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Cover photo:

Mosul, Iraq, 19 October 2016: Smoke rises from Bashiqa town following a coalition airstrike during the operation to retake Iraq's Mosul from Daesh (ISIS).

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Civilian protection in the battle for Mosul: critical priorities

Introduction

Iraq's second city, Mosul, had a pre-war population of some 2.5 million. Situated on the banks of the Tigris in the governorate of Ninewa, Mosul occupies a strategic position with Iraqi Kurdistan and the culturally-diverse Nineveh plain to the north and east, and the Syrian border and the oil fields of Deir Ezzor to the west.

Ever since Mosul was captured by the forces of the Islamic State of Iraq and al-Sham (ISIS) in June 2014, the Government of Iraq and its international partners have declared their determination to retake the city. In the intervening period, civilians in Mosul have suffered gross violations at the hands of ISIS, including but not limited to murder, extra-judicial executions, cruel treatment, rape, sexual slavery, pillage and forcible population displacement.

With the start of the assault on Mosul by forces of the Iraqi government and the international coalition, the risk to civilians has reached a critical level. The UN has warned of the potential displacement of over one million people from Mosul, to add to Iraq's existing IDP population of 3.3 million, and humanitarian agencies have begun planning for a major crisis. However, planning for the humanitarian fallout from the battle of Mosul only addresses one part of the challenge for civilian protection. Recent operations to 'liberate' or retake smaller population centres in central and western Iraq, or in Syria, have been marked by indiscriminate bombardments, the use of banned weapons, the use of civilians as hostages or 'human shields', reprisal attacks against civilians or those *hors de combat*, as well as mass population flight and the extensive physical destruction of residential areas, infrastructure and other civilian objects.

This briefing draws on such recent precedents to identify the critical risks to civilians in Mosul and surrounding areas

of Ninewa and the corresponding priorities for civilian protection. It calls for an effective system of responsibility and accountability across parties to the conflict to ensure adherence with international humanitarian law (IHL) and international human rights standards.

All parties to the conflict, including the government of Iraq, members of the international coalition, ISIS and other non-state actors, are bound by the provisions of the Geneva Conventions of 1949, including their common Article 3 concerning conflicts not of an international character, other relevant IHL instruments, and customary international humanitarian law. While this briefing draws attention to provisions which are at particular risk of being violated, nothing in the discussion should be taken to question the need for all parties to the conflict to abide by the full range of their obligations under IHL and, where applicable, human rights law.

The conduct of hostilities

Reliable figures for the current population of Mosul, or for the number of ISIS-affiliated fighters in the city, are not obtainable. However, ISIS strength has been variously estimated at between 5,000 and 15,000 and the entire population of Mosul and the surrounding area at between one and two million. The probable ratio of fighters to civilians is thus under one in 100. In such a situation it is necessary to stress the fundamental importance of the principle of distinction, that is, the need to distinguish at all times between armed forces and those directly participating in hostilities, who may be subject to attack, and the civilian population.

Precautions in attack and the prohibition on indiscriminate attacks

In advance of any military attack, IHL requires precautionary measure to be taken to spare the civilian population and civil-

ian objects. These include verifying the military nature of any objective, and taking all feasible precautions in the choice of means or methods of attack (such as the choice of weapon or the timing of an attack) to avoid, or in any event minimise, civilian death or injury or damage to civilian objects.

A significant number of targets in the anti-ISIS air campaign to date have not been pre-planned or fixed military objectives but rather targets of opportunity; in such circumstances pilots or base commanders making operational decisions need to have sufficient information available and the requisite training in IHL rules to ensure necessary precautions are taken. When it becomes apparent that the objective is not military, or that an attack may be expected to cause excessive civilian death or destruction, the attack should be cancelled or suspended.

In the case of fixed military objectives at least, where circumstances permit, advance warning should be given of attacks affecting the civilian population. The provision of a warning, however, does not relieve the attacker of responsibility to take further precautions.

Parties to conflict must distinguish at all times between combatants and non-combatants (including civilians and those *hors de combat*). Attacks on civilians and civilian objects are prohibited at all times. Indiscriminate attacks are also prohibited. These include attacks which fail to distinguish between military and civilian objects, or ones in which expected incidental civilian deaths or injury, or damage to civilian objects, are excessive in relation to the concrete and direct military advantage anticipated. Intentionally directing attacks against civilians or civilian objects, or launching an indiscriminate attack, is a war crime.

As has been extensively documented elsewhere, ISIS has on numerous occasions deliberately targeted civilians and has perpetrated mass killings of both civilians and captured soldiers.¹ In a previous report by the Ceasefire Centre for Civilian Rights and Minority Rights Group International it was also estimated that anti-ISIS bombing campaigns had killed thousands of civilians in Iraq; the majority of them, over 2,800 by September 2015, were killed in often indiscriminate bombing by the Iraqi Security Forces.²

Use of prohibited weapons

Throughout the history of regulating armed conflict, from the prohibition on the use of poison to more recent initiatives to ban anti-personnel mines and cluster munitions, certain weapons have been prohibited on the grounds that they are by their nature indiscriminate, and therefore inconsistent with the principle of distinction, or cause superfluous injury or unnecessary suffering.

In the battle against ISIS in Iraq both sides have used prohibited or censured weapons. Barrel bombs³ have been dropped by the Iraqi Security Forces on densely-populated areas in central and western Iraq, including in Fallujah, in numerous instances. Their use in Mosul has also been reported.⁴ Mustard gas, a chemical agent, has been deployed by ISIS, including in Sinjar and in Makhmour. In early 2016 the Organisation for the Prohibition of Chemical Weapons confirmed the use of sulfur mustard in an attack on the Kurdistan Region of Iraq.⁵

'Human shields', aerial bombardment and humanitarian access

Much of the civilian killing and destruction of civilian objects in the conflict against ISIS to date has resulted from patterns of interlocking, and frequently unlawful, behaviour on both sides with civilians caught in the middle.

