall be afforded special protections in the currently incomplete Regional Constitution for which drafting was initiated in 2011. The majority of Iraq's Christians live in KR-I. The Kurdistan Region Ministry

for Endowments and Religious Affairs has also recognized and allowed representation of smaller ethnic and religious groups including Bahá'is, Kaka'i, Jews and Zoroastrians.²¹⁹

The 2015 KRG Law on Protection of the Right of Components (Law No. 5) recognizes various ethnic and religious minorities, guarantees equality and the right to political, economic, social and cultural participation, including the right to education in mother-tongue languages. The law prohibits all forms of discrimination, but does not criminalize hate crimes and lacks provisions on the establishment of an implementation body or commission.²²⁰

Generally, the public KRG message is a positive one. It encourages free expression, minority protection and participation. But the actions of the KRG in relation to the future of minorities in the disputed territories bordering the KR-I are in contradiction to this message. Efforts to ensure the rights of minority groups are trumped by political, security and humanitarian pressures which have reportedly caused minorities to feel 'oppressed'.²²¹

Notably, Law No. 5 prohibits demographic change of ethnic and religious communities, but the rhetoric among senior KRG government officials is an alarming indication of Kurdish territorial ambitions – physically marked out by a 650-mile trench spanning from Sinjar in Ninewa to Khanaqin in Diyala – that increases the KR-I territorial mass by up to 40 per cent.²²² Some have claimed that Kurdish appropriation of minority lands is a reversal of the Arabization campaign of the former regime.²²³ President of the KRG, Masoud Barzani, on the other hand, has stated that the KRG will not surrender lands where Kurdish blood was shed.²²⁴

Intimidation

Those who accuse the government of land grabbing and criticize violations discussed in earlier chapters of this report – including the KRG blockades of Sinjar and Tel Kaif, Peshmerga looting of minority properties, and restrictions on IDP returns to regained minority territories in Hamdaniya and elsewhere – are frequently subjected to arrests, detention and threats so severe that they prompt emigration.²²⁵

'Every time I write or publicly speak about the Peshmerga repeatedly looting my property after ISIS withdrew from my town, I get arrested and detained by the Asayish for one or two days. Once I received a threat and I had to leave Iraq for a few months. It was not safe for me to stay here.'

Christian IDP and activist, Dohuk, March 2017

Civil society organizations are not exempt. In January 2017, Yazidi human rights organization 'Yazda' was

abruptly closed by Kurdish authorities, although the decision was reversed a few months later.²²⁶ Another example took place in March 2017, when 31 unarmed demonstrators protesting against the KDP's Sinjar policies were arrested. Examples like these have become common and the use of threats and retaliation to discourage future protests is undermining freedom of expression and assembly in the KR-I. In stifling minority voices the government is creating an impossible environment for their engagement in the planning of a post-ISIS Iraq.

This too is reflected in the KRG agenda towards local governance of minority areas in disputed territories outside the KR-I. In Sinjar, for instance, minorities allege that the mayor is appointed by the KDP from party loyalists rather than through local elections.²²⁷ In newly regained Assyrian town Batnaya, where Peshmerga forces are stationed, the Kurdish flag is planted high above the destroyed houses of Christian families, the Assyrian Christian flag flies below it, and the flag of Iraq has been tied into a knot.

Adjusting to a permanent IDP presence in the KR-I

Between members of displaced minority communities who choose to leave Iraq and those who seek to return to their areas of origin, there are many who plan to remain in the KR-I. The KRG has been accommodating to IDPs but their long-term settlement in the KR-I will require guarantees of civil, political, social, economic and cultural rights, as well as the means to access and enforce them.

'We have recognized rights but not the mechanisms to implement them. We have the right to teach in our language in schools but there are no schools in the area. I have three children in Syriac schools but I have to take them from one neighbourhood to another, because I don't have one near me.'

Assyrian Christian Leader, Dohuk, March 2017

There are those that believe that remaining in Erbil will result in minority assimilation:

'Children will have to attend Kurdish schools and be taught in Kurdish. As for voting rights, even if it were granted for IDPs, they would only have the option of voting for a KDP candidate anyway.'

Christian religious leader, Erbil, February 2017

The future of Ninewa

Ninewa governorate is the homeland of several of Iraq's minority groups including Christians, Shabak, Turkmen and Yezidis. Centuries of trade, migration and conquests

have contributed to the current diverse cultural, religious, ethnic and linguistic composition of the region. But the atrocities brought upon Ninewa since 2014 have affected the social cohesion of its minority groups, polarizing communities and their aspirations for the governorate.

Military successes against ISIS are likely to be followed by the emergence of new conflicts over regained territories, amid competing political ambitions: 'Ninewa is now a political area and parties want to politically invest in it.'²²⁸ Without a plan for the governorate, however, new territorial encroachments are likely to occur. Already, minority representatives are expressing concern about ongoing tensions between the KRG and the GoI, with questions surrounding the implementation of Article 140 of the Iraqi Constitution on disputed territories still unresolved.²²⁹ It is feared that attaching the 'disputed territories' title to minority lands will strengthen the claim of both governments to Ninewa and deprive minorities of the opportunity to influence the fate of the governorate.²³⁰

The decisions taken by the GoI, KRG and international community to navigate the post-ISIS phase will determine the future of Ninewa, its capital Mosul, and the status of Iraq as a centralized or decentralized state. Many believe that the interests of minorities and the Ninewa lands are best served within a strong central government, particularly where external influences are at play:

'A weak government allows interference. Political bargaining will destroy the country. You cannot and should not compromise on the rights of minorities. We must be brave to find solutions, and not seek external ones.'

Iraqi MP, Baghdad, March 2017

The GoI's ability to exercise representative governance is uncertain based on past experience, and minorities are no longer willing to take the risk of entrusting their future in others. Many Yezidis, Christians and Turkmen are calling for alternative administrative arrangements that will solidify community territorial ownership and allow minority groups a degree of autonomy in determining their own affairs in the Ninewa territories. The feasibility of these demands will vary in consideration of the nature of the administrative powers, the geographical extent of the territory and the level of autonomy afforded.

Any new political order must further give due regard to the condition of lands regained from ISIS. In many areas, not only is the physical destruction palpable, but years under ISIS occupation have altered demographics, hindered the functionality of institutions and administrations, and created an intellectual and economic standstill. All these elements generate significant

challenges even at national levels of governance, and must accordingly be factored into any plan for the governorate and devolution of powers.

Decentralization of powers

The Iraqi Constitution provides a framework for decentralization with consideration to minority rights. Article 116 of Chapter One, Section Five (Powers of the Regions), holds that '[t]he federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations.' Article 125 of Chapter Four [The Local Administrations] expands this to guarantee 'the administrative, political, cultural, and educational rights of the various nationalities, such as Turkmen, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law.'

Minority communities believe that complying with the legislative requirements of Article 125 would secure much of the self-administration which they seek, ensure protection from conflicts between larger powers over their territories, and grant a platform for the voices of minorities.²³¹ But as yet, despite one decentralization law,²³² Iraq lacks a thorough and complete legal framework for decentralization.

To realize Article 125 the Council of Representatives must accordingly establish a legal structure to convey powers to local authorities and this should include provisions on: the jurisdiction of local institutions; the formation of local government; the establishment of district or sub-district 'local administrative units'; and the development of legal protection mechanisms.²³³

Scope of powers

The nature of decentralized powers may vary between regions, depending on which authorities would most appropriately respond to the specific needs of the area, its components and the historic and territorial circumstances of minority groups. Accordingly, national powers must adopt a flexible approach to decentralization and veer towards the principle of subsidiarity, ensuring that those who are most directly affected and concerned with Ninewa are able to make decisions.

It is likely that key concerns in the delegation of powers would include education, language, religion and culture, which correspond to minority identity and way of life. Nevertheless, administrative powers could extend to include further aspects of governance, such as local planning, environment, economic development and social services. Defining these authorities in legislation will ultimately require consultation sessions engaging minority communities, national and local political leaders, and the institutions that currently exercise these functions.

Economic sustainability

Decentralization will need to be accompanied by financial resources so as to enable local institutions to effectively govern and provide basic services. Funds and logistical support to build infrastructure and governance mechanisms at a local level will enhance capacity to receive and exercise allocated powers. In the initial stages of decentralization, the GoI may have to allocate funds to the establishment of the framework for self-governance and the cost of transferring services. A long-term outlook might require continued financial support from the federal government to provincial levels, and similarly from provincial authorities to district or sub-district activities.

Provincial or more localized authorities must be able to run their administrations while also catering to the economic requirements of their communities. Internal tax-raising powers may further help generate economic resources for the governorate. Monetary arrangements should be managed by legislation, and would ideally incorporate an administrative system whereby local governments and councils report annually to the national government on estimated and actual budgets, as well as the expenditure of funds for each fiscal year.²³⁴

Defining 'local'

Perhaps the most challenging aspect of Article 125 is defining what is intended by 'local' administrations and hence the level of governance to which powers can be legally transferred. Decentralization of Iraq within the federal system is an option which may contribute to the protection of minorities amongst national and international state powers, but only when pursued along existing provincial boundaries. Anything beyond this may be argued as effectively mapping out divisions on ethno-religious lines via legislation.

In practice, however, it is important to take into consideration the nature of the Ninewa governorate, its demographics and the implications of decentralization at a provincial level. Although home to a significant population of Iraq's minorities, the majority of Ninewa governorate's population is Sunni Muslim.²³⁵

This too may be reflected in the ethnic and religious composition of the provincial council, potentially once again weakening minority voices and influence in the region. Further to this, many minority groups experienced violations of their rights at the hands of their neighbours and so are unlikely to willingly entrust their affairs to broader provincial structures that also encompass neighbouring districts perceived to be extremist hubs.

Not only have minorities lost faith in the GoI and the KRG, but they do not foresee political pluralism as a possibility in non-minority dominated administrations. Any strategy for decentralization at an existing provincial level

would have to cater to these concerns and, while reversing the post-2003 political disenfranchisement of Sunni Muslims, it must also ensure an active and prominent role for minority representatives in provincial governance.

The GoI may indeed choose to use Article 125 as a tool for decentralizing at district level, but the governance of mixed ethno-religious populations in districts such as Tel Afar will present the same challenges as Ninewa on a smaller geographical scale. Providing decentralization at a provincial level, while simultaneously permitting the establishment of minority-led local governments for districts, may provide a middle ground in these sensitive circumstances.

Notably, however, no matter how Iraq chooses to define 'local administrations', its minorities remain both geographically concentrated and dispersed, meaning that territorially based arrangements would not provide solutions for ethnic and religious minority groups as a whole. Local governance in Ninewa would certainly increase minority political participation, but legislation to define and enforce the guarantees of Article 125 regionally will not secure the protection of minority communities outside of the designated local administration.

This challenge is certainly acknowledged by minority groups who, in addition to decentralization, have requested that minority representation in the GoI and the KRG should more closely reflect their populations, as well as the realization of constitutional minority rights protections through enactment and enforcement of appropriate legislation.

Forming a new governorate

Some minority leaders argue that the establishment of a new, separate governorate for minority groups in the Ninewa region is the only way to secure appropriations from the GoI, as national funding is not allocated to districts or sub-districts.²³⁶

At the very least, the foundation for provincial powers is already encoded in the Constitution, arguably advantaging regional authority over that of the district. Article 122 of Chapter Two of the Constitution (Governorates that are not incorporated into a region) grants administrative and financial authorities to governorates 'in accordance with the principle of decentralized administration'. Article 123 further states that '[p]owers exercised by the federal government can be delegated to the governorates or vice versa', while Article 115 stipulates that all powers not exclusive to the federal government will belong to regional and governorate authorities.

