

Protection Sub-Working Group in Iraq

Draft Protection Strategy

Introduction

The primary responsibility for the protection of the civilian population in Iraq lies with the Government of Iraq (GoI). The UN Integrated Mission in Iraq, comprising the United Nations Assistance Mission for Iraq (UNAMI) and the United Nations Country Team (UNCT), continues to work with the GoI to enhance the protection environment for all persons within Iraq, through the provision of protection assistance, advice, technical support and capacity building. A number of national and international non-governmental organizations, with support from the NGO Coordination Committee in Iraq (NCCI), are engaged on direct support to all vulnerable categories of the Iraqi population across Iraq.

The United Nations Development Assistance Framework (UNDAF) 2011 – 2014, provides the current overall coordination mechanism for the delivery of UN assistance in Iraq. Based on Iraq's Five Year National Development Plan (NDP) 2010 – 2014, the UNDAF aims to support the Government of Iraq (GoI) to create a 'sustainable, secure and inclusive development environment contributing to human security, human development and social justice'. The UNDAF is structured around five Priority Areas, with protection coordination envisaged under the area of Governance and Human Rights.¹

The Protection Strategy outlined below, whilst not formally linked to the UNDAF, presents a framework for protection coordination and activities in Iraq, with the aim of guiding coordinated efforts to improve the protection of the civilian population in Iraq. It has been developed jointly by the members of the Protection Sub-Working Group. The document provides 1) a brief contextual overview of the protection environment in Iraq, highlighting key risks and challenges; 2) an outline of key protection and human rights issues; and 3) work-plan outlining strategic direction, interventions and enhanced protection coordination.

The Strategy is supplemented by the Terms of Reference for the Protection Sub-Working Group which sets out the operational modalities and an outline of activities for the group.

¹The 5 Priority Areas, each with a related 'Priority Working Group' (PWG) are: 1) Governance and Human Rights; 2) Inclusive Economic Growth; 3) Environment; 4) Essential Services; 5) Human Capital. The Governance and Human Rights PWG is co-chaired by UNDP and UNHCR. The sub-working group on Protection will be co-chaired by UNHCR and UNAMI Human Rights Office (HRO).

Definition of Protection

The present Strategy utilises the Inter-Agency Standing Committee (IASC) definition of protection. Pursuant to this, protection encompasses '*all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law (i.e. human rights law, international humanitarian and refugee law)*'.² This comprehensive definition thus provides a broad scope both in terms of the legal framework for protection and the strategies and methods which can be adopted by the protection working group.

Legal framework

Virtually all sectors of Iraqi society experience protection challenges due to the ongoing insecurity, political instability, weak economy and poor living standards. These issues are exacerbated by gaps in the rule of law both *de jure* and *de facto*.

Iraq is a State party to a number of key international human rights instruments, including the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child. Iraq has also ratified the four Geneva Conventions of 1949³ and has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁴ However, many of the provisions of the treaties which Iraq ratified or acceded to have not been fully incorporated into national legislation.

The 2005 Constitution of Iraq provides fundamental human rights guarantees including with regard to the rule of law, equality before the law, equal opportunity, privacy and judicial independence. However, national institutions to implement these rights remain weak, and Iraqi citizens face serious challenges in their ability to access and enjoy their rights. These issues are discussed in further detail below.

Protection environment

Main protection issues

Threat to life

Despite significant improvements in security since the height of sectarian violence in the 2006 – 2008 period, the situation across the country remains unstable, particularly in Baghdad as well as Ninewa and Kirkuk. Security incidents continue

² This definition was originally agreed during the 1999 Workshop of the International Committee of the Red Cross (ICRC) on Protection.

³ Iraq has signed, but not ratified the Convention on Cluster Munitions; Iraq has also not ratified the Additional Protocol II to the Geneva Conventions.

⁴ The process of ratification has not yet been finalized.

to be reported, albeit on a smaller scale than in previous years, mostly directed at security personnel and political figures. Civilians remain the highest casualties of the on-going violence. The Brookings Institute reported that 1,578 civilians were killed in 2011, almost half the number of killed civilians reported for 2010: 2,953.