Like many other armed opposition groups around the world, ISIS often bases itself in densely-populated urban areas. It has ignored the IHL duty in such situations to take passive precautions to ensure that any military objective is sited away from civilians or civilian objects in case of attack. Moreover, ISIS has frequently used the presence or movements of the civilian population to shield military objectives. This constitutes a war crime.

Again, however, the deployment of 'human shields' does not remove the responsibility of adverse parties to take precautions to avoid, or at least minimise, civilian casualties and to refrain from attacking a military objective where the loss to civilian life would be disproportionate.⁷ The Iraqi ministry of defence has sought to justify high rates of reported civilian deaths from ISF opera-

Hospitals and other places of special protection

A disturbing feature of armed conflict in recent years is the rise in attacks on hospitals or other medical facilities or personnel, including by parties to the current conflict in Iraq. In October 2015 US airstrikes on a hospital in Kunduz, Afghanistan, killed 42 people, including 24 patients and 14 staff. The subsequent US investigation concluded that the incident was caused by unintentional human error and equipment failure and no criminal charges were brought.

Fallujah general hospital and other medical facilities in the city were hit

repeatedly, without warning, in shelling by Iraqi Security Forces in 2014-15.⁶ Some reports connected these attacks with the fact that wounded ISIS fighters were undergoing treatment at the hospital. It has also been reported that ISIS have used medical facilities as bases or even command centres.

All medical units (including military hospitals) benefit from special protection under IHL, and cannot be made the target of attack. The fact that enemy fighters may be undergoing treatment does not remove this protection. Even if a hospital is being used as a location from which to launch hostile acts, the hospital could only become the target of an attack once prior warning had been

given to enable the acts to cease or for the patients to be evacuated.

ISIS has a long history of destroying and defacing cultural monuments, churches and other places of worship, which also enjoy special protection under IHL. Finally, IHL also grants special protection to works and installations containing dangerous forces, including dams, whose destruction may cause large-scale suffering in the civilian population. The poor state of maintenance and general safety of the Mosul dam has been the subject of much speculation in Iraq in recent years. ISIS launched attacks against Kurdish *Peshmerga* positions near the Mosul dam as recently as September 2016.

tions by saying that ISIS fighters deliberately positioned themselves in civilian areas or civilian facilities such as hospitals in an attempt to shield themselves from attack.⁸

The battles to retake cities from ISIS, including Ramadi and Sinjar in Iraq and Kobane in Syria, have often caused widespread physical destruction. The ISIS practice of booby-trapping or bombing buildings on retreat has contributed to the destruction, but much of it has been due to intensive aerial bombardment by the US and members of the international coalition and, in Iraq, by aerial bombardment and shelling by the ISF. UN officials described the destruction in Ramadi as worse than anywhere else in Iraq; some 5,700 buildings were damaged, with 2,000 completely destroyed, including the hospital and the train station.⁹ Some estimates put the level of damage in central Ramadi at 80 per cent. Such widespread destruction, together with other factors such as the prevalence of explosive remnants of war, make the swift return of IDPs impossible. (Less intensive bombing in the subsequent operation to retake Fallujah was reportedly due in part to the realisation that such levels of destruction were publicly unacceptable.)

‘Carpet’ or ‘area’ bombing, as widely practised in Europe and the Far East during the Second World War, is now generally considered unlawful under IHL, at least in the sense of bombing operations which treat as a single military objective a number of clearly separated and distinct military objectives in a city containing a similar concentration of civilians or civilian objects. Further investigation would be necessary to conclude whether this was an accurate characterization of any of the bombing in Iraq, or whether the widespread urban devastation rather reflects patterns of indiscriminate bombardment, or even the collective impact of a very large number of individual attacks on discrete military objectives.

The impact on the civilian population should nonetheless be clear. This is particularly the case where civilians have not been able to flee and have suffered from lack of food and medical supplies during siege situations. Once again, tactics employed by both sides in the conflict during the sieges of Ramadi and Fallujah impeded humanitarian access for prolonged periods despite repeated calls by the UN and humanitarian agencies for all parties to the conflict to allow passage of hu-

manitarian relief for civilians in need.¹⁰ During the siege of Fallujah in the first half of 2016, ISIS prevented civilians from leaving, reportedly shooting at those attempting to flee, while Iraqi Security Forces and Shi'a militias encircled the city, preventing supplies from entering.

Investigation of civilian casualties

IHL imposes specific duties to investigate civilian deaths. These include an obligation on all parties to identify the dead and the missing, in furtherance of the right of families to know the fate of their relatives. There is a further duty on belligerents to undertake an investigation where a breach of IHL may have occurred, including a suspected failure to take all feasible precautions to avoid loss of civilian life.

Human rights law imposes additional obligations on states towards all those under their jurisdiction. In relation to the right to life, this includes an obligation to undertake an investigation in any case where an individual has been killed by state agents. In addition to binding the Iraqi government with regard to any military action taken on its territory, this obligation also falls on members of the international coalition where an attack has led to the death of civilians under their effective control.