The Provincial Powers Act

In 2008 the Council of Representatives adopted Law No. 21, 'Governorates Not Part of a Region', otherwise known as the Provincial Powers Act (PPA), to legislate

decentralization. In June 2013, significant amendments to the PPA were introduced which increased governorate authority, concluding disputes between the local government and provincial governments on the administration of security, petroleum and investment portfolios.²³⁷ The PPA allowed local governments to choose their own judiciary and granted the governor direct power over authorities tasked with protection, and maintaining order and security in the governorate. Furthermore, amendments to Law 21 significantly increased petrodollar shares for governorates where oil is produced or refined.²³⁸

Despite legal advances, the GoI had previously been reluctant to accept decentralization, and the legislation in essence has acted as a philosophical guideline for the process. The original text, its amendments and its implementation were rejected by government, and a reversal towards a strong federal system was sought.²³⁹ Yet provincial governments have still sought powers beyond the PPA, as the transformation from a centralized state into a decentralized government cannot be wholly achieved through this one law.²⁴⁰

Nevertheless, with Ninewa's hydrocarbon resources, the application of the PPA could have considerably boosted the local economy. In addition, some take the view that implementation of its provisions on security governance could have resulted in a different outcome to the ISIS assault on its territories and people. Others argue that it was the very exercise of such powers at governorate level that contributed to the fall of Mosul. Either way, it is these types of authorities over security and administration which minorities hope can protect them when overseen by representatives of their own communities at district or even sub-district level.²⁴¹

One or several governorates?

Decentralization according to some minority aspirations not only requires implementation of the Constitution, the PPA and prospective legislation, but also may call for the creation of up to three new governorates which would allow minority communities greater autonomy over their affairs in their respective territories. The proposed governorates are Sinjar (predominantly inhabited by Yezidis), Tel Afar (a majority Turkmen area), and the Ninewa plain (home to Christians, Shabak and other minorities).²⁴² Transforming these areas into three separate governorates could encourage the preservation of minority presence in Iraq, and serve as form of symbolic compensation for the loss experienced by minority groups.²⁴³

This approach has received some support in the US. In September 2016, US Congress Resolution 152 was introduced to encourage the US and international community to back the creation of a Ninewa Plain

governorate and its provincial administration.²⁴⁴ However, in promoting ideas for the future governance of Iraq, members of the international community should be aware of the dangers of creating new ethno-religious divisions and must be careful not to exclude certain minorities from their post-ISIS planning. Creating a new governorate only in the Ninewa plain would seem to disproportionately benefit the Christian population over Turkmen and Yazidis for example, and may have the effect of reaffirming views among these groups that they hold secondary status in Iraq.

On the other hand, decentralization does not necessarily have to be implemented all at once. If Iraq chooses to create new governorates for minorities it could do so one at a time, beginning with the least economically and socially challenging, to develop a solid and tailored framework for decentralizing to new governorates along the way.

The unique circumstances of each minority-populated area, from natural resources to standards of education, means that decentralization to three new governorates will require different levels of support or involvement of national authorities. The GoI, the KRG and the international community must ensure that a new governorate arrangement does not disadvantage some minorities compared to others in the long term, and that decentralization does not lead to abandonment, ultimately creating minority 'ghettos'. Minorities similarly may need to be open to external support while distinguishing between guidance and interference.

The GoI, however, has rejected the proposal to divide Ninewa along ethno-religious lines. Although Prime Minister Al-Abadi has stressed the importance of transferring powers to governorates,²⁴⁵ the Iraqi parliament voted in a non-binding decision in favour of maintaining Ninewa's administrative border.²⁴⁶ But the parliamentary position may change, as did Al-Abadi's views on decentralization, especially in the aftermath of national elections to take place in April 2018.

The challenges to new governorates

There are notable challenges to creating new governorates in the proposed areas. Minority representatives argue that the territorial boundaries could facilitate minority self-management, create security mechanisms trusted by the populations, and ease ethnic tensions.²⁴⁷ But disputes among minority groups within each proposed governorate would suggest otherwise. There are deep ethnic divides and land ownership conflicts between Christians and Shabak in the Ninewa plains, for instance, and the question remains of their willingness to exercise shared governance over their territories.

'I do not think things will change for minorities because we are ill organized, we have a huge dispute

among us, we are not united, and we do not have a strong campaign.'

Yezidi academic, Dohuk, March 2017

Tel Afar is another key example of internal divides, where ISIS has fuelled sectarian tensions between Sunni and Shi'a Turkmen.²⁴⁸ Turkmen politicians acknowledge these hurdles and are 'extending efforts to make reconciliation between Sunni and Shi'a'.²⁴⁹ Although internal conflicts cast shadows on the feasibility of a Turkmen governorate, the desire to be granted the same degree of international recognition as Christians and Yazidis in post-ISIS reconstruction could be a push towards unifying the community.

'Sunni and Shi'a Turkmen need each other. We are otherwise lost between the minority and the majority.'

Turkmen representative, Baghdad, March 2017

Minority communities are further at odds between those who want their own autonomous territories, and those who seek a closer relationship with the KRG.²⁵⁰ It is expected that, if Ninewa governorate is divided, the KRG would promote the holding of a referendum in the newly formed governorates of Ninewa Plain, Tel Afar and Sinjar, to determine whether the local population would wish to join these areas with the KR-I.²⁵¹ This has given rise to a concern that creating separate governorates for minorities would only encourage Kurdish campaigns for hegemony as it could become easier to influence the political trajectory of three smaller governorates, than the whole of Ninewa under its current provincial borders. This adds to the sense the vulnerability of minority groups.

'Sunnis and Shi'a have a lot of problems, but the problems are related to control and power. These things are changeable. With the Kurds the problem is land, and land is not changeable like power. As a result the priority in my opinion is to protect the land. So my vision is to support the GoI, because I need the government to secure the land.'

Iraqi MP, Baghdad, March 2017

Given current territorial disputes, there is the risk that larger powers may seek to install unrepresentative local governments purporting to act in minority interests, while manipulating the population demographics in regained territories, all to swing a future vote in their favour.²⁵² With this view, Yazidis have already established a Self-Administrative Council in Sinjar because they no longer trust Kurdish control in the area.²⁵³

'The conflicts in Sinjar and other retaken areas are a race between parties to get control of land, disguised by nationalist slogans, before we are even fully rid of ISIS.'

MP from Ninewa, Baghdad, March 2017

The KRG is putting out a different public message: 'We are pro-referendum and we welcome any arrangements for these components, but the components have to decide for themselves, even if it's self-determination.'²⁵⁴ The creation of new governorates might be a major guarantee needed to preserve the ethnic and religious diversity of Ninewa, but only if minorities are given a genuine, unpressured choice on the future of any new governorates. This is not something that many see as possible:

*'The US State Department will support the KRG. There should be reforms post-ISIS but we are not being given a choice in what happens to us. Others are deciding for us.'*²⁵⁵

Christian religious leader, Erbil, February 2017

Forming a region

Decentralization at provincial, district and sub-district levels, as well as the creation of new governorates, are all options for Ninewa that can provide some level of autonomy. Yet many minority representatives are seeking the highest level of autonomy afforded within the federal state: that of a region.

'Being a part of the KRG or the GoI would mean being a slave. We need autonomy and our own zone.'

Christian religious leader, Erbil

Some Christians are pursuing an arrangement similar to the Erbil–Baghdad agreement. A draft autonomy paper is currently in circulation among Christian leaders, and is modelled after the Swedish-Finnish Åland Agreement,²⁵⁶ affording powers equivalent to those of a federal entity. The 'zone' is envisioned to incorporate much of the Ninewa plains, including the following districts and villages: Al-Hamdaniya, Wardak, Bazawa (and Shabak villages in the Mosul district), Bashiqa (including the villages of Mosul), Christian and Yezidi majority villages in Shekhan, Tel Kaif (including villages north of Mosul) and Nimrud. According to the draft, these territories – although not yet clearly determined for the sake of new provincial borders – would be governed by a Law of Autonomy to be passed by both the KRG and GoI.²⁵⁷

Yezidis have echoed demands for autonomy in draft submissions to the KRG and UNAMI. A list of requests compiled by Prince Tahseen Beg (the Yezidi spiritual

leader) in a meeting held with Yezidis through the Yezidi Spiritual Council, calls for the establishment of 'the governorate of Sinjar and Ninewa Plain which shall be autonomous'.²⁵⁸ This sentiment was shared by a senior ranking official of the Protection Force of Êzîdxan who believes that establishing a region in the Ninewa plain and Sinjar is the first step to finding solutions for minorities.²⁵⁹ However, as described earlier in this report, Turkmen and a coalition of minority representatives concentrated in Tuz Khormatu, Kirkuk and Tel Afar are also advocating for their own autonomous region.²⁶⁰

Former Governor of Ninewa, Athil al-Nujaifi – currently commanding a Turkish-trained paramilitary force – has plans of his own for the governorate. He proposes that post-ISIS, Ninewa governorate should become an autonomous region with six to eight smaller governorates within it.²⁶¹

The law

Article 119 of the Iraqi Constitution holds that one or more governorate/s has the right to form a region. This is reiterated in Article 1 of the 2008 Law of the Executive Procedures regarding the Formation of Regions (Law No. 13). This would mean that a minority 'zone' in the essence of a regional entity, can only be formed from governorates, and not districts or sub-districts.

Any arrangement for an autonomous region for minorities in Sinjar, Tel Afar and the Ninewa plains would require that these territories are first converted into governorates.²⁶² Although politically unlikely, Al-Nujaifi's bid for an autonomous region of Ninewa is the only option that is legally viable under current provincial boundaries.

To form a region, or join an existing region, a request must be presented by one-third of governorate council members to the Council of Ministers.²⁶³ The Independent High Electoral Commission (IHEC) would then be tasked with holding a referendum for the populations of the desired region within three months.²⁶⁴ Alternatively, one-tenth of the voters in each of the governorates intending to form a region may also submit a request.²⁶⁵ This would require that an initial 2 per cent of voters make a submission to IHEC which will publicly announce the request and allow a period of one month for voters to register their support of the request to reach the necessary quota.²⁶⁶

The geographical 'shape' of the region must also be defined for its establishment. While neither the Iraqi Constitution nor Law 13 contain any provisions preventing the creation of regions from non-neighbouring governorates, it would seem logical that the region is comprised from adjoining territories so as to be functional as a unitary entity.

Despite the formation of the 'Al-Rafidein Coalition', Christians and Yazidis have not expressed a united stance in wanting Tel Afar to be included within a 'special zone' or region for minorities. In fact, much of the Yazidi discourse concerns both Sinjar and the Ninewa plain, while Christians are predominantly taking a more focused interest in the Ninewa plain. Yet Tel Afar is the territory connecting the other two proposed governorates, so without its inclusion, a shared region is unlikely to be formed.

The prospect, then, for the formation of three separate regions, from three as yet unformed governorates, seems rather distant and somewhat unattainable. Creating one region from only one proposed governorate would also have its own challenges. To say the least, it would seemingly prioritize one or two minority groups over others, creating a special class of hierarchy among Iraqi ethnic and religious communities, while also creating a new majority-minority dynamic *within* the new region.