Displacement / Returns

Relative improvements in the security situation since 2008 have led to significant numbers of IDP and refugee returns with estimates ranging from 1 to 1.5 million.⁵

Despite the returns, however, large numbers of persons remain internally displaced with an estimated 1.3 million Iraqis (224,000 families) unable or unwilling to return at present. Baghdad hosts the largest number of IDPs, with some 572,783 persons / 95,338 families; including 148,483 persons living in 121 settlements. Across the country, an estimated 467,000 persons (IDPs, returnees and other conflict-affected persons) remain in more than 351 settlements, where living conditions and the overall protection environment are extremely poor and access to services limited. For instance, while a vast majority of IDP rely on PDS rations, many have problems transferring PDS cards from the place of habitual residence to the place of displacement. Compounding this problem further, many displaced individuals lack the necessary documentation to claim PDS rations and other social welfare benefits the government provides. Food assistance, distributed to all families in Iraq on a regular basis, is thus often denied to those who would need it most. Most IDPs lack adequate shelter and squat in 'informal settlements' on land owned by private persons or government agencies, awaiting the eviction. The settlements with ad-hoc shelter are overcrowded, they lack proper sanitation, and often enjoy only so much electricity and water as they can illegally extract from the neighbouring community by connecting to their power grid or water systems. Some reports thus indicate that in Baghdad alone 77% of IDPs have insufficient access to electricity, 74% insufficient access to water and 79% of settlements have poor or non-existent sanitation. As many do not have consistent access to free or quality health care, reports of skin diseases or respiratory problems are frequent (e.g., in 2010, in Diyala, 90% reported skin diseases and 77% respiratory problems).

Additional problem faced by IDPs in settlements and in host community is access to education. The low numbers of enrolment of children in primary schools amongst IDPs is found to be a result of several reasons: firstly, many IDPs do not have sufficient funds for school uniforms or materials or find that the nearest educational facility is too far away and thus inaccessible for children without organized public transportation; second, many displaced families struggle to provide for their families, the situation which forces the children to engage in begging or daily labor

⁵ Total number of returnees from 2003 to 2010 is estimated at 1,298,216 individuals and from January to November 2011 at 230,790 individuals.

March 2012

to supplement family's income. In Baghdad alone, 89% children under 14 were reported to have been engaged in daily labor in 2010.

In 2011, the Government of Iraq began to allocate land for resettlement in most provinces with a large numbers of displaced people, but the process of land allocation, service provision and integration remains marred with problems. As such, prospects for durable solutions are unclear and steps need to be taken to support the implementation of progressive GoI and governorate level policy toward durable solutions, particularly for the most vulnerable populations of concern.

Discrimination and minority rights

While there have been some improvements in terms of security for Iraq's ethnic and religious groups, their situation continues to be precarious and members of these groups remain subject to discrimination, harassment and targeted attack. Although freedom of religion is guaranteed under the Iraqi Constitution, the supremacy of Islam is fundamental, including as the principal source of law, which can give rise to policies / practices discriminatory to religious minorities. Groups/ individuals perceived as contravening Shari'a law continue to be at risk of attack, with the most high profile attacks during 2010 / early 2011 on the Christian community in Baghdad and Ninewa. Ethnic minorities, particularly groups in the 'disputed territories', including Turkmen, Shabak and Assyrian-Chaldeans remain at risk, with reports of discrimination by authorities and challenges in accessing assistance.

