

## Extremism, Contested Territory and Diversity: An Opportunity for Development of Iraq's National Policy on Displacement in 2020?

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### Abstract

After decades of brutal dictatorship under Saddam Hussein and years of sectarian civil war, followed by the 2014 ISIS take over, and subsequent loss, of territory in the north and west of the country, Iraq's institutions and people are still reeling. Though post-war reconstruction is now underway and the numbers of internally displaced persons (IDPs) in Iraq are gradually decreasing, there remain almost two million displaced people scattered throughout the country. Over half of these IDPs have been displaced for more than three years.

The contemporary displacement landscape in Iraq is both problematic and unique. Protracted displacement has become entrenched as a norm, with state response to date emphasising return as the only desirable solution. Complicating the search for durable solutions is the ongoing conflict between the government of Iraq and the Kurdish Regional Government, over the resource-rich Disputed Territories, which are historically the most ethno-religiously diverse region of Iraq. Additionally, the presence of perceived ISIS-affiliates among the IDP population renders implementation of durable solutions extremely challenging, whilst simultaneously raising unique protection concerns as these perceived affiliates remain extremely vulnerable to abuse and discrimination by state and security forces, as well as civilians.

In 2008 the Iraqi Ministry of Displacement and Migration published a national policy on displacement, which was never implemented. At the time, on paper, it represented a relatively robust mechanism for protection. It is, however, inadequate to respond to the current displacement context within Iraq, particularly the protection needs of minorities within the Disputed Territories and perceived-ISIS affiliates. This research examines the contents of the policy against the current protection needs of IDPs, before exploring how it can be updated, and made relevant, by drawing upon the effective, holistic provisions contained within the African Union Kampala Convention.

### Keywords

Iraq; displacement; ISIS; extremism; protection

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## 1. Introduction

After decades of brutal dictatorship under Saddam Hussein, years of sectarian civil war triggered by the 2003 U.S-led coalition invasion, followed by the 2014 Islamic State of Iraq and Syria (ISIS) occupation and subsequent loss of territory in the north and west of the country, Iraq's institutions and people are still reeling. Though post war reconstruction is now underway and the numbers of Internally Displaced Persons (IDPs) in Iraq are gradually decreasing,<sup>1</sup> there remain almost two million displaced people scattered throughout the country. Over half of these IDPs have been displaced for more than three years.<sup>2</sup> Many Iraqi IDPs currently enduring situations of protracted displacement are relying increasingly on negative coping mechanisms 'such as reducing meals, borrowing money, and in worst cases, resorting to child labour, prostitution, organ sale and begging';<sup>3</sup> demonstrating that protection needs are not being met.

The legacy (and existence) of ISIS in Iraq significantly exacerbates an already challenging displacement context. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) identifies those IDPs perceived as being extremist-affiliates as 'the most vulnerable beneficiaries that humanitarians serve';<sup>4</sup> evidencing this assertion by pointing to the fact that IDP communities containing suspected extremists and supporters of extremism are often subjected to raids by security forces, as well as arbitrary arrest and detention. OCHA has also described how 'women and children whose [male relatives] are accused of being...[ISIS]-affiliates can face grave consequences.'<sup>5</sup> Many contemporary returnees are perceived as ISIS affiliates and acts of revenge are being carried out against both people and property as these individuals return.<sup>6</sup>

The contemporary displacement landscape in Iraq is both problematic and unique. Protracted displacement has become entrenched as a norm, with state response to date emphasising return as the only desirable solution. Complicating the search for durable solutions, is the ongoing conflict between the government of Iraq and the Kurdish Regional Government over the resource-rich Disputed Territories, which are historically the most ethno-religiously diverse region of Iraq. Additionally, the presence of perceived ISIS-affiliates among the IDP population renders implementation of durable solutions extremely challenging.