Importantly, while Article 121 specifies significant powers of the region, including the administrative requirements of the region and management of security, the powers conferred on regions are not absolute. Article 120 of the Iraqi Constitution, for instance, holds that a regional constitution cannot contradict the national one, effectively meaning its provisions cannot conflict with the much contested Article 2 on 'established provisions of Islam'.

It must be made clear that autonomy does not equate to independence. Some responsibilities may be shared where the matter holds special importance both for the country as a whole and specifically for the region. Typically this would encompass areas such as education, where curriculum standards can be set by the state and language of schooling determined locally. Nevertheless, according to Article 115 of the Constitution, priority is given to the law of the region with regard to shared powers. The GoI may still hold exclusive responsibility for several matters concerning the whole state, such as foreign affairs, foreign trade and international legal commitments.

The challenges

In theory, Ninewa has all the makings of a prosperous region, with fertile land, oil reserves and a rich cultural heritage. Ninewa is also viewed by some as a potential 'buffer' between governments in Erbil and Baghdad. But like all other decentralization arrangements, creating a region is unlikely to put an end to local disputes, as a Christian religious leader explained: 'it is not enough to have autonomy as neighbour had turned against neighbour'.²⁶⁷

It is feared that in light of these disputes, creating regions will also give rise to ethnic cleansing, not least of the Arab villages that remain within the targeted territory. Lack of trust among victimized minority groups means

that communities may continue to erect territorial boundaries until only their own community members remain. Religious leaders are already proposing 'cantonal' arrangements beyond that of regional autonomy.²⁶⁸ Christians speak of wanting to secure land for its 'original owners', seeking to reverse historic demographic change in the regions.²⁶⁹ Yazidi leaders have similarly requested a return of Sinjar and Ninewa plain demographic to the 'pre-1940' format.²⁷⁰ Minorities, in response to the sustained pressures they have faced, are seeking potentially dangerous exclusive arrangements: 'We need our zone; just for us,' a Christian religious leader explained.²⁷¹

In the broader sense, regional autonomy for minorities arguably portrays a political message that the state is unable to protect minority groups and secure their rights within a federal centralized or semi-decentralized system. Government officials expressed concern that it would be 'abandoning the minorities once again'.²⁷²

For minorities who do not reside within the territory, the formation of an autonomous minority region will act as an alarming notice of their vulnerability, as they fall outside of its intended protections. It could further lead to ethnic cleansing externally, with minority members potentially being ousted from other areas of Iraq, once they have their own 'zone'.

A significant change is certainly needed to reassure minorities of their future in Iraq, but this does not have to mean immediate and complete autonomy. Not only is it legally and administratively unfeasible, but it could also disadvantage minorities and marginalize them further. Decentralization can take a progressive form with powers increased over time, to ultimately achieve a comprehensive autonomy framework without fuelling pre-existing tensions. Either way, the GoI, the KRG and the international community must afford minorities the political platform to determine post-ISIS arrangements of the Ninewa governorate.

Security

One of the most contested topics regarding territories regained from ISIS is the security arrangements for Ninewa. In addition to any devolution of powers, Iraq may need to adopt a national security strategy, complemented by security sector reform to ensure both inclusive and representative protection of Iraqi components.

In February 2017, Prime Minister Al-Abadi with the Ministerial National Security Council discussed the possible formation of a Joint Centre for Intelligence and Security in Ninewa.²⁷³ The appointment of a military governor in Mosul is also another transitional option under consideration.²⁷⁴

The establishment of a security force which reflects the diversity of the population is additionally considered to be an important step in post-ISIS reconciliation in Ninewa. The lack of such a force has arguably led to the formation of several armed groups purporting to act on behalf of minorities. For instance, there is a plan to form an 'integrated' force with 2,000 fighters from both Sunni and Shi'a communities to secure Tel Afar post-ISIS, hoping to build bridges between the two groups in the districts.²⁷⁵ The formation of this integrated force is reportedly facing a problem with a shortage of Sunni Turkmen recruits.

But any long-term strategy for Ninewa may require an end to the trend for ethnic and religiously composed militias, with the establishment of a national, diverse security unit. The draft National Guard Law, introduced in 2015 but not yet enacted, could be the tool for this transition. The intention of the law is to include both Sunni tribes and Shi'a militias in the formation of locally based forces in each governorate, and reverse the policies which marginalized Sunnis from public services.²⁷⁶ Yet the law must similarly seek to target the disenfranchisement of minority groups in Ninewa, who are unlikely to entrust their protection to a national force.

The draft National Guard Law has not found political favour, with some viewing it as a risk to national security as it may be misused for inter-provincial conflicts.²⁷⁷ Regardless of any potential national guard, many minority representatives are calling for the protection of the international community as they have abandoned trust and faith in national and regional institutions: 'without a UN Resolution for the protection of minorities, people will not return', said a former MP.²⁷⁸ Suggestions have ranged from Security Council Resolutions similar to a model based on 1991's US-led 'Provide Comfort' operation that 'protected the Kurds',²⁷⁹ up to the deployment of international peacekeepers and establishment of international military airbases in the Ninewa region.²⁸⁰

Demobilization, disarmament, reintegration

The end of hostilities in Ninewa will necessitate the use of various protection mechanisms for those placed *hors de combat* as well as extensive strategies to demobilize, demilitarize and reintegrate fighters from all parties to the conflict. Iraq should further seek to counter the ISIS ideology, which will likely linger long after a physical military defeat over the group. In the absence of these efforts, any military gains and political agreements for the protection of minorities may be quickly lost as Iraq spirals deeper into conflict.

ISIS

Both during and after the Mosul offensive, anti-ISIS coalitions will benefit from initiating and expanding demobilization campaigns aimed at lower ranks of the group, with the effect of demoralizing ISIS leadership.

Colombia's experience of effective demobilization campaigning resulted in the reduction in the number of FARC insurgents from 20,000 over a decade ago to approximately 7,000 fighters. Reassurances of acceptance upon defection from FARC, as well as legal protections for those who did, were additional significant motivations for demobilization.

Arguably, Iraq must adopt a similar strategy, while simultaneously altering its rhetoric in targeting ISIS ideology. Appeals from mainstream Islamic leaders for peace and moderation, aimed at ideologically motivated combatants, has done little to sway the minds of ISIS members not motivated by religion, but by money, glory or politics. Colombia's experience, however, indicates that appealing to the emotions and sentiments of fighters, through reminders of life before their recruitment, and emphasizing the abuses and hypocrisy of the leadership, can assist large-scale demobilization effects.²⁸¹

The structure of ISIS as a group, its fighters and its supporters, is a complex one. Some members were recruited as ISIS utilized frustrations of those marginalized from political life. Some have crossed international borders to join the group, falling prey to its propaganda. Yet arguably, there are ISIS members in Iraq who have in some sense become trapped. Recruits who were lured in or radicalized, and who quickly discovered the abuses, injustices and nature of the group, are essentially bound to ISIS even if they seek to leave,²⁸² as the Iraqi government offers no promises of resettlement, reintegration or protection for defectors who did not commit violations of international law, and who now seek to cooperate and speak against the group. Consideration must also be given to the situation of forced recruits; including those belonging to the Yezidi community and other minorities, whereby amnesties should be applied accordingly.

These measures are the foundation of demobilization and could result in a large-scale reduction in the number of ISIS fighters in Iraq, as they have done in Colombia.

The military defeat of ISIS will not necessarily be the end of the group; 'ISIS is there as an ideology. They are working on a new name, a new purpose, one with political influence,' a senior KRG official warned.²⁸⁷ The Sunni endowment, the media, the Ministry of Education and schoolteachers have a critical role to play in de-radicalizing, condemning extremism and combating the ISIS ideology. To overcome the inherent risks of demobilization, disarmament and reintegration (DDR) in the securitized environment of Iraq, its practices must be

Rehabilitating ISIS's child soldiers

The situation of child soldiers or 'Cubs of the Caliphate' is another dynamic to consider in disarmament, demobilization and reintegration (DDR) campaigns. Reports indicate that approximately 1,200 Yezidi boys have been abducted and indoctrinated by ISIS.²⁸³ Many are brainwashed and do not wish to return to their families. A psychologist working with ISIS victims described a telephone conversation he had with a Yezidi child captive who was being trained by ISIS in Raqqa, in which the child had proudly declared, 'I am no longer a Yezidi, I am a Muslim. Yezidis are infidels, and I will kill them.'²⁸⁴

'In 2014 the boy was 5 years old when he fled ISIS with his mother. He was shot five times. ISIS took him and had him treated in a hospital in Mosul where they simply removed the bullets and stitched up his wounds. ISIS trained him extensively for two years of his captivity. He was taught how to behead a person, through demonstrations and lessons on the bodies of other ISIS victims. He was taken to train in several places including Mosul and Tel Afar.

His uncle managed to pay a ransom to get him back and he was released at the age of 8. He is now with his uncle and two siblings in an IDP camp. His other siblings are still in the hands of ISIS. The location of his mother and father is unknown, including whether

or not they are alive. The boy needs extensive psychotherapy. In the camp he is very aggressive, hits the other children, and demonstrates a desire to hurt others when upset over matters such as losing a game. He does not present a real threat but needs to be monitored and cared for extensively.'

Senior psychologist, Dohuk, March 2017

Efforts must be immediately extended to rescue these children. Those who do manage to escape require extensive therapy and rehabilitation to reverse ISIS conditioning and overcome the trauma of their capture. Sporadic psycho-social support is simply insufficient.

However, there are reports of children being detained by the GoI on suspicion of armed activity, including in association with ISIS. According to the UN, at least 314 children, including 58 girls, had been charged or convicted of terrorism-related charges under Iraq's 2005 Anti-Terrorism Law in 2015.²⁸⁵ The law notably permits the death penalty for those who commit acts of terrorism, and 'all those who enable terrorists to commit these crimes', regardless of the age of the child at the time of contravention or conviction. It is critical that wherever possible, Iraq treats children who are accused of ISIS affiliation as victims of the group, and any prosecution and child detention should be a last resort, with any sentence having the purpose of rehabilitation and reintegration.²⁸⁶

applied to address the root causes of violent and hateful radicalism against minorities.

PMUs and other armed groups

Military forces operating in Iraq are numerous and range from Iraqi Security Forces, Kurdish Peshmerga to armed groups under the 'Hashd' or PMUs, as well as militias that operate outside of PMU parameters, representing ethnic or religious factions of Iraq. Today, there are over 100 militias within Iraq's borders.²⁸⁸ The PMUs alone are comprised of approximately 110,000 members, only 8 per cent of whom are Sunni.²⁸⁹ Conflicts and tensions among various armed groups operating in Iraq certainly exist, but forces are to a large extent united in their efforts against ISIS. Yet once the physical threat of ISIS is finally removed, the threat of internal conflicts between and within militant groups, is likely to emerge.

In November 2016, the Iraqi parliament passed the Popular Mobilization Unit Law, which effectively legitimized the PMUs as an official security body affiliated

with the Iraqi armed forces, under the control of the state.²⁹⁰ Prime Minister Al-Abadi claims authority over PMUs and, as the end is in sight for the military struggle against ISIS, he is coming under considerable pressure by those who would like to see the PMUs dissolved, and those who – conversely – seek to keep PMUs as independent forces, with their own political, security and economic agenda.²⁹¹

If Iraq decides to maintain the status of the PMUs as an independent security branch under the current law, it will face challenges beyond those of internal security. Some PMU leaders have declared that their militias will continue to battle ISIS until they reach its stronghold in Raqqa.²⁹² If the PMUs are deemed to be a state entity, their future presence and use of force in Syria could have major implications for the GoI, and its status as a party to an external conflict.