The topic of homosexuality is largely taboo in Iraq. Members of the lesbian, gay, bisexual and transgender (LGBT) community usually keep their sexual orientation secret and live in constant fear of discrimination, rejection by family members, social exclusion, intimidation and violence. While the Iraqi penal code does not expressly prohibit homosexual relations between consenting adults, a variety of less specific, flexible provisions in the penal code leave room for active discrimination and prosecution of LGBT persons and feeds societal intolerance

Gender based violence

Serious abuses against women and girls, including domestic violence, forced /early marriage, honour killings, female genital mutilation, sexual exploitation and trafficking persist. Sexual and gender based violence (SGBV) remains prevalent throughout Iraq, with reports of violence committed by family members, armed forces as well as armed opposition groups. Survivors are often reluctant to report incidents of violence due to fear of reprisals and a lack of effective redress and accurate statistics of SGBV are unavailable. In most areas, responders to SGBV are often untrained and lack the skills to safely and effectively provide assistance (including, but not limited to police and hospital personnel).

Despite some provision for gender equality in national legislation,⁶ as well as applicable international law, protection gaps exist both *de jure* and *de facto*.

In many respects the legal framework remains highly discriminatory towards women. Certain provisions in the Iraqi Penal Code, for example, enshrine a husband's right to discipline his wife,⁷ and provide for lighter sentences for males who murder female relatives following perceived violations of social mores.⁸ Rape is a private offence, and a perpetrator is excused if he marries his victim.⁹ Marital rape is not an offence. Furthermore, many of the most vulnerable survivors of violence, and women generally, generally have low levels of do not have the same knowledge about how to access justice and services available to them.

The capacity and willingness of authorities to prevent violence, protect women and prosecute perpetrators are extremely limited. Few shelters are available, and only in the Region of Kurdistan. A lack of holistic protection mechanisms for long term support, including medical, counselling, and psychosocial mean that shelters are presently not a viable option for women affected by violence. Legal and policy reform are needed to ensure that victims of abuse and violence are not criminalised, but are protected and provided with adequate medical and social care. Mechanisms to provide sustainable support to survivors of violence, in the form of livelihoods, education and vocational training are also widely needed throughout the region.

A number of programmes are currently being undertaken within the Protection Sector to address violence against women and girls - in terms of prevention and response, at both the community level and working with Government authorities, as highlighted further below.

Child protection

Decades of internal strife, sanctions and violent conflict have left their mark on three generations of children in Iraq and have greatly weakened and in some cases destroyed institutions and systems for physical, social and legal protection. In addition, the loss of tens of thousands of caregivers has further eroded children and youths' protective environment, creating conditions that expose significant numbers to extreme levels of deprivation and violence, denying them the enjoyment of their basic human rights.

As observed by UNICEF in 2010¹⁰, over the last five years, thousands of Iraqis have lost their life. Today, children and young people are still vulnerable to a wide range of rights violations. Children and youths are still being heavily impacted by acts of sectarian or conflict related violence, as well as by explosive remnants of war

⁶ Article 14 of Constitution – Iraqis are equal before the law without discrimination based on gender.

⁷ Iraqi Penal Code, 1969 (Law No. 111 of 1969), Article 41(1).

⁸ Ibid, Art. 128.

⁹ Ibid, Art. 393; Art. 398.

¹⁰ UNICEF evidence to Universal Periodic Review (UPR) 2010

(ERW). Armed operations keep on being conducted in civilian populated areas, including where children and youths congregate. According to the information received in 2011 by the Task Force monitoring and reporting violations committed against children in the context of the armed conflict (MRM), some 108 children have reportedly been killed, 265 injured. Children are paying a high price for the country's landmine and unexploded ordnance contamination¹¹ and damage extends beyond physical harm as it also restricts children's ability to safely go to school, play and enjoy a happy childhood. The recruitment and use of children by a range of Iraq's non-state armed groups remains an issue of concern as well as the high number of children and youths abducted for ransom or other criminal intents. The treatment of children and young people in contact with the law is of concern with some 1,200 currently held in MoLSA run facilities and in an unknown number in adult facilities in condition below international standards.