In 2008 the Iraqi Ministry of Displacement and Migration published a national policy on displacement, which was never implemented. At the time, on paper, it represented a relatively robust mechanism for protection. It is however inadequate to respond to the current displacement context within Iraq, particularly the protection needs of minorities within the Disputed Territories and perceived-ISIS affiliates. The existing 2008 NPD is one of only two in the Middle East,<sup>7</sup> but whilst rendered obsolete by dysfunctional bureaucracy, this accolade is meaningless. Iraq currently has a real opportunity to set a positive precedent for IDP protection by formulating pragmatic durable solutions which incorporate non-discriminatory protection provisions, and which take a preventative approach to future displacement.

With the above-mentioned opportunity in mind, this research examines the contents of the NPD against the current protection needs of IDPs, before exploring how it can be updated, and made relevant, by drawing upon the effective, holistic provisions contained within the 2010 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention). Very little existing academic literature examines the case for updating Iraq's NPD, and no other literature approaches the subject via identification of lessons that can be learned from the Kampala Convention.

Due to the entrenched protracted displacement currently experienced by Iraqi IDP communities, this paper will employ a critical durable solutions-based theoretical framework as a means through which to examine how the Kampala Convention can be utilized in order to develop Iraq's NPD. Whilst doing so, this paper will also draw from the 2004 Guiding Principles on Internal Displacement (GPs). The GPs are of particular normative importance due to their status as the primary international instrument for IDP protection. Unlike refugees, IDPs do not benefit from the provisions of an internationally legally binding convention. Rather, the GPs can be categorized as 'soft law': though not legally binding as a stand-alone instrument, they direct parties to legally binding provisions within existing international human rights and humanitarian law which are relevant and applicable for the protection of IDPs. In contrast, the Kampala Convention is a legally binding instrument, but applicable to African states only, though it is

1 Nancy Riordan reports that in 2015, the Internal Displacement Monitoring Centre estimated that the number of IDPs in Iraq had risen to 4 million: see Riordan, (2016), *Internal Displacement in Iraq: Internally Displaced Persons and Disputed Territory*, *New England Journal of Public Policy*, 28 (2), p1. This 2015 internal displacement figure of 4 million has since decreased to a 2019 displacement figure of 1.8 million. See: United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (February 2019), *Iraq Humanitarian Response Plan: January – December 2019*, p6.

2 United Nations Office for the Coordination of Humanitarian Affairs, (November 2018), *Humanitarian Needs Overview: Iraq*, p7.

3 Higel L, (2016), *Iraq's Displacement Crisis: Security and Protection*, *Ceasefire Centre for Civilian Rights and Minority Rights Group International*, p5.

4 United Nations Office for the Coordination of Humanitarian Affairs, (November 2018), *Humanitarian Needs Overview: Iraq*, p22.

5 Ibid.

6 Ibid.

7 The other Policy being Yemeni. See Nicolau I & Pagot A, (2018), 'Laws and Policies on Internal Displacement: Global Adoption and Gaps', *Forced Migration Review*, 59, p9.

able to set precedents, which over time may develop international traction and transform into international norms. The Kampala Convention is renowned as an extremely effective instrument because it employs a holistic approach to protection, employing a preventative, rather than purely reactionary, response to displacement.

The needs of IDPs in Iraq are many, particularly as protracted displacement becomes entrenched as the norm rather than the exception. However, this paper will focus specifically on the protection needs of two groups of people whose displacement within the current Iraqi context makes them exceptionally vulnerable: perceived ISIS affiliates and minorities; especially minorities originating from Nineveh and other areas within the Disputed Territories. The focus on these two categories of IDP is not to privilege the protection needs of these groups, but rather to highlight the distinct challenges the Iraqi state faces in ensuring adequate protection and realistic durable solutions for all IDPs in Iraq. After careful analysis of both the Kampala Convention and the GPs, this paper will argue that by incorporating provisions from the Kampala Convention, rather than the GPs, Iraqi authorities can, and should, create a relevant and robust NPD for Iraq.