Under the UN's *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, investigations under both IHL and human rights law should be effective, prompt, thorough and impartial.¹¹

The recording and investigation of civilian deaths in Iraq is greatly hampered by a lack of transparency from almost all parties to the conflict. Civilian deaths caused by ISF bombing are routinely denied or blamed on ISIS. Even if the US does not accept extra-territorial obligations under human rights law, its practice regarding the investigation of possible IHL violations in Iraq appears to have deteriorated from the practice of US forces and the International Security Assistance Force in Afghanistan. ISAF established a civilian casualty tracking cell in Afghanistan in late 2008 in order to 'acknowledge civilian casualties immediately and transparently investigate allegations rapidly'.¹²

Accountability across anti-ISIS forces

A complicating factor in the Mosul offensive is the fact that it is not an operation carried out by one centralized military force, but rather a coordinated effort by an alliance formed of extremely diverse and loosely-organized armed actors. The exact make-up of this alliance, and the role that each actor will play within the operation, are still unclear. However, it is likely that some or all of the following actors will be involved: the Iraqi Security Forces, the federal police, the Kurdish *Peshmerga* forces, the US-led international coalition, the Shi'a militias organized under the umbrella of the Popular Mobilization, the National Mobilization and other Sunni armed factions, and possibly even some minority militias (Christians, Turkmen, and/or Yezidis). The potential involvement of Turkish forces currently stationed in Iraq is also unclear.

These actors all have competing agendas and some are deeply distrustful of one another. For example, some Sunni actors have made clear their view that the Shi'a militias should not play any role in the operation, while the Shi'a militias are reluctant to concede a central role to the Kurdish *Peshmerga* in the offensive. These tensions are all the more potent given the strategic importance of Mosul, as the last major city in Iraq held by ISIS and capital of the Ninewah governorate, parts of which are claimed by both Arabs and Kurds.

Crucially, the plethora of armed actors participating in the military campaign to retake Mosul raises questions about the chain of command and accountability for violations that may be perpetrated during the course of hostilities. Recent experience in Iraq poses a worrying precedent. The retaking of the cities of Amerli, Tikrit, Ramadi and Fallujah from ISIS control over the course of 2014-2016 was accompanied by widespread reports of violations against the civilian population, including abductions, beatings, torture and forced confessions, summary executions, mutilation of corpses, and burning and looting of civilian homes.¹³ However, there has so far been little to no indication that perpetrators of such violations will be held to account.

The actions of the Shi'a militias grouped under the Popular Mobilization Front have been particularly controversial. Although a 2016 decree by the

Prime Minister incorporated the PMF as a special unit of the Iraqi Security Forces, supposedly bringing it firmly under the control of the central government, some militia members continue to assert that they respond to no one but themselves.¹⁴ During the retaking of Fallujah in May-June 2016, Shi'a militias were reported to have engaged in widespread human rights violations against Sunni Arab civilians. An estimated 1500 Sunni men were separated from their families by PMF units and subject to treatment that ranged from harassment and beating to torture and killing.¹⁵ After the end of the Fallujah operation, Prime Minister Abadi acknowledged that there had been violations but insisted they were individual transgressions, and promised accountability. However, only four or five people were detained, and the entire Fallujah investigation has been shrouded with uncertainty, with little information shared publicly about the conduct or outcome of the procedures.¹⁶

Questions also arise as to accountability for violations perpetrated by other actors in the coalition. As noted above, members of the US-led international coalition have failed to acknowledge mounting civilian casualties promptly, or to investigate them transparently. The Kurdish *Peshmerga* have also been accused of violations against civilians in areas under their control, such as destruction of homes in Arab villages and forced displacement of their residents.¹⁷ However, accountability is complicated by the fact that the *Peshmerga* operate *de facto* independently from the Iraqi Security Forces, and command and control is split between the two major Kurdish political parties: the Kurdish Democratic Party and the Patriotic Union of Kurdistan.¹⁸ According to the UNHCR, there have not been any prosecutions of *Peshmerga* members accused of violations.¹⁹

Adherence to international humanitarian law and the maintenance of accountability requires first and foremost that the central government establish effective control over the armed groups fighting under its banner. Armed groups operating independently of central government control must at a minimum establish accountability mechanisms within their structure to respond to allegations of violations. All credible allegations of violations must be investigated promptly and transparently and suspected perpetrators of crimes prosecuted according to standards of due process.

Protection for internally displaced persons

Military operations to retake the city from ISIS are likely to provoke large waves of displacement, as civilians attempt to flee. Several estimates exist as to the numbers of IDPs likely to be created by the Mosul offensive, and they vary according to the expected duration of the hostilities. The KRG has reportedly envisioned three possible scenarios. In the best-case scenario, the Mosul operation will result in a quick defeat for ISIS, displacing 100,000 at most while the remaining residents never leave their homes. In the middle scenario, over 400,000 IDPs would be displaced in successive waves as hostilities intensify. In the worst-case scenario, the hostilities could go on for months, creating one million IDPs.²⁰ However, the UN warns of a higher figure, stating that as many as 1.2 to 1.5 million people could be displaced.²¹

Many IDPs will initially flee towards villages in the Ninewa plains in search of relative safety, while others will head south towards Tikrit, retaken from ISIS control since March 2015.²² Some may even flee to the Syria-Iraq border to the north, passing through Syrian territory in order to re-enter Iraq further south.²³ A number can also be expected to head towards ISIS-controlled districts, such as Tel Afar. However, the greatest proportion of IDPs will likely seek to end up in one of the three Kurdish governorates of Erbil, Suleymania, and Dohuk.

International humanitarian agencies, the Kurdistan Regional Government, and the Government of Iraq have already started some planning to cope with the imminent exodus of IDPs from Mosul. There are fears, however, that existing plans are inadequate, fail to address the multiple protection challenges, and that local capacities will quickly be overwhelmed. Experience from previous waves of displacement caused by the ISIS advance and by government-led campaigns to take back major cities from ISIS control indicates the type of civilian protection challenges that are likely to emerge during the Mosul offensive. In order to effectively protect IDPs originating from Mosul, the relevant actors need to: create safe corridors and ensure the security of civilians fleeing Mosul; im-

plement consistent, transparent and non-discriminatory documentation, screening and entry procedures at checkpoints and border crossings; and provide for the humanitarian needs of IDPs upon their arrival in camps and other temporary shelter arrangements. Each of these issues is discussed in turn below.