In addition, access to basic services remains a key challenge, particularly for children already vulnerable such as those from displaced families living in informal settlements, children living in institutions or those with disabilities. Lack of adequate educational facilities, poor standards (quality) of teaching particularly, school non-attendance and drop-out are major concerns as well as poor access to quality primary health care. Education and medical facilities and personnel are furthermore also targeted by acts of violence. Child labor is still of concern with 7 per cent of children from 5 to 14 years reportedly working according to Iraq Multiple Indicator Cluster (MICS) 4 preliminary results¹². Finally interpersonal violence is also thought to be prevalent. The Iraq Psychologists Association (IPA) reported an increase in aggression against children in Iraq from their own parents and MICS in 2006¹³ found that 84% of children aged 2-14 had been subjected to at least one form of psychological or physical violence. Gender-based violence (GBV) affecting children and adults remain of great concern, particularly when it relates to early marriage, sexual abuse, exploitation, "honour killings"¹⁴ or Female Genital Mutilation. Although marriage under 18 is prohibited, as is forced marriage, a judge may permit marriage of a person of 15 years.¹⁵ Early marriages are performed through religious contract and are not recognised by law. Girls married under this system are vulnerable to further exploitation; children born to such marriages lack civil identification.

¹¹ Iraq has one of the world's largest problems of landmines, unexploded ordnance (UXO) and other explosive remnants of war (ERW) with a contamination of more than 2 million landmines/UXO and cluster bombs.

¹² Iraq National Youth and Adolescence Survey, COSIT (2009), available at http://cosit.gov.iq/english/pdf/2010/youth_nys.pdf

¹³ Multiple Indicator Cluster Survey 3, available at http://www.childinfo.org/files/MICS3_Iraq_FinalReport_2006_eng.pdf

¹⁴ Human Rights Report (1 January – 30 June 2008), UN Assistance Mission in Iraq.

¹⁵ Articles 7 – 9 Personal Status Code

March 2012

Formal mechanism(s) for identifying children who are at risk of abuse, neglect, exploitation or who are already victims of violence are weak or non-existent in Iraq. While some services do exist, their lack of capacity, resources and the poor coordination between duty-bearers highlight the absence of and the need for a child protection system.

Refugees / asylum seekers

The GoI is not a signatory to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, and advocacy for accession remains a key protection priority. It is a priority as well that the GOI continues in its respect for the principle of *non-refoulement* of all asylum seekers and refugees in its territory, pursuant to the Constitution of the Republic of Iraq and to continue in its efforts to develop a fair and efficient asylum processes in Iraq. The protection of refugees is governed by the 1971 Political Refugee Act, while a proposed Refugee Law remains a draft.

A total of 35,322 refugees (9,820 cases) are registered in Iraq, including Palestinians, Iranians, Turkish and Syrians.¹⁶ Important steps have been taken by the GoI towards the protection of asylum seekers / refugees, including registration of all refugees in Central Iraq and in Makhmour Refugee Camp in Ninewa, and issuance with ID cards, thus enabling freedom of movement and access to employment, education and basic services. The GOI should continue the registration and providing ID cards to all refugees in Iraq.

For many refugees and despite a favourable legal framework, the protection environment remains challenging with refugees facing the same difficulties as Iraqis in terms of security, poor infrastructure and unemployment, and some refugee communities continue to face sporadic attacks, harassment, abuse and discrimination, which is significantly impacting on their ability to live a normal life..

Under the 2006 Iraqi Nationality Law, persons who have resided legally in Iraq for ten years or more may become eligible for Iraqi nationality. While some refugees have formerly availed themselves of the opportunity to acquire Iraqi nationality, or are in the process of doing so, many other refugees continue to face challenges to benefit from this law, while it could enhance their integration in the context of durable solutions. The Government of Iraq needs to consider making the opportunity available to all refugees eligible to the Iraqi nationality by the Iraqi Nationality Law

All three durable solutions may be considered for different groups, including third country resettlement for refugees with specific protection needs.

Stateless persons

¹⁶ In addition, UNHCR statistics record 4,295 asylum seekers in Iraq (1,495 cases) – as at end Feb 2012.