Al-Abadi's office has already proposed integrating PMUs into pre-existing security branches.²⁹³ On 20 March 2017, the prime minister asserted that the PMUs

‘have sacrificed for the country’ and this sacrifice will be rewarded with offers of recruitment into the Iraqi army, adding that armed groups who continue to act outside of state authority will be deemed unlawful.²⁹⁴ Many may object to the dismantlement of the PMUs and could resist demobilization altogether. Aws Al-Khazraji, Secretary-General of Abu al-Fadl al-Abbas Brigade, for instance, has said: ‘we will never accept the PMU integration in the Iraqi army’.²⁹⁵ Convincing militias to relinquish control over territories where they have defeated ISIS will be a further obstacle in DDR programmes.

The structure of the PMUs is one of individual, competitive, autonomy-seeking militias founded by their own faction leaders to whom their members report. The government control is weak and if orders for demobilization are not followed by one militia within the PMUs, rivalries between forces may mean that others are not likely to stand down either. The removal of their common enemy would effectively divide the forces in practice.

When Grand Ayatollah Sistani, the highest Shi’a authority in Iraq, issued a *fatwa* in 2014 calling on Iraqis to take up arms to defeat ISIS, the mobilization of these militias was declared to be temporary and bound by the framework of the army and Iraqi security apparatuses.²⁹⁶ There is now hope among some Iraqi government officials that Grand Ayatollah Sistani will issue a second *fatwa* calling for the demobilization of the PMUs when their intended purpose has been served.²⁹⁷ This is reportedly expected to occur soon after the military defeat of ISIS.²⁹⁸

Independent militias in Iraq, including those acting on behalf of ethnic and religious minorities that have not been absorbed into institutional security structures, are still prominent in number, size and influence, despite Article 9 of the Iraqi Constitution prohibiting the ‘formation of military militias outside the framework of the armed forces’. Demobilization will be especially difficult where militia members do not consider themselves accountable to the GoI or KRG, and are not followers of the Sistani religious authority. Specialized incentives may be necessary to secure DDR for these groups.

Notably, disbanding the PMUs or other militias will not necessarily lead to disarming, demobilizing or demilitarizing the groups. Providing incentives for PMUs or militia members to give up arms rather than forcibly removing weapons is less likely to fuel community grievances towards the state, but disarming members of their personal weapons is simply unrealistic in the context of Iraq’s gun culture and continued insecurity. This only underscores the need for effective demobilization.

‘Iraq still has weapons that it received in the 1970s. The arms being distributed now will still be here in another 50 years.’

Christian military commander, Dohuk,
March 2017

Although the PMU Law forbids the involvement of members in any political, partisan or social frameworks, the reality is that, in addition to ethnic and religious associations, most militias in Iraq are already politically affiliated. In February 2017 Qais al-Khazali, leader of the Asaib Ahl al-Haq militia, declared that ‘the PMU will be present in the political life as it was present on the battlefield. It will work on eliminating corruption. The PMU is here to stay’.²⁹⁹

Reintegration of former combatants into civilian life can only be achieved if accompanied by economic and social measures. The fact that militias are seeking more of a political role indicates that their members want to take part in the post-ISIS reconstruction of Iraq. The GoI may seek to invest in the capacity of ex-fighters, particularly that of youth, through vocational training and employment opportunities. This will be especially important as salaries will end for demobilized forces. Former fighters could also be afforded opportunities to work alongside civil society groups and local councils to design and implement post-ISIS community service programmes, or serve other functions, such as emergency response or firefighting.

Without reintegration efforts, demobilized fighters may turn to crime and violence or may simply be disposed to join new armed groups.³⁰⁰ After ISIS, Iraq will have the challenge of establishing stability. DDR techniques may help to achieve this, but the political and economic shortfalls of governance must be addressed so as to avoid continued frustrations and consequent recurrent militarization.

8 Recommendations

General Recommendations

- 1 All parties to the ongoing conflict must strictly comply with applicable international humanitarian law and international human rights law. They must take all feasible precautions to protect civilians from the effects of hostilities and to respect, protect and meet their basic needs.
- 2 The GoI, the KRG, supporting governments, the EU, the Working Group on Stabilization of the International Coalition against ISIS and the UN should work to establish secure areas to allow for the return of affected minority groups to their original homes and lands. A comprehensive plan should be developed to include the following elements:
 - Define international support for the provision of security in the aftermath of the conflict.
 - Implement 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 stability and peace-building initiatives, including rebuilding strong and inclusive local governance representing communities of those who fled ISIS.
 - 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.
 - Develop and implement plans for demobilization and reintegration of PMUs.
 - 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.

Recommendations to the Federal Government of Iraq

Humanitarian issues

- 3 Identify and provide adequate resources to support, as the primary responsible actor, displaced Iraqis and develop a comprehensive strategy with implementable policies to address sustainable returns.
- 4 Prioritize humanitarian and reconstruction assistance for those most vulnerable, including minority groups, women and children.
- 5 Accelerate the delivery of 'Rapid Response' reconstruction packages (such as windows, doors, roofing and other basic supplies and equipment) that will allow returnees to make repairs to damaged and looted homes with a minimum of outside involvement.
- 6 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.
- 7 Initiate prompt, independent and impartial investigations of corruption in the procurement and delivery of humanitarian assistance, and prosecute those found to be responsible.
- 8 Provide psycho-social and other specialized services to victims of sexual violence, and children forcibly recruited and indoctrinated by ISIS, as well as their families.

Preventing future abuses

- 9 Immediately investigate human rights violations – including the destruction of civilian homes and property – among elements of PMUs and other security forces.
- 10 Ensure that all units of Iraqi armed forces, including 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.

- 11 Ensure that all military action conforms with international humanitarian law and international human rights law, including the prohibition of indiscriminate attacks and any attack expected to result in a disproportionate loss of civilian life or damage to civilian objects.

Restoration and reconciliation

- 12 Halt the forced displacement of civilians except for their own security or for military necessity.
- 13 Allow civilians to return to their homes in retaken areas unimpeded by security services, and allow civilians to rebuild their homes and communities.
- 14 Promulgate a National Missing Persons Law, which establishes a National Missing Persons Registry, as a first step to provide answers to families of the missing, and an adjudicative process to provide state benefits to widows and families of the missing. Support efforts to begin registration of missing person claims.
- 15 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. This should be accompanied by a reparations process for civilians whose homes or property have been destroyed or appropriated or looted by security forces.
- 16 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 which there is sufficient evidence to prosecute.
- 17 Ensure that minority groups are able to play a role in national reconciliation processes.

Heritage

- 18 Prosecute destruction of cultural sites as war crimes. This is supported by the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict.
- 19 Work to prevent the trafficking and sale of looted items. For example, efforts to catalogue antiquities and to implement UN Security Council resolutions making trade in Iraqi and Syrian antiquities illegal should be promoted, including through the ratification and implementation of relevant international instruments and the promulgation of domestic legislation criminalizing the trade in antiquities. This legislation would amend the Iraqi

Commercial Code, drawing on 1995 UNIDROIT Convention.

- 20 Integrate religious and minority leaders into the restorative process. Minorities themselves are stakeholders, and dialogue on these processes should extend beyond expert-level dialogue among antiquities experts.
- 21 Encourage religious and political leaders from all communities to condemn looting. Establishing a clear cross-communal consensus condemning the destruction, sale or trafficking of cultural heritage could help prevent further theft by different armed groups.

Accountability

- 22 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.
- 23 Amend Iraqi criminal law to grant domestic courts jurisdiction over international crimes committed in Iraq.
- 24 Develop a national strategy to address violations of international humanitarian and criminal law, and identify appropriate international and domestic resources. This strategy should:
 - include broad national consultation on judicial and non-judicial approaches to accountability;
 - ensure the protection of mass graves in formerly occupied areas;
 - collect, aggregate and analyse accounts of human rights and international humanitarian and criminal law violations to document crimes;
 - 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 retaken areas and to support domestic prosecution of crimes.

Institutions and legislation

- 25 Respond to the needs of Iraq's ethnic and religious minorities by promulgating legislation that safeguards their rights as citizens, including possible establishment of special autonomy arrangements to better protect different communities.

- 26 Pass a law to protect diversity and combat discrimination that implements concrete commitments in Iraq's Constitution.
- 27 Enact legislation codifying protections for IDPs 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.
- 28 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

- 29 In coordination with the federal government, develop a comprehensive strategy and implementable policies to address the humanitarian issues facing IDPs and the country on an emergency basis. Ensure that adequate resources are made to implement this strategy over the long term through government funding and international support.
- 30 Prioritize humanitarian and reconstruction assistance for those most vulnerable, including minority groups, women and children.
- 31 Immediately halt ongoing human rights violations - including the destruction of civilian homes and property - among Peshmerga, and other intelligence and security forces.
- 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 Halt the forced displacement of civilians except for their own security or for military necessity.
- 34 Allow civilians to return to their homes in retaken areas unimpeded by security services.
- 35 Allow the free flow of persons and goods to retaken areas, including in particular humanitarian supplies, equipment and personnel.
- 36 Systematically 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.
- 37 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.
- 38 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.
- 39 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.
- 40 Continue to provide humanitarian support for IDPs seeking refuge inside the KR-I. Cooperate with international organizations and donor governments to establish adequate and winterized living arrangements for the displaced.
- 41 Initiate prompt, independent and impartial investigations of corruption in the procurement and delivery of humanitarian assistance and prosecute those found to be responsible.
- 42 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.
- 43 Provide priority assistance to victims of sexual violence, and child victims of ISIS indoctrination.

Restoration and reconciliation

- 44 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.
- 45 Respond to the needs of Kurdistan's ethnic and religious minorities by promulgating legislation in the Kurdish region that safeguards their rights as citizens, combats discrimination, and promotes public participation.
- 46 Recognize Yezidi and Shabak as distinct minority community identities, and extend Articles 5, 14, 35 and 36 of the Kurdish Constitution accordingly.

Recommendations to the International Community

- 47 Provide investigative and technical support to the GoI and KRG to hold perpetrators of human rights violations and war crimes accountable.
- 48 Provide adequate resources to international bodies charged with documenting, investigating or prosecuting violations of international humanitarian and criminal law.
- 49 The exception to existing EU rules that Iraq can receive substantial funds despite being a middle-income country should be extended, and other substantial funds put in place to enable a long-term stabilization and peace-building strategy.

Humanitarian issues

- 50 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.
- 51 Provide additional support for the removal of IEDs and ERW in retaken areas to accelerate returns.
- 52 Provide urgent financial support and other forms of assistance to international humanitarian actors, including the UN system, the Red Cross/Red Crescent Movement and international NGOs working to support an Iraqi-government-led response.
- 53 Prioritize humanitarian and reconstruction assistance for those most vulnerable, including minority groups, women and children.
- 54 Provide assistance to Iraqi-based NGOs engaged in humanitarian operations.
- 55 Provide priority assistance to victims of sexual violence, and child victims of ISIS indoctrination.

Preventing future abuses

- 56 Ensure that any international military action taken against ISIS and other fighters in support of the Iraqi government adheres to international humanitarian law and international human rights law.
- 57 Ensure that any international military support includes liaison with minority organizations and the sharing of intelligence relevant to the security of minority populations.