Safe corridors and security in flight

During hostilities in Mosul, the right of civilians to leave the city and seek safety elsewhere must be guaranteed. Parties to the conflict should take all possible measures to safeguard the physical security of civilians attempting to leave the city, facilitate their journey through safe corridors, and protect them from security threats while in flight. Residents living in the city at the time of the offensive should not be assumed to be ISIS collaborators by attacking forces, nor should they be punished by ISIS for attempting to leave.

During the retaking of Fallujah, ISIS snipers shot civilians leaving the city, and burned boats to prevent civilians from crossing the Euphrates River.²⁴ There are also reports that ISIS recently detained approximately 2,000 civilians who were trying to escape Hawija.²⁵ In early 2016, the UN Special Rapporteur on the rights of internally displaced persons reported that civilians leaving Mosul faced harsh punishment from ISIS if caught, and that ISIS had placed landmines in routes leading out of the city, causing many civilian deaths.²⁶ Other actors, too, have been responsible for restricting the movement of civilians out of conflict areas. After the retaking of Amerli from ISIS in November 2014, PMU and ISF units prevented Turkmen and Sunni Arab residents of surrounding villages from moving to safe areas.²⁷ In November 2015, the *Peshmerga* prevented Sunni Arab IDPs fleeing Tel Afar from accessing safe areas due to accusations of their support for ISIS.²⁸

The Government of Iraq, the Kurdish Regional Government and their partners must also prioritize the creation of safe corridors. However, they must take care to ensure that such routes are actually safe before encouraging civilians to use them. During the operation to retake Fallujah from ISIS control in March 2016, the Iraqi government informed civilians about three safe exit routes out of the city. However, civilians attempting to use

them continued to be blocked by ISIS, and faced numerous security threats *en route*, including the proximity of armed groups, ongoing clashes, and the presence of landmines. On 10 June, 26 people were injured and one killed when a landmine exploded on the route towards Al-Salam junction.²⁹

The parties to the conflict should ensure that roads are decontaminated from landmines and other risks to civilians before being publicly announced as safe routes, and they should commit to sustained protection of such routes. In particular, this should involve attention to the risks faced by vulnerable groups. Many of those fleeing will be female-headed households who have lost or been separated from the male breadwinner. Women travelling without a male companion are often prone to exploitation and abuse, including trafficking. Due to the arduous nature of the journey, some IDPs may also seek the service of smugglers to assist them in escaping, opening up further challenges.³⁰

Another factor which has repeatedly threatened the security of civilians fleeing ISIS-controlled cities is the presence of checkpoints along their route, manned by a variety of armed actors, including non-government actors. Civilians stopped by armed groups at checkpoints have been subject to violations, and the presence of these checkpoints in itself acts as a deterrent to civilians contemplating escape.³¹ For example, during the military operation to retake Fallujah, Sunni Arab families fleeing the city were on multiple occasions stopped by Shi'a militias operating under the umbrella of the Popular Mobilization Forces. Families were separated, and the men were automatically treated as ISIS collaborators and subject to a range of humiliating treatments. For example, Human Rights Watch received reports of men being detained without food or water; insulted and harassed; beaten with sticks and cables; tied to trucks with rope and dragged, sometimes to the point of death; and summarily executed.³²

Although there is a legitimate and understandable fear that ISIS fighters may infiltrate the civilian population leaving ISIS-controlled areas, security screenings must be conducted transparently, by authorized actors in accordance with the law, and with judicial oversight. In cases where families must be separated, family members should be informed about the location of their detained rela-

tives and the reason for their detention. Detaining authorities have the responsibility to provide food, water, sanitation facilities and meet other basic needs of detainees, or to allow humanitarian actors access to detention locations. In cases where there is no indication that detainees have ties with armed groups, they should be immediately released.

Documentation, screening and entry

The large numbers of IDPs expected to flee from Mosul is likely to create a build-up at entry points to Kurdish-controlled parts of Ninewa and into the Kurdistan Region itself, especially Kalak checkpoint on the border with the Erbil governorate, 40 kilometres east of Mosul, as well as to other parts of Iraq. This will present a major humanitarian challenge, if IDPs are forced to camp outside at border crossings for days on end without adequate supplies of food, water, or medicine.

Since the ISIS advance of 2014, the experience of IDPs attempting to cross governorate borders within Iraq has been extremely uneven, creating humanitarian crises and resulting in effective restrictions on their freedom of movement as guaranteed by international law. Not only does each governorate implement its own entry procedures, but procedures have been implemented inconsistently within the same governorate and even at individual checkpoints. For example, since 2014 IDPs from Anbar province have been repeatedly prevented by the Iraqi Security Forces from crossing Bzebis bridge, the only entry route into Baghdad. Officials at the Baghdad checkpoint also required IDPs to have two sponsors from the governorate before allowing them entry, a difficult condition for many to satisfy, causing delays of days or even weeks. IDPs also reported that entry procedures were sporadically and inconsistently implemented, leading to accusations of discrimination against Sunni Arabs.³³

There have also been multiple reports of the Kurdish authorities implementing inconsistent and even discriminatory entry procedures on IDPs seeking refuge in the region, beginning in 2014 and continuing to the present. Various sources have reported that the Kurdish border officials sometimes require IDPs to have sponsors in the region, or even pre-existing residency permits, before allow-

ing them entry, and sometimes do not. The procedure seems to vary according to the official on duty at the time, and more often according to the ethnic and religious profile of the IDPs. Generally, Kurds are easily permitted entry to the region without the need for a sponsor or any residency permit. Christians and Yazidis also experienced relative ease of entry, even without a sponsor. In contrast, the UNHCR states that all Arab and Turkmen IDPs have been denied entry into the region since late 2014 except those who were able to present pre-existing residency permits.³⁴ The UN Special Rapporteur on the rights of internally displaced persons further reports that Sunni Arab families living in the Kurdistan Region face restrictions on their freedom of movement, while Christians and Yazidis do not.³⁵ The procedure for extending and renewing residence permits is also unclear and inconsistently applied.³⁶

In order to prevent unnecessary delays at checkpoints and to support IDPs' freedom of movement as far as possible, the Kurdish authorities must ensure that entry requirements are transparent, uniform, and non-discriminatory. They should publicly announce the conditions and documents required for entry and cease the practice of differentiating between IDPs on the basis of ethnicity or religion. If security screenings are required, these must also be conducted transparently and in accordance with the law.