## 2. Analytic Framework

This research focuses on protection-based durable solutions to protracted displacement within a very specific context: that characterized by disputed territory, presence of a diverse array of minority groups and deep trauma resulting from recent ISIS-occupation of a large section of territory. These factors are interrelated, largely because a wide array of minorities originate from the Nineveh Plains, an area within Nineveh governorate, which in turn is located within the Disputed Territories of Iraq; an area which was occupied by ISIS. The crimes against minorities that ISIS committed have left many living in a situation of protracted displacement, remaining too fearful, or unable to return home.<sup>8</sup> Additionally, as Nancy Riordan points out, the post-ISIS conflict over the Disputed Territories [also] inhibits IDP return and prolongs destabilization,<sup>9</sup> further contributing to an atmosphere fuelled by tension, mistrust and discontent.

In response to these empirical factors, the analytic framework this research employs is a critical approach to durable solutions, defined by recognition of the inadequacies inherent within the three traditionally recognised durable solutions to displacement (sustainable return and reintegration; sustainable local integration in host community; and resettlement and sustainable integration into the new host community),<sup>10</sup> combined with the need for formulation of policies and approaches which address displacement in a bottom-up, participatory manner. It is here that the Kampala Convention proves instructive, demonstrating that such academic recommendations can be successfully transferred to legislative practice. The drafters of the Convention adopted a broad-based participatory approach to its creation, thus enabling the incorporation of grassroots concerns and critique of an institutionalised, top-down approach to identification of priorities and solutions.<sup>11</sup> Furthermore, the Kampala Convention emphasizes the fundamental role of collective, socio-economic rights in securing peace and sustainable solutions, which represents a departure from UN-formulated conventions and responses, which often prioritize civil and political rights.

Compounding the situation of entrenched protracted displacement in Iraq, is the lack of policy formulation, or even political will, on the part of the Government of Iraq (GoI), Kurdish Regional Government (KRG), or international stakeholders to objectively encourage integration into host communities as a durable solution. Rather, the aforementioned actors have consistently focused exclusively upon return as the sole solution available to IDPs,<sup>12</sup> despite the fact that many IDPs do not want to pursue this option. This problematic feature of state response to displacement is exacerbated in Iraq by the tendency of contemporary Iraqi IDPs to view security in terms of ethno-sectarian homogeneity.<sup>13</sup> Such a perception of safety clearly complicates durable solutions involving integration if the host community is not part of the same ethno-sectarian social group as the IDP, and clearly indicates the need for organized, community-led reconciliation initiatives as well as freedom of movement and freedom to choose place of residence.

It is clear that integrative durable solutions have been underexplored in the Iraqi displacement context, in favour of unsupported return,<sup>14</sup> despite a large body of refugee scholarship advocating precisely for integrative solutions to displacement. Roger Zetter and Katy Long make a poignant observation which is consistently overlooked by the Iraqi authorities and international stakeholders: 'People are unwilling to return as long as high levels of insecurity and weak or non-existent governance persist; host communities resist local integration; and resettlement is an option only for a few.'<sup>15</sup> Thus, Zetter and Long point to the need for a flexible, experimental, and politically risky approach to displacement, which incorporates the informal coping and survival strategies of IDPs, and allows for, or supports, secondary migration.<sup>16</sup> This academic recommendation reflects a central theme of the Kampala Convention, which emphasises the need for participation of IDPs in displacement response. Moreover, the Convention recognizes the importance of socio-economic rights, which are often the driving force behind de facto integration; independent integration which often occurs through IDPs pursuing informal livelihood strategies.<sup>17</sup>

8 Mixed Migration Platform, (27<sup>th</sup> April 2017: Round 1), 'IDP Perceptions in Northern Iraq', *Mixed Migration Platform and Ground Truth Solutions*, p3 and United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p4.

9 Riordan N, (2016), 'Internal Displacement in Iraq: Internally Displaced Persons and Disputed Territory', *New England Journal of Public Policy*, 28 (2), Article 10, p1.

