

Detention programming in Iraq

Global Protection Cluster Conference

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Iraq Context

- ▶ **Arbitrary detention** and disappearances of Iraqi IDPs, including children, was widespread **during military operations** to retake territories under extremist group control. Contributing factors:
 - ▶ Multiplicity of armed/security actors, and no central database, leading to arrests and re-arrests
 - ▶ Name similarities
 - ▶ Lack of civil documentation, particularly during flight to safe areas
 - ▶ Collective punishment of IDP families w/ perceived affiliations
 - ▶ Presence of armed actors in camps, undermining their civilian and humanitarian character, with reported incidents of detention
- ▶ **De facto detention** in specific camps for families w/ perceived affiliations, with severe movement restrictions

CM Coord for protection outcomes in Mosul response

- ▶ Prior to the Mosul offensive, GOI adopted a Concept of Operations (ConOps) that put **protection of civilians at its heart**
- ▶ The military ConOps was complemented by a **humanitarian ConOps** developed by UN CM Coord team in Sept 2016, with substantial inputs from PC
- ▶ These docs enabled the **engagement between the humanitarian community (through CM Coord) and military actors for the protection of civilians, albeit with challenges**
- ▶ While ConOps positive and laudable, **actual conduct of the Mosul offensive and treatment of civilians departed from those plans raising serious protection concerns**

Reality: Departure from CONOPS in Mosul response

- ▶ CONOPS stated that **security screening will take place only in designated screening sites**. However, reports of screening and detention taking place received: in informal sites on displacement routes (after crossing the frontline); door-to-door in newly retaken areas; in camps, often with the involvement of pro-government armed groups
- ▶ Although **many reports of detention** were obtained from IDPs upon their arrival in camps, the information was difficult to verify due to **informal nature of the screening process** resulting in detention
- ▶ In initial stages of Mosul emergency, **very limited capacity to address the large scale detention** in newly retaken areas. High number of detention cases identified through protection monitoring, but limited protection interventions for detention cases.

Detention related successes in Mosul response

- ▶ **Advocacy with donors** to provide funding to protection partners working on detention
- ▶ As a result, in 2017 there were 5 legal partners focusing on detention in Ninewa, covering such areas as:
 - ▶ **legal representation** (mostly name similarity or issuance of criminal record letters to prevent re-arrests)
 - ▶ **monitoring of official detention centers** where partners could obtain access (Mol-facilities)
 - ▶ **Family tracing and reunification**

Detention related successes in Mosul response

- ▶ **Detention legal aid activities complimented by work of general protection mobile teams, including:**
 - ▶ **Protection monitoring and assessments:** close to the frontlines, at mustering points and screening sites, where detention incidents were occurring
 - ▶ **Information dissemination:** information desk established at transit site, which enabled referrals to legal assistance on detention cases; info card with ICRC hotline number to report allegations of detention/arrest
 - ▶ **Legal assistance on civil documentation** as a means to prevent detention
 - ▶ **Psychological first aid:** PFA and counselling to families of detainees
 - ▶ **Preventative and responsive advocacy with security forces:** active engagement by partners with security actors e.g. direct interventions to prevent arbitrary detention, particularly detention of children; incidents of detention of larger groups of IDPs were reported in real time to the PC and elevated through CM Coord to HC for high level advocacy with Gol's High-level Advisory Team (HAT) and military command

Detention related successes in Mosul response

- ▶ High-level advocacy resulted in **Prime Minister's order to the security forces to provide information to families** who fled during Mosul campaign about their detained relatives (June 2017). No evidence available on whether this order was implemented on the ground
- ▶ December 2017: **first coordination meeting of detention legal partners** under Ninewa Legal Partners Meeting:
 - ▶ **Mapping of detention partners**
 - ▶ **Joint advocacy** on barriers in provision of legal assistance in Ninewa i.e. risks of detention in civil directorates and courts for individuals with perceived affiliations who wish to secure civil documents; verbal threats, hostility and general animosity against NGO lawyers representing IDPs with perceived affiliations; lack of coordination between security forces leading to re-arrests, etc.
- ▶ **Close cooperation with ICRC:** bilateral contacts by legal partners, establishing referral mechanism for detention/arrest cases b/w ICRC and Ninewa PWG partners (particularly for those detained in MoJ facilities)

Key Dilemmas

- ▶ **Provision of legal representation to “easy” cases** (e.g. name similarity) vs. engagement on more complex cases under Art. 4 of the Anti-Terrorism Law, which involve higher risks for NGO lawyers and impact on overall operational space for protection activities
- ▶ **Use of the death penalty in Iraq** for those convicted for terrorism-related offences. Given the flaws of the Iraqi justice system, it appears extremely doubtful that strict due process and fair trial guarantees are followed. This raises the prospect of **irreversible miscarriages of justice and violations of the right to life**. OHCHR has urged Iraqi authorities to halt all executions, establish an **immediate moratorium on the use of the death penalty** and carry out an **urgent and comprehensive review of the criminal justice system**.
- ▶ **Human rights organizations proposed creative detention programming** by humanitarian actors - e.g. court monitoring to ensure access to due process and fair trials
- ▶ **However, counter-terrorism policies of some humanitarian donors may impede work on difficult cases**
- ▶ Donors indicated that **detention programming would entail a costly and longer-term restructuring of the criminal justice system**, and should be left to rule of law / development actors

UNICEF/CP SC work on juvenile justice

- ▶ Republic of Iraq national law: **age of criminal responsibility** is above 9 (11 in KR-I)
- ▶ Many boys were separated from families to be screened during military operations
- ▶ Development actors with Juvenile Justice programs (e.g. UNICEF & partners) stepped up during emergency response, especially through: representation of children in juvenile court, and improvement of conditions in juvenile detention facilities (observation houses and reformatories), including access to social workers, and educational services
- ▶ **Challenges:**
 - ▶ Different legal frameworks in the Kurdistan Region of Iraq, and in the Central-South Iraq
 - ▶ Prolonged pre-trial detention, and limited access of humanitarian actors during pre-trial period
 - ▶ Reintegration program framework yet to be agreed, for children released from detention (e.g. family and community acceptance, livelihood support, etc.)



▶ **THANK YOU**