Special measures will be needed to respond to the problem that many IDPs are likely to be travelling without documentation, having lost or been robbed of their identification during displacement. IDPs should be informed of the documents required for entry, and the procedure for renewing and reissuing lost documents. Previously, IDPs without documents have been required to go to central government offices in Baghdad, but this expectation is impractical and opens IDPs to further risks.³⁷ Government agencies should continue the process of setting up mobile or temporary registration offices in the North, expanding them to ensure that all IDP populations can be served.

Even if measures are taken to expedite entry procedures as much as possible, IDPs are still likely to face the possibility of being stranded at checkpoints for extended periods of time. Build-ups of IDPs at checkpoints have already led to reported

deaths of pregnant women, children and the elderly, while many more suffered from dehydration.³⁸ Humanitarian actors should take pro-active measures to mitigate this problem, by pre-positioning relief workers and stocks of essential items at border checkpoints, such as food, drinking water, and medical supplies. The Kurdish authorities should also prioritize entry and accelerate screening for vulnerable populations, including pregnant women, young children, unaccompanied children, the elderly, and persons suffering from medical conditions.

Protection issues in IDP camps

Civilians fleeing Mosul will have serious and urgent protection needs immediately upon their arrival to safer territory. Many will have left Mosul with little more than the clothes on their backs, or may have been robbed of their possessions upon leaving. In many cases, they will have undergone an arduous journey to reach safety, travelling for days without access to food or water and constantly in fear. Some will have witnessed the death of loved ones and other conflict-related horrors, and will be in need of psychosocial support.

The KRG authorities have begun planning for the IDP exodus by constructing camps in Kurdish-controlled parts of northern Ninewah. However, whether their capacity will be sufficient is seriously in question. Current planning appears to depend on the simultaneous return of large numbers of existing IDPs to liberated areas of the Ninewa plain. Given the very poor recent experience with IDP returns in Iraq, this scenario seems optimistic at best.

The KRG itself is already hosting an estimated 1.8 million Iraqi IDPs and Syrian refugees, displaced since 2014 and 2011 respectively. Although the Kurdish authorities have been commended for their willingness to take in large numbers of IDPs and refugees, serious gaps in protection exist. For example, many IDPs still lack access to basic facilities and services, such as drinking water, electricity, food, clean latrines and shower facilities, education and healthcare. In the midst of an economic crisis worsened by low oil prices, retreating investors, and a decrease in budget contributions from Baghdad, the Kurdish authorities are struggling to provide for the needs of IDPs. International humanitarian actors working in the region

also consistently report that the level of funding secured from the international community is far below the amount necessary to respond to the essential needs of IDPs. For example, in January 2016 the UN Humanitarian Country Team launched an appeal for \$861 million to support 7.3 million Iraqis in need of humanitarian assistance, but as of July 2016 only 40 per cent of that amount had been raised.³⁹

However, in contrast to the 2014 influx of IDPs into the KRG, which happened quickly and unexpectedly, with the Mosul offensive the Iraqi and Kurdish authorities have had the advantage of foresight, as well as the advantage of learning from the 2014 crisis. The international community needs to act now to support the Iraqi and Kurdish authorities in planning for the humanitarian response to IDPs displaced from Mosul. The KRG has identified \$284 million as the budget required for the first six months.⁴⁰

With funding in place, both domestic and international authorities would be able to focus on meeting the humanitarian needs of newly-created IDPs, prioritizing the most vulnerable groups. This should involve pre-positioning of essential items (such as emergency kits, food rations, medical supplies, water and sanitation products, and basic household supplies) at strategic points along flight routes, checkpoints and holding areas and arrival points. It will also involve identifying suitable land for construction of camp facilities to accommodate the new arrivals, including 'winterization' or 'summerization' of the camps as the case may be. It will be difficult to predict how long IDPs will have to stay before being able to return to Mosul, and many may choose not to return at all. Consequently, humanitarian actors should plan for the short- to long-term needs of IDPs, including:

- **Food Supply:** Iraq has a government-funded food ration program (the Public Distribution System, or PDS), which has long functioned as an effective system for distributing basic food items to families.⁴¹ However, the current crisis and disruption to domestic food production caused by conflict present challenges to the distribution of food for IDPs. Humanitarian actors should work with government authorities to identify gaps in provision and respond accordingly by distributing essential food

items to families in need. The government should also simplify the procedure to replace lost PDS cards, which is currently bureaucratic and inefficient.⁴²