10 Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons (2010), <https://www.unhcr.org/50f94cd49.pdf>

11 Kamungi P, (2010), 'Beyond Good Intentions: Implementing the Kampala Convention', *Forced Migration Review*, p53.

12 Siddiqui N, (2018), 'Balancing the Rights of Displaced, Returning and Remaining Populations: Learning from Iraq', *Forced Migration Review*, 53, p64.

13 Norwegian Refugee Council & Internal Displacement Monitoring Centre (NRC/IDMC), (December 2013), 'Internal Displacement in Iraq: Barriers to Integration', NRC / IDMC joint published with International Organization on Migration (IOM), p16.

14 United Nations General Assembly, (5<sup>th</sup> April 2016), 'Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his Mission to Iraq', A/HRC/32/35/Add.1, Human Rights Council, Thirty-second session, Agenda Item 3, p17 – 18.

15 Ibid, p34.

16 Ibid.

17 Zetter R and Long K, (2012), Unlocking Protracted Displacement, *Forced Migration Review*, 40, pp34-37.

Karen Jacobsen builds upon Zetter and Long's suggestions for addressing displacement by employing a livelihoods lens through which to view displacement situations. Just as Zetter and Long recognise that IDPs engage in informal, temporary migration as they seek their own durable solutions to their displacement, Jacobsen identifies the fact that in seeking jobs and income opportunities, IDPs are 'increasingly likely to end up in urban areas rather than camps.'<sup>18</sup> This is certainly the case in Iraq, where seventy one per cent of IDPs reside outside of camps,<sup>19</sup> forty per cent of whom are in need of protection assistance.<sup>20</sup> Jacobsen therefore argues that in inner cities, everyone, IDPs as well as the host community, struggles to meet the same basic needs, as they are confronted with the same 'structural problems associated with urban poverty'. This structural violence makes it difficult for individuals to secure adequate housing, sufficient food and clean water, access to healthcare, and education for their children.<sup>21</sup>

Like Zetter and Long, Jacobsen too calls for an approach to displacement which recognises and incorporates the informal survival strategies of IDPs, as opposed to a top-down implementation of rigid policy which fails to consider reality on the ground or IDP perspectives. In doing so, Jacobsen advocates for the use of a livelihoods framework which 'comprises an analysis of the assets and strategies refugees [and IDPs] use to achieve desired outcomes, and the institutional, or structural context... which constrains or enables these strategies.'<sup>22</sup> Within this framework, the outcomes of any interventions for the host community also play an integral role, and so, any attempt to address displacement should also improve the socio-economic conditions for the host community, or it cannot be considered durable. It can therefore be seen that the response to displacement advocated by Jacobsen mitigates the observation made by Zetter and Long; that host communities often resist integration of IDPs, and again provides an insight into the salience of collective, socio-economic rights.

Aside from informal coping strategies and socio-economic considerations for both IDPs and host communities, which are often overlooked by traditional approaches to durable solutions, an additional barrier to sustainability of solutions not mentioned thus far, is provided by Geraldine Chatelard. Chatelard convincingly argues that '[n]othing short of genuine peacebuilding and reconciliation efforts will create the conditions for [erasure]... of displacement'<sup>23</sup> no matter how much IDP response is mainstreamed into development. Nadia Siddiqui concurs, highlighting the absolute need for broad implementation of social cohesion and peacebuilding programming across affected communities: returnees, communities of return, host communities, as well as those still living in displacement,<sup>24</sup> if protracted displacement is to be solved sustainably. Since the 2003 U.S invasion and subsequent sectarian war, followed by the occupation of huge swathes of territory by ISIS, Iraqi social cohesion is in tatters. Peacebuilding and reconciliation initiatives will be fundamental to ensuring the success of any attempts at durable solutions, but they should not be prioritized above socio-economic development of entire host communities as an integrative measure. Rather, a dual strategy of community socio-economic development and service provisions should be employed alongside long-term peacebuilding and reconciliation initiatives if integration is to be successfully achieved.