Restoration and reconciliation

- 58 Respond to the needs of Iraq's ethnic and religious minorities by supporting promulgation of legislation in Iraq and the KR-I that safeguards their rights as citizens, including where appropriate consideration of autonomy arrangements to better protect minority communities.
- 59 Develop a comprehensive strategy to support returns, which includes 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.
- 60 Refer the situation in Iraq to the International Criminal Court, or otherwise establish an international body that has the capability to document and investigate crimes committed by all sides of the conflict.
- 61 Take steps to combat the illegal trade in antiquities, and provide technical support to restore lost heritage.

Asylum issues

- 62 Commit to longer-term protection and resettlement of IDPs in the current conflict. Adjust asylum criteria, background checks and other policies, while accelerating resettlement efforts, recognizing the conditions of the conflict and the challenges faced by refugees to provide valid identity documentation.
- 63 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.

Appendix:

Violations of international criminal law

This appendix focuses on individual criminal responsibility for prohibited acts in northern Iraq between June 2014 and March 2017. There is a well-developed framework for international law in this area, which is outlined and explored in the remainder of this chapter. Aside from individual responsibility, there is also a question of state responsibility for what has been happening to minorities in northern Iraq for the last year and a half and in particular IDPs.

Internally displaced persons

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 (IHL) violations, remains with the state within whose borders they have been displaced.³⁰¹ IDPs retain all the human rights and IHL 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 Office for the Coordination of Humanitarian Affairs in 2004.³⁰² 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 criminal law in detail, the Guiding Principles can be a useful tool to assess the responsibility of the GoI in respect to the human rights challenges facing IDPs that are outlined elsewhere in this report.

International criminal law

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.³⁰³ 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.³⁰⁴ 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.³⁰⁵

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.³⁰⁶ 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.³⁰⁷

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 United States 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 United States, but they were acting in support of Iraqi forces and

only attacking ISIS targets, not engaging the forces of another state.³⁰⁸ Similar considerations apply to other states involved in the conflict in Iraq, including Australia, 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,³⁰⁹ 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 June 2014 and March 2017, when the interviews for this report were conducted, including 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.³¹⁰ 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.³¹¹

For the second overall requirement, the perpetrator need not make a legal evaluation of the existence of an armed conflict,³¹² 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.³¹³

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 period. 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.³¹⁴

- *Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture*³¹⁵
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*³¹⁶
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',³¹⁷ such as enduring the constant fear of being subjected to physical, mental or

sexual violence³¹⁸ 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,³¹⁹ forced marriage to ISIS fighters, public executions and women being sold into sexual slavery.

- *Taking of hostages*³²⁰
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.³²¹
- *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*³²²
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*³²³
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 March 2017, 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.³²⁴

- *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*³²⁵
Numerous buildings, monuments and other sites of immense religious, cultural and historical importance 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*³²⁶
'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.³²⁷ Throughout the retaken areas, widespread looting by the forces that fought against ISIS has been reported by returning property owners, often multiple times. Properties have been looted in the period after the departure of ISIS forces and, therefore, under ISF, PMU or Kurdish military control. As with similar actions by ISIS forces, 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*³²⁸
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.³²⁹ 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.³³⁰ 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*³³¹

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.³³² 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, as ISIS has done on a number of occasions, appear to satisfy the elements of this crime.

War crimes committed by other forces

Based on the facts discussed in 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. However, it is difficult to demonstrate that the crimes as a whole were committed as part of a plan or policy,³³³ 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*³³⁴

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.³³⁵ 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*³³⁶

ISF, PMUs and Kurdish forces allegedly destroyed villages inhabited by minorities, causing death and injury to civilians and damage to civilian property, including homes and shops, actions which do not appear to be justified by military necessity.³³⁷ 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*³³⁸

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.³³⁹ 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 12 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*³⁴⁰

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 comprise 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.³⁴¹

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;³⁴² and, second, that the attack is either widespread or systematic.³⁴³ 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.³⁴⁴

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.³⁴⁵ Jurisprudence from international courts, however, suggests this is not required under customary international law.³⁴⁶ 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.³⁴⁷ 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 discussed in this report, it appears that ISIS forces and commanders committed each of the underlying acts, with the exception of apartheid.³⁴⁸ 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.³⁴⁹ 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.³⁵⁰

- *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.³⁵¹ It can include the trafficking of persons and deprivation of liberty that reduces a person to a servile status.³⁵² ISIS forces abducted numerous people and held them without the possibility of leaving; on occasion, they transferred people, including children, from one place to another, 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;³⁵³ they are often referred to as 'forced displacement'.³⁵⁴ 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.³⁵⁵ Hundreds of thousands of 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.³⁵⁶ 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.³⁵⁷ 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 perpetrator 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.³⁵⁸ 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.³⁵⁹
- *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.³⁶⁰ 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.³⁶¹ 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 persons detained or arrested.³⁶² It requires the intention to remove individuals from the protection of law for a prolonged period of time.³⁶³ 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.³⁶⁴ 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 comprises any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, 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.³⁶⁵

There are two sets of elements, namely the 'contextual elements' and the underlying prohibited acts. The contextual elements are that acts are carried out against a national, ethnic, racial or religious group and that the acts be done with the intent to destroy, in whole or in part, the targeted group.³⁶⁶ 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.³⁶⁷ 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.³⁶⁸

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.³⁶⁹ 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.³⁷⁰

Based on the facts discussed in 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.³⁷¹

The underlying acts for genocide include 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. 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 heart-breaking 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 located. 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.

Notes

- 1 This group is also called the Iraqi State of Iraq and the Levant (ISIL), the Islamic State and, using its Arabic acronym, Daesh.
- 2 Interview with Assyrian Christian leaders, Dohuk, March 2017.
- 3 Interview with Iraqi humanitarian service provider, Erbil, February 2017.
- 4 UNHCR, 'Iraq situation: UNHCR Flash Update – 27 April 2017', available at <http://reliefweb.int/report/iraq/iraq-situation-unhcr-flash-update-27-april-2017>.
- 5 Interview with senior international official, Baghdad, March 2017.
- 6 IOM Iraq Mission, DTM Round 70, April 2017.
- 7 Interview with camp manager, Dohuk governorate, March 2017.
- 8 Interview with Iraqi humanitarian worker, February 2017.
- 9 Interview with senior international official, March 2017.
- 10 Interview with senior international official, December 2016.
- 11 'Baghdad, Kurds at odds over control of post-ISIS Mosul', *Al-Jazeera*, 17 November 2016.
- 12 Interview with Ninewa provincial official, Baghdad, January 2017.
- 13 United States Commission on International Religious Freedom (USCIRF), *Annual Report 2013*, April 2013, Washington, DC, USCIRF, p. 88.
- 14 US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2011, Iraq*, Washington, DC, 2011.
- 15 Human Rights Commission (HRC), *Report of the Special Rapporteur on minority issues on her mission to Iraq*, 9 January 2017, para. 12.
- 16 Institute for International Law and Human Rights (IILHR) interviews, 2013; see also UNHCR, *Eligibility Guidelines*, 2012, p. 30; IILHR, *Iraq's Minorities and Other Vulnerable Groups: Legal Framework, Documentation, and Human Rights*, Washington, DC, IILHR, 2013, p. 99.
- 17 Interview with Kaka'i leader, Baghdad, April 2017.
- 18 IILHR, *Iraq's Minorities and Other Vulnerable Groups*, 2013, *op. cit.*, p. 99.
- 19 For example, see US Department of State, *International Religious Freedom Report 2008*, September 2008; IILHR, *Iraq's Minorities and Other Vulnerable Groups*, 2013, *op. cit.*, p. 134; Salloum, S., *Minorities in Iraq: Memories, Identity and Challenges*, Baghdad and Beirut, Masarat for Cultural and Media Development, 2013.
- 20 UNHCR, 2012, *op. cit.*, p. 33.
- 21 IILHR, *Iraq's Minorities and Other Vulnerable Groups*, 2013, *op. cit.*, p. 135.
- 22 IILHR-UNPO interview with Shabaki senior representative, November 2014.
- 23 UNHCR, 2012, *op. cit.*, p. 34; Lalani, M., *Still Targeted: Continued Persecution of Iraq's Minorities*, London, MRG, June 2010, p. 7.
- 24 IILHR, *Iraq's Minorities and Other Vulnerable Groups*, 2013, *op. cit.*, p. 141.
- 25 Lalani, *op. cit.*, p. 8.
- 26 IILHR, *Iraq's Minorities and Other Vulnerable Groups*, 2013, *op. cit.*, p. 148.
- 27 Puttick, M., *From Crisis to Catastrophe: The Situation of Minorities in Iraq*, London, MRG and Ceasefire Centre for Civilian Rights, October 2014, London, p. 5.
- 28 USCIRF, *Annual Report 2013*, *op. cit.*, p. 89.
- 29 IILHR interviews, 2012 and 2013. See also USCIRF, *Annual Report 2013*, *op. cit.*, p. 89.
- 30 For example, see Lalani, *op. cit.*; US Department of State, Bureau of Democracy, Human Rights and Labor, *op. cit.*
- 31 Office of the High Commission for Human Rights (OHCHR) and UN Assistance Mission for Iraq (UNAMI), *Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July –10 September 2014*, Baghdad, UNAMI/OHCHR, 2014, pp. 17–18.
- 32 UNAMI and OHCHR, *Report on the Protection of Civilians in Armed Conflict in Iraq: 1 November 2015–30 September 2016*, Baghdad, 30 December 2016, p. 4.
- 33 Cetorelli, V., Sasson, I., Shabila, N. and Burnham, G., 'Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey', *PLOS Medicine*, 9 May 2017.
- 34 IOM Iraq Mission, DTM, available at <http://iraqdtm.iom.int>
- 35 Interview with senior church official, Ainkawa, February 2016.
- 36 Interview with Yezidi leader, Dohuk, Iraq, March 2017.
- 37 Jalsin, M., "They just took us": Mosul civilians used as human shields amid offensive', *Time*, 30 March 2017.
- 38 Interview with Yezidi refugee, Washington, DC, March 2016.
- 39 This estimate is drawn from several interviews with Yezidi IDPs, Yezidi leaders, Iraqi government officials and Kurdish regional officials conducted in March 2017.
- 40 Interview with Iraqi academic, Erbil, February 2016.
- 41 Interview with senior Kurdish Official, Erbil, March 2017.
- 42 Human Rights Watch (HRW), 'Interview: These Yezidi girls escaped ISIS. Now what?', 15 April 2015, available at www.hrw.org/news/2015/04/15/interview-these-yezidi-girls-escaped-isis-now-what
- 43 Interviews with IDPs, Dohuk, February 2016.
- 44 Voice of America, available at <http://www.voanews.com/content/yazidi-slave-survivor-britain-help-free-captive-women/3182089.html>
- 45 Interviews with Sunni and Christian IDPs and Iraqi civil society leaders, Baghdad and Erbil, February 2016.
- 46 Interview with Iraqi MP, Baghdad, February 2016.
- 47 Interview with Iraqi civil society leader, Baghdad, February 2016.
- 48 Whyte, L., 'Germany opens its doors to Yazidi women and children enslaved by ISIS', *The Guardian*, 2 March 2016.
- 49 Interview with Tikrit University professor, February 2016.
- 50 *The Blaze*, 'The rare eyewitness account of one of the few survivors of an Islamic State massacre', available at <http://www.theblaze.com/stories/2014/09/04/the-rare-eye-witness-account-of-one-of-the-few-survivors-of-an-islamic-state-massacre>
- 51 UNAMI and OHCHR, *Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July–10 September 2014*, *op. cit.*, pp. 12–16.
- 52 Caris, C.C. and Reynolds, S., *Middle East Security Report No. 22: ISIS Governance in Syria*, available at http://www.understandingwar.org/sites/default/files/ISIS_Governance.pdf
- 53 UNAMI and OHCHR, *op. cit.*, p. 6.
- 54 These Sinjari were reportedly later killed by ISIS. Interview with Kurdish official, Dohuk, February 2016.
- 55 Bloom, M., Horgan, J. and Winter, C., 'Depictions of children and youth in the Islamic State's martyrdom propaganda, 2015–2016', *CTC Sentinel*, February 2016.