- **Healthcare:** IDPs currently living in the KRG report access to healthcare as one of their most pressing needs.⁴³ Many IDP camps are located in isolated areas of the region, and IDPs who cannot afford the costs of travelling into urban centres to visit hospitals and clinics are effectively unable to access healthcare.⁴⁴ Crowded and unsanitary living conditions in camps present health risks to IDPs, with respiratory infections, acute diarrhoea and skin diseases identified as leading causes of death.⁴⁵ IDPs displaced from Mosul will be even more vulnerable since they have been living with limited access to medicine and healthcare since ISIS first took control of the city in June 2014.⁴⁶ National authorities and humanitarian actors should therefore deploy mobile medical clinics to IDP camps to ensure that all IDPs have access to much-needed healthcare.
- **Education:** currently, only 50 per cent of children in camps and 30 per cent of those outside of camps are accessing education.⁴⁷ The displacement crisis in Iraq has caused more than two years of disruption to IDP children's education, with little sign of an end in sight. Even where schools are available to children in the KRG, a variety of factors prevent them from accessing education, including the distance of schools from the camps; poor quality of teaching and resources in schools; high student-teacher ratios; and language barriers faced by Arabic-speaking children forced to adapt to the Kurdish curriculum.⁴⁸ National authorities and humanitarian actors should establish more temporary schools in IDP areas and ensure that teaching capacity and resources are in place ahead of the impending IDP influx, and employ Arabic-speaking teachers to ease the transition of IDP children into the new school environment.
- **Protection of vulnerable groups:** the humanitarian response to the IDP crisis should include attention to the particular needs of vulnerable groups, such as female-headed

households and victims of sexual and gender-based violence. Camp facilities should be designed with proper lighting and private and secure latrine and shower facilities, to prevent the high prevalence of sexual harassment currently reported in camps. Women's needs should also be taken into account as far as health and sanitation are concerned, such as ensuring IDP women's access to reproductive healthcare and menstrual hygiene products. Finally, it is likely that a significant number of IDPs from Mosul will have been victims or witnesses of sexual and gender-based violence, and other traumatic experiences. The provision of psychosocial support should therefore be considered an urgent humanitarian need.

Protection of civilians and those placed *hors de combat* following hostilities

Treatment of detainees

Under IHL, wounded or captured fighters, or those who lay down their arms, are *hors de combat* and are required to be treated humanely at all times. Although captured fighters in a non-international armed conflict are not entitled to prisoner-of-war status, they are afforded significant protections by Common Article 3 of the 1949 Geneva Conventions, along with civilians, persons taking no active part in hostilities and others *hors de combat*. Common Article 3 expressly prohibits murder, mutilation, cruel treatment and torture, the taking of hostages, outrages on personal dignity (in particular humiliating and degrading treatment) and unfair trials. While the absence of prisoner-of-war status in a non-international armed conflict means that opposition fighters can be criminally liable under Iraq's domestic law, even for acts that are *lawful* under IHL,⁴⁹ any trial must be in a regularly-constituted court, affording due process guarantees.

ISF units have committed serious violations of the rights of detainees, including murder, mutilation and beheadings of suspected ISIS members. An *ABC News* investigation in March 2015 uncovered photographs and videos posted on social media that appeared to show Iraqi special forces carrying

out such atrocities and was told by a senior US official that the Chairman of the US Joint Chiefs of Staff had repeatedly warned Iraqi leaders about such conduct. US assistance for certain units was subsequently withdrawn.⁵⁰ Following the retaking of Fallujah, there have been accounts of severe

abuses in government-run prisons in Iraq.⁵¹ As noted above, IDPs who fled Fallujah were subjected to gross violations at the hands of Shi'a militias surrounding the city. 1,500 men and boys were separated from their families for interrogation, hundreds of whom were subjected to torture, ex-

Child soldiers

The Convention on the Rights of the Child⁵⁷ and its Optional Protocol on the Involvement of Children in Armed Conflict prohibit the recruitment and use of children in hostilities.⁵⁸ Parties are also required to take all feasible measures to prevent such recruitment and use by armed groups distinct from the armed forces of the state, including the adoption of measures necessary to prohibit and criminalize such practices.⁵⁹ The conscription or use in hostilities of children under the age of 15 years is a war crime.

In the campaign against ISIS, children have often been associated with PMUs and pro-government militias, with leaders commending youth and children for liberating territories from ISIS. Schools in Baghdad, Diyala, Basra and other southern governorates have reportedly been used as religious and military training camps for children, following Grand Ayatollah al-Sistani's call on students on 5 June 2015 to undertake military training in their summer breaks. Additionally, the Ministry of Youth and Sports has explicitly encouraged the use of youth clubs for military training of children.⁶⁰ There have also been reports of children fighting alongside Yezidi and Turkmen militia in Ninewa and Kirkuk, as well as within Sunni tribal-based militias supporting the ISF against ISIS in Ramadi.⁶¹

The systematic recruitment and use of children by ISIS is widely reported. The fall of Mosul in 2014 led to an increase in recruits in ISIS-controlled territories.⁶² The 2015 report of the UN Secretary-General on children and armed conflict records that between August 2014 and June 2015, hundreds of boys, including Turkmen and Yezidis, were forcibly separated from their families and taken to training centres where they were taught the Quran, combat tactics and the use of weapons. These children have been received in at least five training centres in Tel Afar, Mosul, south of Mosul and also in Aleppo and Raqqa in Syria. Amongst other accounts, in February 2015, families with two or more sons in Mosul were required to have one son join ISIS. The same month, ISIS imposed compulsory recruitment in the Rutba district, Anbar. After the fall of Tikrit in April 2015, ISIS further forcibly recruited 100 young men and boys between the ages of 13 and 20.⁶³ It has been estimated that at least 1,500 children have been enlisted to fight for ISIS and some children as young as 8 have been reportedly trained in ISIS camps.⁶⁴ A study revealed that unlike other conflicts where children are used in warfare for a specific purpose, the fatalities of child ISIS fighters occur in the same types of attacks and locations as their elders.⁶⁵ The rate of child involvement in ISIS operations is also increasing, with three times as

many children in January 2016 compared to January 2015.⁶⁶

If Mosul is freed from ISIS, authorities will potentially be left with a large number of indoctrinated children. Iraq has a specific obligation under international law to demobilise and rehabilitate former child soldiers and to ensure their reintegration into society.⁶⁷ In practice, this is likely to be challenging. Past experiences of child soldiers in Liberia, Mozambique or Uganda indicate that family and religion are the two key tools to youth demobilisation and reintegration,⁶⁸ but for children in Iraq, religion has been distorted and there have been many instances where the families of child soldiers were implicated in their recruitment.⁶⁹