Given the extreme vulnerability of IDPs who are perceived as ISIS-affiliates and the severe trauma that certain post-ISIS communities continue to suffer, for ethical reasons, this research makes no attempt to identify the presence of actual ISIS-affiliates within the Iraqi displaced population. Instead, the focus throughout this paper will remain upon how protection-based durable solutions can be achieved which incorporate perceived ISIS-affiliates and which address the ongoing conflict over the Disputed Territories, which disproportionately affects minority IDPs. It is increasingly clear that for IDPs who fled ISIS, as well as those perceived as ISIS-affiliates, return is not an option.

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18 Jacobsen K, (2006), Refugees and Asylum Seekers in Urban Areas: A Livelihood Perspective, *Journal of Refugee Studies*, 19 (3), p273.

19 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p16.

20 Ibid, p21.

21 Jacobsen K, (2006), Refugees and Asylum Seekers in Urban Areas: A Livelihood Perspective, *Journal of Refugee Studies*, 19 (3), p276.

22 Ibid, p279.

23 Ibid, p18.

24 Siddiqui N, (2018), 'Balancing the Rights of Displaced, Returning and Remaining Populations: Learning from Iraq', *Forced Migration Review*, 53, p65.

### 3. Methodology

This research undertook an entirely desk-based, qualitative approach to reviewing primary and secondary-source literature produced by journalists, scholars, practitioners, Non-governmental Organizations (NGOs), inter-governmental organizations and government bodies. Humanitarian reports and needs assessments produced by NGOs were heavily relied upon in order to identify those protection needs currently being met and those which are not. Wherever possible, reports were sought which had employed a participatory approach, enabling this research to incorporate IDP perspectives concerning desires, needs, perceptions and experiences. These humanitarian reports provided a contextual and factual framework in the form of primary data from which to analyse and develop theory as provided by practitioners and scholars.

The GPs and Kampala Convention were analysed and applied to the Iraqi context in order to ascertain whether the Iraqi NPD can usefully adopt provisions and approaches from either instrument. The Kampala Convention, specifically, is more holistic in its approach to protection, and thus more adept at dealing with a complicated displacement landscape, including the nuances of conflict and extremism as they interact with displacement. The GPs were used as a guide for desirable protection provision, but they did represent a protection ceiling, due to the fact that the Kampala Convention surpasses them in terms of protection during all stages of displacement, including prevention.

The primary ethical concern regarding this research relates to the presence of ISIS in Iraq and the perception (or misperception) among many Iraqis that IDPs from previously ISIS-held areas who have not yet returned home are ISIS affiliates. Presenting data that evidences the presence of ISIS-affiliates among IDP populations would be problematic as it could result in state refusal to provide protection and assistance for all IDPs originating from certain areas, all IDPs of a certain population demographic, or lead to increased harassment of IDPs by security actors. This concern is largely mitigated, however, by the fact that the aim of this research is neither to prove, nor disprove, the existence of ISIS-affiliates among IDP populations. The presence of such extremist-affiliates for the purpose of this research is largely irrelevant, as it is the protection concerns that arise from people's perceptions which will be focused upon.

## 4. The Complexities of IDP Protection in Iraq

### 4.1 4.1 The Displacement landscape in Iraq: Protracted displacement as the norm

Unlike many countries experiencing internal forced migration, displacement in Iraq is not contained within a specific geographic area such as a certain governorate, nor is displacement experienced by a specific demographic of the Iraqi population. Rather, Iraq has experienced three major waves of displacement since the U.S-led coalition invasion in 2003. Though each wave is distinct temporally and politically, they overlap significantly in terms of needs.<sup>25</sup> The first wave of internal displacement took place immediately after the invasion, when between 2003 – 2005, 500,000 individuals who had been displaced by Saddam's regime returned to Iraq. This triggered the displacement of approximately 200,000 people who had been inhabiting the homes of the returning diaspora, or who were otherwise fearful of repercussions. The second wave of displacement was the result of the sectarian conflict that broke out after the 2006 bombing of the Al-Askaria shrine in Samarra; a conflict which during its most intense period, resulted in 1,000 deaths per week.<sup>26</sup> This second wave of displacement began to subside during the latter half of 2007,<sup>27</sup> but in 2014, ISIS strengthened their offensive and occupied swathes of western and northern Iraq; notably Anbar, Nineveh and Salah al-Din provinces. The onslaught of ISIS, along with the subsequent battle to oust them, resulted in the displacement of a further six million people.<sup>28</sup> The International Organization for Migration (IOM) estimates that eighty-seven per cent of current IDPs originate from the previously ISIS-held territories.<sup>29</sup>