- 56 'ISIS trains child soldiers at camps for "Cubs of the Islamic State"', NBC News, November 2014, available at <http://www.nbcnews.com/storyline/isis-terror/isis-trains-child-soldiers-camps-cubs-islamic-state-n241821>
- 57 Bloom *et al.*, 'Depictions of children and youth ...'.
- 58 Interview with IDPs, Dohuk, February 2016.
- 59 Yazda, <http://www.yazda.org/abductees>
- 60 Interview with camp manager, Dohuk, March 2017.
- 61 WHO, 'WHO responds to reported use of chemical weapons agents in east Mosul, Iraq', 3 March 2017; Wille, B., 'ISIS accused of unleashing chemical weapons in Mosul', HRW, 6 March 2017.
- 62 Interview with Yezidi representatives, Dohuk, March 2017. For more information, see <http://www.yazda.org>
- 63 Neuhoof, F., 'Horror of Mosul where sinkhole became mass grave for 4,000 of ISIL's victims,' *The Telegraph*, 25 February 2017.
- 64 For more information, see Williams, S.E., 'Destroying homes for Kurdistan', *Foreign Policy*, 23 July 2015.
- 65 Interviews with Yezidi leaders and senior Kurdish government officials, Erbil and Dohuk, March 2017.
- 66 Interview with Yezidi leader, Dohuk, March 2017.
- 67 Interview with Member of Iraqi Parliament, Baghdad, May 2017.
- 68 These delays were mentioned by a number of respondents in Erbil and Ninewa governorates, March 2017.
- 69 Harmansah, O., 'ISIS, heritage, and the spectacles of destruction in the global media', *Near Eastern Archaeology*, 78(3), September 2015.
- 70 Rose-Greenland, F., 'How much money has ISIS made selling antiquities? More than enough to fund its attacks', *Washington Post*, 3 June 2016.
- 71 Yoon, S., 'Islamic state is selling looted art online for needed cash', *Bloomberg Businessweek*, 29 June 2015.
- 72 Interview with Iraqi Deputy Minister of Culture, February 2016.
- 73 Yoon, *op. cit.*
- 74 *Ibid.*
- 75 Interview with Columbia University Department of Art History and Archaeology, March 2016.
- 76 Myers, S.L. and Kulish, N., 'Broken system allows ISIS to profit from looted antiquities', *New York Times*, 9 January 2016.
- 77 *Ibid.*
- 78 *Ibid.*
- 79 Brodie, N., 'Syria and its regional neighbors: a case of cultural property protection policy failure?', *International Journal of Cultural Property*, 22, 2015, pp. 317–35.
- 80 IOM Iraq Mission, DTM Round 70, April 2017.
- 81 *Ibid.*
- 82 *Ibid.*
- 83 *Ibid.*
- 84 *Ibid.*
- 85 IOM, *Community Stabilization Handbook: An Overview of Community Transition and Recovery Achievements in Iraq, 2015–2016*, 2016, p. 233.
- 86 *Ibid.*
- 87 UNHCR, 'Iraq situation: UNHCR Flash Update – 2 April 2017'.
- 88 IOM, DTM 70, April 2017.
- 89 Interview with Assyrian IDPS, Ainkawa, Erbil, February 2017.
- 90 The Education for Peace in Iraq Center (EPIC), 'The humanitarian crisis in Iraq: internal displacement', October 2015
- 91 Interviews with several Christian and Shabak representatives, Baghdad and Ninewa governorates, March 2017.
- 92 Danish Immigration Service, *The Kurdistan Region of Iraq (KRI) Access, Possibility of Protection, Security and Humanitarian Situation*, April 2016, p. 54.
- 93 *Ibid.*
- 94 Interview with Christian religious leader, Ainkawa, February 2017.
- 95 *Ibid.*
- 96 Danish Immigration Service, *op. cit.*, p. 56.
- 97 Lafta, R., Aflouk, N.A., Dhiaa, S., Lyles, E. and Burnham, G., 'Needs of internally displaced women and children in Baghdad, Karbala, and Kirkuk, Iraq', *PLOS Currents – Disasters*, June 2016 .
- 98 IOM, DTM 70, April 2017.
- 99 Interview with official responsible for social department of Khanke camp, Dohuk, February 2017.
- 100 Interview with Yezidi IDP in the informal settlement of Dohuk, February 2017.
- 101 OCHA, 'Iraq', www.unocha.org.
- 102 UNHCR, *op. cit.*, 2 April.
- 103 OCHA, *Humanitarian Needs Overview 2017: Iraq*, January 2017, p. 7.
- 104 *Ibid.*, pp. 7 and 20.
- 105 UNHCR, *Handbook for the Protection of Internally Displaced Persons*, p. 293.
- 106 *Ibid.*
- 107 Venancio, M., 'Lessons from a year of post-ISIL stabilization in Iraq', UNDP, March 2017.
- 108 World Food Programme (WFP), 'WFP expands cash-for-work programme in Iraq', August 2010.
- 109 Interview with official responsible for social department of Khanke camp, Dohuk, February 2017.
- 110 Lafta *et al.*, *op. cit.*
- 111 *Ibid.*
- 112 Interview with local community organization, Dohuk. February 2017.
- 113 Interview with senior therapists, Dohuk. February 2017.
- 114 *Ibid.*
- 115 OCHA, *Humanitarian Needs Overview 2017: Iraq, op. cit.*, p. 5.
- 116 UNICEF, 'Iraq monthly humanitarian situation report', February 2017.
- 117 Interview with Christian leader, Ainkawa. February 2017.
- 118 Authors also visited Alqosh, which never fell to ISIS but it is kept under strict military control by Peshmerga.
- 119 Interview with Assyrian IDP from Al-Hamdaniya. February 2017.
- 120 Abdullah, D., 'Iraqi Christians eager to rebuild their lives post-IS', *Al-Monitor*, 17 January 2017.
- 121 According to the NPU commander interviewed in February 2017, 38 per cent of houses have been totally destroyed and/or burned and 48 per cent partially destroyed.
- 122 *Ibid.*
- 123 Based on observations of authors during a visit to hospital in February 2017.
- 124 Interview with Christian returnee in Tel Eskof, February 2017.
- 125 Based on observations of authors during a visit to hospital in February 2017.
- 126 UNDP, 'Immediate stabilization: funding facility for stabilization', August 2016.
- 127 Interview with senior UN official, March 2017.
- 128 Interview with civil society representatives, Dohuk, March 2017.
- 129 Hand over note.
- 130 Interview with senior local government official, northern Iraq. February 2016.
- 131 Ezidi Journal, 'Gathering of West Kurdistan fighters on the edge of Khanasor, YPG and Yazidi Forces prepare for clashes', March 2017.
- 132 Interview with senior Iraqi official, April 2017.
- 133 Wilgenburg, W. 'Yezidis call on Kurdish parties to fight ISIS, not each other', *ARA News*, 4 March 2017.
- 134 Confidential Security Report.
- 135 *The Economist*, 'Kurdistan: dream on hold', 9 July 2016.
- 136 Interview with IDP originally from Tel Eskof, Ainkawa, February 2017.
- 137 Interview with IDP originally from Al-Hamdaniya, February 2017.

- 138 Interview with IDP originally from Tel Eskof, Ainkawa, March 2017.
- 139 HRW, 'Iraq: Looting, destruction by forces fighting ISIS', 16 February 2017.
- 140 Interview with IDPs in Ashti camp, Erbil. February 2017.
- 141 Handicap International, 'Clearing land in Iraq', accessed May 2017 at www.handicap-international.us
- 142 Interview with senior Kurdish official. Erbil, February 2017.
- 143 Interview with senior Iraqi official, April 2017.
- 144 Interview with senior KRG official, Erbil, February 2017.
- 145 HRW, 'Iraq: KRG restrictions harm Yazidi recovery', 4 December 2016.
- 146 *Ibid.*
- 147 Interview with director of Ninewa Centre for Research and Development. Dohuk. February 2017.
- 148 Interview with former Turkmen MP, Baghdad, March 2017.
- 149 Interview with Kurdish commander, Tel Eskof, February 2017.
- 150 Interview with Tel Eskof returnee, Tel Eskof, February 2017.
- 151 Interview with Christian militia commander, Al-Hamdaniya, February 2017.
- 152 Interview with NPU Commander, Dohuk, March 2017.
- 153 Venancio, *op. cit.*
- 154 OCHA, 'Humanitarian bulletin: Iraq: January 2017', 20 February 2017.
- 155 USAID, 'Iraq – Complex emergency: Fact sheet #2', 31 March 2017.
- 156 *Ibid.*
- 157 European Commission, 'EU announces €42.5 million in humanitarian assistance for Iraq', 7 March 2017.
- 158 OCHA, 'About the crisis', retrieved May 2017 at www.unocha.org.
- 159 OCHA, *Iraq: 2017 Humanitarian Response Plan: January–December 2017*, p. 7.
- 160 UNHCR, 'Syria regional refugee response – inter-agency information sharing portal', available at <http://data.unhcr.org/syrianrefugees/regional.php>
- 161 OHCHR, 'UN Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis', 16 June 2016.
- 162 World Council of Churches and Norwegian Church Aid, *The Protection Needs of Minorities from Syria and Iraq*, 2016.
- 163 USCIRF, 'Syria', in *Annual Report 2016*, Washington, DC, USCIRF.
- 164 *Ibid.*, p. 2.
- 165 UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, 23 August 2004, pp. 3–4.
- 166 *Ibid.*, p. 4.
- 167 No Peace Without Justice (NPWJ), 'Transitional justice', 2012, p. 2, available at http://www.npwj.org/sites/default/files/ressources/File/TJ_BasicAssumptionsDraft20JAN12EN.pdf
- 168 *Ibid.*, pp. 2–3.
- 169 Niebur Eisnaugle, C.J., 'An international truth commission: utilizing restorative justice as an alternative to retribution', *Vanderbilt Journal of Transnational Law*, 36(1), 2003, p. 209.
- 170 Lundy, P. and McGovern, M., 'Whose justice? Rethinking transitional justice from the bottom up', *Journal of Law and Society*, 35(2), 2008, p. 266.
- 171 Leebaw, B.A., 'The irreconcilable goals of transitional justice', *Human Rights Quarterly*, 30(1), 2008, p. 102.
- 172 Vermeule, A. and Posner, E.A., 'Transitional justice as ordinary justice', *Harvard Law Review*, 117(3), 2004, p. 766.
- 173 UN Secretary-General, *The Rule of Law and Transitional Justice*, *op. cit.*
- 174 Leebaw, *op. cit.*, p. 114.
- 175 *Ibid.*, p. 115.
- 176 National coalition for Al Rafidein region in Iraq, available at <https://alrafideincoalition.wordpress.com/2017/03/07/national-coalition-for-al-rafidein-region>
- 177 *Ibid.*
- 178 See also International Center for Transitional Justice (ICTJ) and the Human Rights Center of the University of Berkeley, *Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction*, available at <https://www.ictj.org/publication/iraqi-voices-attitudes-toward-transitional-justice-and-social-reconstruction>, 2004, p. 7. While the opinions analysed in the report were expressed in different circumstances and are probably no longer applicable to the current situation, it provides a useful illustration of the type of consultation that is required to begin putting together a comprehensive vision for transitional justice.
- 179 *Al-Monitor*, 'Transitional justice fails in Iraq', 6 June 2014.
- 180 Justice Info.Net, *Transitional Justice in Nepal: The Perspective of the Victims*, available at http://www.justiceinfo.net/en/component/k2/2384-transitional-justice-in-nepal-the-perspective-of-the-victims.html#_ftn2
- 181 Justicia Transitional, *Justicia transicional en Colombia*, available at <http://www.justiciatransicional.gov.co/Justicia-Transicional/Justicia-transicional-en-Colombia>
- 182 UN Development Programme, *Fondo de Justicia Transicional*, available at http://www.co.undp.org/content/colombia/es/home/operations/projects/crisis_prevention_and_recovery/fondo-de-justicia-transicional.html
- 183 López Díaz, C., *Participación de las víctimas en la Ley de Justicia y Paz y la Corte Penal Internacional*, 2011, pp. 41–3, available at <http://www.bivica.org/upload/victimas-ley-justicia.pdf>
- 184 *Ibid.*, p. 52.
- 185 Yusuf, S., *Generating Empathy, Restoring Dignity: The Curious Case of Sri Lanka*, SADF Focus 30, 2017, available at <http://sadf.eu/new/blog/sadf-focus-30-generating-empathy-restoring-dignity-curious-case-sri-lanka-salma-yusuf>
- 186 *Ibid.*
- 187 Thiruvarangan, M., 'Transitional justice in Sri Lanka', *Colombo Telegraph*, 14 August 2016, available at <https://www.colombotelegraph.com/index.php/transitional-justice-reconciliation-in-sri-lanka>
- 188 Adams, B., 'Sri Lanka: Adopt Task Force's justice proposals. consultations highlight broad accountability concerns', Human Rights Watch, 2017, available at <https://www.hrw.org/news/2017/01/12/sri-lanka-adopt-task-forces-justice-proposals>
- 189 ICTJ and the Human Rights Center, *op. cit.*
- 190 NPWJ, *Closing the Gap: The Role of Non-judicial Mechanisms in Addressing Impunity*, 2010.
- 191 *Ibid.*, pp. 158–61.
- 192 Brahm, E., 'Uncovering the truth: examining truth commission success and impact', *International Studies Perspectives*, 8, 2007.
- 193 *Ibid.*, p. 7.
- 194 *Ibid.*
- 195 NPWJ, *op. cit.*
- 196 Lundy and McGovern, *op. cit.*, p. 282.
- 197 NPWJ, 2010, *op. cit.*, p. 59.
- 197 *Ibid.*, pp. 58–9.
- 198 *Ibid.*
- 199 Lundy and McGovern, 'Whose justice?', *op. cit.*, p. 278.
- 200 Interviews with senior international officials, Baghdad, April 2017.
- 201 Interview with UNAMI official, Baghdad, April 2017.
- 202 Interview with French Foreign Ministry Official, Paris, March 2017.
- 203 Human Rights Commission (HRC), *Report of the Special Rapporteur on minority issues on her mission to Iraq*, 9 January 2017, para. 46.
- 204 *Ibid.*, para. 12.
- 205 Interview with senior therapist, Dohuk, March 2017.
- 206 Interview with Christian military commander, Dohuk, March 2017; interview with Dean of Institute of Psychotherapy and Psychotraumatology, Dohuk, March 2017.