Reports indicate that children in Iraq have been arrested without warrants and held in secret detention centres for extended periods of time and are subjected to ill-treatment. Iraq has a lack of youth institutions and prison alternatives and children are frequently detained with adults. As of September 2015, 474 children were being held in detention facilities in Iraq and had been convicted on security charges under the Anti-Terrorism Act (2005). Notably, the terrorism law prescribes the death penalty, irrespective of age at the time of conviction or the time of alleged commission of the crime.⁷⁰

ecution or enforced disappearance. As many as 900 men are still missing and 49 civilians were summarily executed or tortured to death.⁵² There have also been reports of sentencing or executions of suspected ISIS fighters in lieu of justice. In February 2016, an Iraqi trial of suspected ISIS members sentenced 40 people to death in a mere two-hour court proceeding, on the basis of confessions allegedly induced after torture.⁵³

If Mosul is retaken, the capture or surrender of large numbers of ISIS fighters is possible and the question of their imprisonment will arise. Although Common Article 3 lacks detailed rules governing detention in a non-international armed conflict, its guarantees of humane treatment are supplemented by the more detailed rules in Iraqi domestic law and the international human rights instruments to which Iraq is party, including the International Covenant on Civil and Political Rights and the UN Convention against Torture. Given the practices cited above, there is mounting concern about Iraq's ability to conduct humane treatment of detainees, particularly if the number of prisoners exceeds domestic capacity.

Surrendered or captured ISIS members may include foreign fighters. Approximate figures indicate that the number of foreign ISIS fighters in Iraq and Syria increased from 12,000 in June 2014 to 30,000 by December 2015.⁵⁴ Returning foreign fighters may also face prosecution in their national state for violations committed in Iraq or Syria. Indeed, UN Security Council *Resolution 2170* (2014) explicitly requires states to bring 'foreign terrorist fighters' to justice. Approximately 20-30 percent of the European and US nationals who form the ISIS group of foreign fighters have reportedly returned,⁵⁵ but the capture or detention of others by Iraqi forces in the Mosul offensive may place pressure on their national governments to intervene on their behalf, including in exercising diplomatic protection.⁵⁶

Women and former captives

Women and girls in ISIS-controlled territories routinely suffer physical abuse including sexual violence; restricted access to healthcare and education; and restrictions on freedoms of movement, expression and religion.



Christian man displaced from the city of Mosul in 2006. Many IDPs from Mosul have suffered repeated displacement. Bartallah, Mosul, 2006. © Mark Lattimer/MRG

In a post-ISIS Mosul, the health and psycho-social needs of female inhabitants must be considered. As ISIS prohibits women and girls from being seen or touched by male doctors, the lack of female medical personnel remaining in the city has severely depreciated the availability and quality of healthcare, including maternal health services.

Particularly vulnerable are women and girls that have experienced sexual violence or have been held captive by ISIS. Following significant numbers of escapes, estimates of the remaining number of Yazidi and other women and girls in ISIS captivity vary widely, but up to 2,000 may remain captive in Iraq and Syria. The safety of women and girls held as hostages, prisoners and sex slaves is of deep concern during the Mosul offensive. Attacking forces should consult with activists and experts to locate the women prior to attacks and forces involved should be thoroughly briefed in advance so that the protection of women captives and other hostages remains paramount.

If freed from ISIS, former female captives will require long-term mental health and psycho-social care. The provision of such services to escapees in the past has been patchy and social stigma surrounding both mental health and sexual violence has served as a further barrier to care and reintegration. Both the Iraqi government and the KRG should amend their laws to permit abortions for rape victims, as the procedure is not presently an option for women seeking to terminate their pregnancies safely and legally.⁷¹

In addition to women and girls, Yezidi men and boys and other minority captives are a specially-vulnerable group requiring specific response and protection measures. Former captives may require urgent medical care, as well as long-term psychosocial support. The reunification of former captives with their families should be a priority. Consideration must also be given to the situation of forced recruits, including those belonging to Yezidi and other minorities, and the availability of amnesties.

Finally, investigations need to be instigated to locate missing minority captives and women and girls, including those believed to have been trafficked or killed.

ISIS families

The families and relatives of ISIS members will become extremely vulnerable following defeat. Reports indicate that as ISIS loses territory, the relatives of suspected ISIS members are being expelled from their home by Iraqi authorities. For example, families of over 200 militants have reportedly been forced to leave both Dhuluiya and Hit, despite the fact that ISIS was defeated in Dhuluiya nearly two years ago.⁷²

Tribal leaders assert that these measures are for the protection of ISIS families but the actions suggest that collective punishment is being applied, even though family members may have taken no part in hostilities and committed no crimes under national law. According to a UN official, the expulsions are becoming widespread, are endangering civilian lives and are fuelling sectarian tensions.⁷³ Those forcibly displaced are refused refuge in neighbouring districts and may have no option but to return to ISIS-controlled territory, hence placing them at risk of further violence.⁷⁴

Statements from officials or politicians have asserted that no marriages have occurred in Mosul between ISIS members and residents of the city. Ninewa Governor Nofal al-Akoub suggested that this was the case, while Ninewa MP Intisar al-Jabouri has publicly claimed that ‘sexual jihad’ has not occurred and there has been ‘no marriage between any woman in Mosul and an ISIS militant during those two years’.⁷⁵ However, authorities must be open to the possibility that such mar-

riages may have occurred during the ISIS occupation, in order to provide the appropriate protections for the wives of ISIS members and their children. This may include foreign ‘jihadi brides’, who possibly were victims of their militant husbands,⁷⁶ and whose protection will necessitate co-operation between Iraqi authorities and their national governments.