Iraq hosts an estimated 120,000 stateless persons, mostly comprising Faili Kurds and Bidouns. While Iraq is not a signatory to the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness it has produced the “Iraqi Nationality Law” (Law No. 26 of 2006) which contains provisions aimed to remedy and prevent statelessness. A key element of the law repeals the previous Government’s Decree 666 which stripped a large number of Faili Kurds of their citizenship. As a direct result upward of 25,000 Faili Kurds are reported to have regained Iraqi citizenship. Through the PACs, UNHCR assist stateless persons to receive documentation and access administrative and legal institutions.

The last Iraqi census happened in 1987 under Saddam Hussein's regime and counted a total Iraqi population of 16 million. International organizations now put that number at around 30 million. The continued postponement of the census poses a serious and limiting factor in properly identifying the true number of stateless in Iraq. Plans to hold the census in 2007 were cancelled because of sectarian violence in the country at the time. Recent delays have been caused by less specific explanations. Political party representation, disputed territory matters and low prioritization are seen as the cause of on-going delays.

The advancement of rights and protection for the stateless in Iraq is constrained by the lack of clear data on the actual locations and numbers of people involved. Alternative means of reaching out into the stateless community have been experimented with in 2011. Through information sharing at the PACs/PARCs with stateless seeking assistance it has been hoped that more stateless would make them known to the UNHCR. However, many in these groups have not seen that there is a clear benefit to being identified pending improvement action on improving laws to their benefit.

While the “Iraqi Nationality Law” makes provisions to restore citizenship for the Fali Kurds who were stripped of their nationality under the former regime, it exclude the possibility of restoring or granting citizenship for the purposes of population prejudicial to demographic composition. More specifically, issues of statelessness that affect the balance in disputed territories will not be addressed.

Basic surveys in the field of statelessness have taken place showing that the so-called Bidoun “lit without nationality” who have been deported from Kuwait following the Iraq-Kuwait war have acquired the Iraqi nationality by the time of the former regime; they however keep referring to themselves as Bidouns in relation to their rights in Kuwait and with the aim to recovering their confiscated property. Faili Kurds returnees from Iran have also access to the Iraqi citizenship, a better cooperation with the GoI in conducting a large scale survey is needed for a better understanding, Security remains however a challenge to reach out to different locations where stateless are scattered especially in the desert of Anbar and the south.

Incremental progress in the area of restoring the citizenship of Faili Kurds by the Government of Iraq represents the single largest area of solutions offered to the Stateless in Iraq. A national census, followed by legislative action to recognize Iraqi citizens living in a stateless condition are needed to accelerate the delivery of citizenship to the large group in need in Iraq.

UNHCR's strategy for identifying the true number of stateless in Iraq is heavily dependent on the government's decision to finally carry out the much needed census. On an interim basis UNHCR continues to raise the matter of the stateless with our government counterparts and to advocate for the advancement of policies and legislation for the benefit of this group. It must be recognized that Iraq is taking positive steps on behalf of the group, without being obliged under international conventions and protocols. Nevertheless, the prevailing internal struggles among political parties, dealing with the anticipated withdrawal of the US forces and managing the on-going security challenges all proved to be too big to allow needed attention to be given to the census.

Rule of Law/Detention

The GoI's administration of justice has attracted serious criticism, particularly the management of prisons and detention centres. Conditions in Iraqi detention facilities, including juvenile centres, fall short of international standards, due to a lack of capacity and resources.¹⁷ Concerns have been raised over the lack of due process and fair trial standards, as well as the treatment of persons in detention-torture and other abuses have been widely reported. The current criminal justice system has a huge weight on punitive approach; thus, even minor offences, institutionalization is the first option and deprivation of liberty is not used as last resort and for the shortest possible period of time. There is still a lack of MoLSA detention facilities, and mostly concentrating in Baghdad, which inevitably put children in police detention centre or adult prisons. Even the MoLSA operates detention centres, the quality of social services is minimum and capacity of the staff is still very low. Legal and institutional reforms as well as effective implementation of the laws and regulations are required to address the serious protection gaps in this regard. Legal and institutional reforms as well as effective implementation of the laws and regulations are required to address the serious protection gaps in this regard.

¹⁷ Reference is made to the Iraq Briefing Book, December 2010.