- 207 Interview with Christian military commander, Dohuk, March 2017.
- 208 Interview with camp manager, Erbil, February 2017.
- 209 Interview with Christian military commander, Dohuk, March 2017.
- 210 HRC, *Report of the Special Rapporteur on minority issues on her mission to Iraq*, *op. cit.*, para. 17.
- 211 Mamouri, A. 'How Iraq just legalized discrimination of minorities', *Al-Monitor*, 19 November 2015.
- 212 MRG, *Alternative Report to the Committee on the Elimination of Racial Discrimination (CERD)*, 85th Session, 11–29 August 2014, para. 10.
- 213 HRC, *Report of the Special Rapporteur on minority issues on her mission to Iraq*, *op. cit.*, para. 74.
- 214 Meetings with Yazidi community representatives, 14 March 2017 (internal document); OHCHR, Statement of the Special Rapporteur on minority issues on conclusion of her official visit to Iraq, 27 February to 7 March 2016.
- 215 SRSK Kubis Meetings with senior Yazidi representative, *op. cit.*
- 216 *Ibid.*
- 217 HRC, *Report of the Special Rapporteur on minority issues on her mission to Iraq*, *op. cit.*, para. 20.
- 218 HRC, *Report of the Special Rapporteur on minority issues on her mission to Iraq*, 9 January 2017, para. 18
- 219 *Ibid.*, para. 24.
- 220 *Ibid.*, para. 25.
- 221 Interview with Christian deputy military commander, *Al-Hamdaniya*, March 2017.
- 222 Chulov, M. '650-mile trench stakes out claim for bigger Kurdish territory in Iraq', *The Guardian*, 20 January 2017.
- 223 Coles, I. and Kalin, S. 'In fight against Islamic State, Kurds expand their territory', Reuters, 10 October 2016.
- 224 Kesling, B. 'Iraqi Kurds seize land from Islamic State, bolstering leverage for future', *E Kurd Daily*, 15 September 2016.
- 225 Barber, M., 'The KRG's relationship with the Yazidi minority and the future of the Yazidis in Shingal', *NRT*, 31 January 2017.
- 226 Interview with senior NGO representative, 4 March 2017; Barber, 'The KRG's relationship ...', *op. cit.*
- 227 Barber, 'The KRG's relationship ...', *op. cit.*
- 228 Interview with senior member of the Iraqi parliament's Migration and Displaced Committee, Baghdad, 8 March 2017.
- 229 Comments by senior ranking member of Protection Force of Êzîdxan – SRSK Kubis Meetings with World Wide Spiritual Leader of the Yazidis Prince Tahsin Beg Shekhan, 14 March 2017 (internal document).
- 230 Salloum, S., 'Will Iraq's minorities return to their homelands post-IS?', *Al-Monitor*, 14 August 2016.
- 231 Interview with Iraqi member of parliament, February 2017.
- 232 Provincial Powers Act (PPA) (2008).
- 233 IILHR and MRG, 'Briefing paper on legislation giving effect to Article 125 of the Constitution of Iraq', 27 February 2013.
- 234 IILHR, *Minorities and the Law in Iraq*, June 2011, pp. 111–12.
- 235 Ali, A. 'Security, Religion, and Gender in Ninewa Province, Iraq', *Insight on Conflict*, 17 September 2015.
- 236 Interview with Iraqi member of parliament, February 2017.
- 237 Abbas, M. 'Iraqi provincial law renews debate over centralization', *Al-Monitor*, 8 July 2013.
- 238 *Ibid.*
- 239 Abbas, M. 'No exit for Iraq without decentralization', *Al-Monitor*, 7 October 2014.
- 240 Abbas, 'Iraqi provincial law renews debate over centralization', *op. cit.*
- 241 Barber, M. 'The KRG's relationship with the Yazidi minority ...', *op. cit.*; SRSK Kubis Meetings Yazidi Community Representatives, 14 March 2017 (internal document), *op. cit.*; Salloum, S. 'Iraqi minorities move forward with autonomy plan', *Al-Monitor*, 16 March 2017.
- 242 HRC, Report of the Special Rapporteur on minority issues on her mission to Iraq, *op. cit.*, paras 27 and 46; SRSK Kubis Meetings with Worldwide Spiritual Leader of the Yazidis, Prince Tahsin Beg Shekhan, 14 March 2017 (internal document), *op. cit.*; Salloum, S. 'Will Iraq's minorities return ...', *op. cit.*
- 243 Kailan, Y., 'The Ninewa plains and the future of minorities in Iraq', Rudaw, 15 February 2017.
- 244 See: <https://www.congress.gov/bill/114th-congress/house-concurrent-resolution/152/all-info>
- 245 *Inside Iraqi Politics*, 149, 21 February 2017, p. 12.
- 246 Sworesho, 'Federalist Iraq...', *op. cit.*
- 247 Salloum, 'Will Iraq's minorities return ...', *op. cit.*
- 248 Shams, A. 'Iraq's Turkmen mobilise for a post-ISIL future', *Al Jazeera*, 13 February 2017.
- 249 Interview with former Turkmen MP, Baghdad, March 2017.
- 250 *Inside Iraqi Politics*, 150, 7 March 2017, p. 9; Quirk, J. 'New Christian divisions in Ninewa', *Foreign Policy Blogs*, 16 January 2015.
- 251 Interview with Christian religious leader, Erbil, February 2017; interview with Iraqi MP, Baghdad, March 2017; Interview with Iraqi member of parliament, February 2017.
- 252 Interview with Iraqi member of parliament, February 2017.
- 253 World Council of Churches and Norwegian Church Aid, *The Protection Needs of Minorities ...*, *op. cit.*, p. 32.
- 254 Interview with senior KRG official, Erbil, March 2017.
- 255 Interview with Christian religious leader, Erbil, February 2017.
- 256 An agreement brokered in 1921 between the two countries in relation to the Åland archipelago.
- 257 Building a Framework for Ninewa Plain Autonomy (DRAFT), 6 March 2017 (unpublished).
- 258 Draft Yazidi demands document, submission to UNAMI, 2017 (internal document, unpublished).
- 259 List of 'solutions' drafted in interview with senior ranking member of Protection Force of Êzîdxan, Dohuk, March 2017.
- 260 Burton, D., 'Iraqi minorities advocate for the creation of new provinces', *Assyrian International News Agency (AINA)*, 12 May 2016.
- 261 'Sunnis demand autonomous region for Ninewa post-ISIS', *Rudaw*, 27 July 2016.
- 262 Iraqi Constitution (2005), Article 119; Law of the Executive Procedures regarding the Formation of Regions (Law No. 13) (2008), Article 1.
- 263 Iraqi Constitution (2005), Article 119; Law of the Executive Procedures regarding the Formation of Regions (Law No. 13) (2008), Article 2(1) and Article 3.
- 264 Law of the Executive Procedures regarding the Formation of Regions (Law No. 13) (2008), Article 3.
- 265 Iraqi Constitution (2005), Article 119; Law of the Executive Procedures regarding the Formation of Regions (Law No. 13) (2008), Article 2(2).
- 266 Law of the Executive Procedures regarding the Formation of Regions (Law No. 13) (2008), Article 4
- 267 Interview with Christian religious leader, Erbil, February 2017.
- 268 Interview with Christian religious leader, Erbil, March 2017.
- 269 *Ibid.*
- 270 List of 'solutions' drafted in interview with senior ranking member of the Protection Force of Êzîdxan, Dohuk, March 2017.
- 271 Interview with Christian religious leader, Erbil, March 2017.
- 272 Interview with Iraqi MP, Baghdad, March 2017.
- 273 *Inside Iraqi Politics*, 149, 21 February 2017, p. 13.
- 274 UN Habitat, *City Profile of Mosul, Iraq: Multi-sector Assessment of a City under Siege*, 2016, p. 85.
- 275 Interview with senior community representative, Baghdad, March 2017.
- 276 Aldouri, S. 'National Guard Law would help Iraq regain Sunni trust', Chatham House, 20 August 2015.
- 277 *Ibid.*
- 278 Interview with former Turkmen MP, Baghdad, March 2017.