Mosul is also likely to be home to children conceived during the occupation of the city by unknown fathers, or brought to Iraq by foreign fighters, or born within marriages formed during the occupation, or conceived from rape. It is critical that these children, like all others in Iraq, are afforded the protections of Common Article 3 and the Convention on the Rights of the Child. Children who do not possess civil documentation or are unable to obtain it are at risk of statelessness and registration procedures may need to be amended to facilitate their protection.

Conclusion

Recent precedents from military operations to retake Iraqi cities from ISIS control, including Tikrit, Ramadi, Fallujah and Sinjar, demonstrate a pattern of repeated failures to implement sufficient measures for civilian protection, both in the conduct of hostilities and in planning for the humanitarian consequences. These include:

- consistent failures by parties on both sides of the conflict to take constant care to spare the civilian population and to take all feasible precautions in the choice of means or methods of attack to avoid, or in any event minimise, civilian death or injury or damage to civilian objects;
- the deliberate targeting of civilians or the launching of indiscriminate attacks, which fail to distinguish between military objectives and civilians or civilian objects, by parties on both sides in the conflict;
- the use of prohibited weapons, including mustard gas (ISIS) and barrel bombs (ISF);
- attacks by both sides on places of special protection, including hospitals and medical facilities;
- the recruitment of child soldiers by the PMUs and by ISIS, including in ISIS’ case their use as suicide bombers;
- a series of escalating and often unlawful tac-

tics by both sides which result in very high levels of civilian suffering, including the use of ‘human shields’, the employment of siege tactics on civilian-populated cities, the intensive bombardment of urban areas and the failure to ensure humanitarian access as well as safe corridors for population flight;

- the imposition on IDPs by Iraqi and KRG authorities of discriminatory documentation, screening and entry procedures at checkpoints and governorate border crossings;
- the inhumane treatment by parties on both sides of the conflict of detained civilians and fighters *hors de combat* in violation of Common Article 3 of the Geneva Conventions, including murder, mutilation, cruel treatment, torture and unfair trials;
- the failure by all parties to the conflict, including members of the international coalition, to acknowledge civilian casualties promptly and to investigate them transparently;
- the refusal by members of the international coalition to take sufficient collective responsibility for the violations committed by the Iraqi Security Forces to which they provide military support.

Given this weight of recent practice, it is feared that thousands of civilian lives in Mosul and surrounding areas are now at critical risk.

It is recommended that:

1. All parties to the conflict adhere at all times to their obligations under international humanitarian law, including ensuring respect for the fundamental principle of distinction, and their obligations under international human rights law.
2. The Iraqi Security Forces and allied militias should actively suppress revenge attacks and collective punishments inflicted by their forces on communities perceived to have supported ISIS and ensure the perpetrators of any such attacks are held accountable.
3. Specific measures should be taken by forces attacking Mosul to secure the protection of specially-vulnerable groups, including child soldiers, ISIS captives and forced recruits, and the children and families of ISIS members;
4. Members of the international coalition, including the US, UK and France, should:
 - take greater collective responsibility for ending gross violations committed by the Iraqi forces to which they provide operational military support;
 - establish a civilian casualty tracking cell in Combined Joint Task Force – Operation Inherent Resolve to ensure civilian casualties are acknowledged promptly and investigated rapidly and transparently;
 - provide adequate funding to international humanitarian agencies and Iraqi provincial authorities struggling to cope with a further escalation in Iraq’s displacement crisis.

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Civilian protection in the battle for Mosul: critical priorities

In brief

Recent precedents from military operations to retake Iraqi cities from ISIS control, including Tikrit, Ramadi, Fallujah and Sinjar, demonstrate a pattern of repeated failures to implement sufficient measures for civilian protection, both in the conduct of hostilities and in planning for the humanitarian consequences. Given this weight of recent practice, it is feared that thousands of civilian lives in Mosul and surrounding areas are now at critical risk.

Since 2014, ISIS has deliberately targeted civilians on numerous occasions, but parties on both sides of the conflict, including the Iraqi Security Forces and allied Popular Mobilisation Units, are responsible for:

- launching indiscriminate attacks, which fail to distinguish between military objectives and civilians or civilian objects;
- the use of prohibited weapons, and attacks on places of special protection, including hospitals and medical facilities;
- the recruitment of child soldiers; and
- the inhumane treatment of detained civilians and fighters *hors de combat* in violation of Common Article 3 of the Geneva Conventions, including murder, mutilation, cruel treatment, torture and unfair trials.

Such conduct, together with the imposition of siege tactics on ISIS-held cities and the intensive bombardment of urban areas by Iraqi and international coalition forces, has combined with the ISIS tactic of using 'human shields' to result in thousands of civilian casualties

and high levels of civilian suffering. The failure to ensure humanitarian access as well as safe corridors for population flight has also been compounded by the imposition on IDPs by Iraqi and Kurdish authorities of discriminatory documentation, screening and entry procedures at check-points and governorate border crossings.

In the context of military operations to retake Mosul, **this report recommends:**

- Members of the international coalition, including the US, UK and France, should take greater collective responsibility for ending gross violations committed by the Iraqi forces to which they provide operational military support; and should establish a civilian casualty tracking cell in Combined Joint Task Force – Operation Inherent Resolve to ensure civilian casualties are acknowledged promptly and investigated rapidly and transparently;
- The Iraqi Security Forces and allied militias should actively suppress revenge attacks and collective punishments inflicted by their forces on communities perceived to have supported ISIS and ensure the perpetrators of any such attacks are held accountable;
- All parties to the conflict should adhere at all times to their obligations under international humanitarian law, including ensuring respect for the fundamental principle of distinction, and their obligations under international human rights law.

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