- 279 Interviews with Christian and Yezidi representatives, Erbil and Dohuk, February–March 2017.
- 280 List of ‘solutions’ drafted in interview with senior ranking member of the Protection Force of Ēzîdxan, Dohuk, March 2017.
- 281 Ricks, T., ‘The lesson of Colombia’s demobilization of FARC can help us work against ISIS’, *Foreign Policy*, 28 Jan. 2016.
- 282 Dearden, L., ‘Isis jihadi bride Kadiza Sultana “abandoned efforts to escape Syria after Austrian girl beaten to death”’, *The Independent*, 12 August 2016.
- 283 Interview with Dean of Institute of Psychotherapy and Psychotraumatology, Dohuk, March 2017.
- 284 *Ibid.*
- 285 UN, Report of the Secretary-General on Children and Armed Conflict, UN Security Council, UN Doc. S/2016/360, 20 April 2016, para. 60.
- 286 HRW, ‘Children detained as national security threats’, 28 July 2016.
- 287 Interview with senior KRG official, Erbil, March 2017.
- 288 Geneva International Centre for Justice (GICJ), *Militias in Iraq: The Hidden Face of Terrorism*, September 2016, p. 2.
- 289 Sattar, O. ‘How Iraq’s PMU law is disrupting national unity efforts’, *Al-Monitor*, 14 December 2016.
- 290 Sattar, O. ‘Why Iraq’s law on Popular Mobilization Units isn’t all that popular’, *Al-Monitor*, 8 March 2017.
- 291 Mamouri, A. ‘How will Abadi handle Iraq’s Shiite militias?’, *Al-Monitor*, 31 March 2017.
- 292 Al-Marashi, I. ‘The future of militias in post-ISIL Iraq’, *Al Jazeera*, 27 March 2017.
- 293 Mamouri, ‘How will Abadi handle Iraq’s Shiite militias?’, *op. cit.*
- 294 Transcript of Prime Minister Haider al-Abadi at the U.S. Institute of Peace, 20 March 2017, <https://www.usip.org/transcript-prime-minister-haider-al-abadi-us-institute-peace>
- 295 Mamouri, ‘How will Abadi handle Iraq’s Shiite militias?’, *op. cit.*
- 296 *Ibid.*
- 297 Interview with senior member and former senior member of the Iraqi parliament’s Migration and Displaced Committee, Baghdad, March 2017.
- 298 Mamouri, ‘How will Abadi handle Iraq’s Shiite militias?’, *op. cit.*
- 299 *Ibid.*
- 300 UN Habitat, *City Profile of Mosul ...*, *op. cit.*, pp. 87, 89.
- 301 UNHCR, ‘Internally displaced people: on the run in their own land’, available from <http://www.unhcr.org/pages/49c3646c146.html> (visited 13 May 2016).
- 302 A copy of the principles is available at: <http://brookings.edu/fp/projects/idp/resources/GPsEnglish.pdf> (visited 13 May 2016).
- 303 IILHR/UNPO interviews with senior Iraqi government official and MP, November 2014.
- 304 Interview with Iraqi civil society leader, Baghdad, February 2016.
- 305 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.
- 306 *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.
- 307 *Prosecutor v. Kayishema*, Case No. ICTR-95-I, ICTR Trial Chamber, Judgment, para. 170.
- 308 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.
- 309 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.
- 310 *Prosecutor v. Semanza*, Case No. ICTR-97-20, ICTR Trial Chamber, Judgment, 15 May 2003, paras 368–9.
- 311 *Prosecutor v. Kunarac*, Case No. IT-96-23&23/1, ICTY Appeals Chamber, 12 June 2002, para. 58.
- 312 See for example the ICC Elements of Crimes, Introduction to Article 8, p. 13.
- 313 *Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute, 14 March 2012, p. 438.
- 314 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.
- 315 Rome Statute, Article 8(2)(c)(i).
- 316 *Ibid.*, Article 8(2)(c)(ii).
- 317 ICC Elements of Crimes.
- 318 *Kvočka et al.*, ICTY Trial Chamber, 2 November 2001, para. 173.
- 319 *Aleksovski*, ICTY Trial Chamber, 25 June 1999, para. 229.
- 320 Rome Statute, Article 8(2)(c)(iii).
- 321 See ICC Elements of Crimes, Article 8(2)(c)(iii) and *Blaskic*, ICTY Trial Chamber, 2 March 2000, para. 187.
- 322 Rome Statute, Article 8(2)(c)(iv).
- 323 *Ibid.*, Article 8(2)(e)(i).
- 324 See, for example, *Kordic and Cerkez*, ICTY Trial Chamber, 26 February 2001, para. 328.
- 325 *Ibid.*, Article 8(2)(e)(iv).
- 326 *Ibid.*, Article 8(2)(e)(v).
- 327 See ICC Elements of Crimes, Article 8(2)(e)(v) and the corresponding footnote.

- 328 Rome Statute, Article 8(2)(e)(vi).
- 329 ICC Elements of Crimes, Article 8(2)(e)(vi)-3, war crime of enforced prostitution.
- 330 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.
- 331 Rome Statute, Article 8(2)(e)(vii).
- 332 See Smith, A., 'Child recruitment and the Special Court for Sierra Leone', 2004, 2 *Journal of International Criminal Justice*, pp. 1141–53.
- 333 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.
- 334 Rome Statute, Article 8(2)(c)(i).
- 335 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.*
- 336 Rome Statute, Article 8(2)(e)(i).
- 337 See, for example, *Kordic and Cerkez*, ICTY Trial Chamber, 26 February 2001, para. 328.
- 338 Rome Statute, Article 8(2)(e)(vii).
- 339 See Smith, *op. cit.*
- 340 Rome Statute, Article 8(2)(e)(viii).
- 341 *Ibid.*, Article 7.
- 342 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 Judgement, paras 25–33).
- 343 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.
- 344 *Mrksic, Radi and Slijivancanin*, Review of the Indictment pursuant to Rule 61, 3 April 1996, para. 30.
- 345 Rome Statute, Article 7(2)(a).
- 346 SCSL, AFRC Trial Judgment, para. 215; SCSL RUF Trial Judgment, para. 79; ICTY, *Kunarac et al.* Appeal Judgment, para. 98; ICTY, *Blaškić* Appeal Judgement, para. 120.
- 347 *Prosecutor v. Kunarac*, Case No. IT-96-23&23/1, ICTY Appeals Chamber, 12 June 2002, para. 98.
- 348 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.
- 349 See ICC Elements of Crimes, Article 7(1)(b).
- 350 See, for example, *Stakic*, ICTY Trial Chamber, 31 July 2003, paras 641–642.
- 351 *Kunarac, Kovac and Vokovic*, ICTY Appeals Chamber, 12 June 2002, para. 119.
- 352 See ICC Elements of Crimes, Article 7(1)(c).
- 353 See *Brdjanin*, ICTY Trial Chamber, 1 September 2004, para. 554 and *Stakic*, ICTY Trial Chamber, 31 July 2003, para. 67.
- 354 See ICC Elements of Crimes, Article 7(1)(d).
- 355 *Simic, Tadic and Zaric*, ICTY Trial Chamber, 17 October 2003, para. 125.
- 356 *Ibid.*, para. 64.
- 357 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.
- 358 ICC Elements of Crimes, Article 8(2)(e)(vi)-3, war crime of enforced prostitution.
- 359 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.
- 360 *Kupreskic*, ICTY Trial Chamber, Judgment, 14 January 2000, para. 751.
- 361 *Krnjelac*, ICTY Trial Chamber, Judgment, 15 March 2002, para. 432. See also *Stakic*, ICTY Trial Chamber, Judgment, 31 July 2003, para. 733.
- 362 See ICC Elements of Crimes, Article 7(1)(i).
- 363 ICC Rome Statute, Article 7(2)(i).
- 364 *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.
- 365 Genocide Convention, Article 2; Rome Statute, Article 6.
- 366 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.
- 367 See, for example, *Krstic*, ICTY Trial Chamber, 2 August 2001, para. 580.
- 368 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.
- 369 *Jelusic*, ICTY Appeals Chamber, 5 July 2001, para. 4.
- 370 *Krstic*, ICTY Appeals Chamber, 19 April 2004, para. 41.

371 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.

About the authors of this report



The Institute for International Law and Human Rights (IILHR)

IILHR is a non-profit charity registered in Washington, D.C., 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 programs that help local partners strengthen support for human rights and the rule of law.

IILHR staff has been a strong, supportive presence in Iraq since July 2005. It 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 advising on draft domestic violence legislation), IILHR has brought together minority civil society leaders and parliamentarians from Iraq, seeking to build capacity to pursue a legislative and advocacy agenda. IILHR has worked with the Iraqi judiciary on several rule of law initiatives. IILHR has closely worked with the Iraqi parliament on a wide range of legislative matters, produced more than 85 legal memoranda on draft legislation, and concluded memoranda of understanding with several parliamentary committees. IILHR has published four legal handbooks on Iraqi gender and minority law, asylum claims, and best practices and procedures for the Iraqi High Commission on Human Rights. Most recently, IILHR worked with the United Nations to improve laws and lawmaking in the parliament, and is currently working with the United Nations on passage of anti-discrimination legislation, as well as on national and local transitional justice and reconciliation issues.



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 understand 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.



working to secure the rights of minorities and indigenous peoples

Crossroads: The Future of Iraq's Minorities After ISIS

Crossroads: The Future of Iraq's Minorities After ISIS draws on extensive fieldwork, interviews and desk research to highlight the ongoing plight of Iraq's ethnic and religious minorities, as well as their uncertain prospects for the future. Despite the recent retaking of Iraqi territory from Islamic State of Iraq and al Sham (ISIS) forces, minority populations – already disproportionately subjected to human rights abuses – continue to diminish. Amidst competing land claims and the absence of clear security measures to protect, rebuild and encourage returns, minorities remain vulnerable to discrimination, persecution and targeted attacks.

Emigration from Iraq has continued at a steady rate among minority communities. Meanwhile, some observers predict as many as 600,000 to 1.2 million persons will be displaced as a result of the Mosul offensive. Returns to

areas retaken from ISIS are very slow, due to an absence of adequate security and reconstruction assistance, as well as outright obstruction from political and military authorities in retaken areas. Combined with insufficient resources, this has resulted in a situation where millions of civilians still have little or no access to adequate shelter, sanitation or basic services such as education.

The Iraqi government, Kurdish authorities and international community have so far failed to reach an agreement on accountability, peace-building and reconciliation in the aftermath of the conflict. This publication, building on its findings, presents a series of recommendations and concrete steps to support return for the millions displaced by conflict and strengthen the possibility of a stable political settlement in Iraq.



This report has been produced with the financial assistance of the European Union, Government of the Netherlands and the Konrad Adenauer Foundation. The contents of this report are the responsibility of IILHR, MRG, NPWJ and UNPO and can under no circumstances be regarded as reflecting the position of the European Union, Government of the Netherlands or the Konrad Adenauer Foundation.

Minority Rights Group International 54 Commercial Street, London E1 6LT, United Kingdom

Tel +44 (0)20 7422 4200 **Fax** +44 (0)20 7422 4201 **Email** minority.rights@mrgmail.org **Website** www.minorityrights.org

[www.twitter.com/minorityrights](https://twitter.com/minorityrights) www.facebook.com/minorityrights

ISBN 978-1-907919-86-2