This widespread displacement and overlapping of complex, politically significant waves of forced migration within and between provinces, is, according to Philip Marfleet, reflective of 'systematic changes brought by invasion and occupation',<sup>30</sup> and is part of what makes the Iraqi displacement landscape both unique and challenging to address. Marfleet points to how in the wake of the U.S invasion, between 2005 – 2007, with sectarian violence and inter-communal distrust becoming increasingly entrenched, militias forced millions out of their homes on the basis that they should reside within areas homogeneously inhabited by their ethno-religious group.<sup>31</sup> Thus, the fracturing of community cohesion began as a result of the 2003 invasion and occupation, but escalated as sectarian conflict took hold of the country. By 2011, 'though minority communities comprised five per cent of Iraq's population, they comprised twenty per cent of those displaced.'<sup>32</sup>

With 1.8 million people still displaced throughout Iraq, and over half of these having been displaced for more than three years,<sup>33</sup> OCHA has declared that 'protection remains the overarching humanitarian priority in Iraq in 2019.'<sup>34</sup> It cites the most pressing protection concerns for 2019 as: 'retaliation against people with perceived affiliations to extremist groups; forced, premature, uninformed and obstructed returns; lack of civil documentation; severe movement restrictions in camps; arbitrary detention; IDPs and returnees who require specialized psycho-social support; extensive explosive hazard contamination; and housing land and property issues.'<sup>35</sup>

Protracted displacement is a particularly widespread, problematic feature within the Iraqi displacement landscape, with long-term IDPs now comprising the majority of the current displaced population.<sup>36</sup> The Internal Displacement Monitoring Centre (IDMC) defines protracted displacement as existing where 'the process for finding a durable solution for the displaced as stalled, and/or where the displaced are marginalized as a consequence of violations or a lack of protection of their human rights, including economic, social and cultural rights.'<sup>37</sup> Durable solutions on the other hand, are described by the Inter Agency Standing Committee (IASC) as being achieved 'when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement

25 Van der Auweraert P, (2011), 'Displacement and National Institutions: Reflections on the Iraqi Experience', *Middle East Institute and Fondation pour le Recherche Strategique*, p6.

26 Ali Z, (2018), *Women and Gender in Iraq: Between Nation-Building and Fragmentation*, p24 & 136.

27 Ibid.

28 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (February 2019), *Iraq Humanitarian Response Plan: January – December 2019*, p6.

29 Riordan N, (2016), 'Internal Displacement in Iraq: Internally Displaced Persons and Disputed Territory', *New England Journal of Public Policy*, 28 (2), Article 10, p7.

30 Marfleet P, (2011), 'Displacement and Denial: Internally Displaced Persons in Today's Iraq', *International Journal of Contemporary Iraqi Studies*, 5 (2), p280.

31 Ibid.

32 Ibid, p286.

33 United Nations Office for the Coordination of Humanitarian Affairs, (November 2018), *Humanitarian Needs Overview: Iraq*, p7.

34 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (February 2019), *Iraq Humanitarian Response Plan: January – December 2019*, p7.

35 Ibid.

36 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p16.

37 Cited in Norwegian Refugee Council & Internal Displacement Monitoring Centre (NRC/IDMC), (December 2013), 'Internal Displacement in Iraq: Barriers to Integration', NRC / IDMC joint published with International Organization on Migration (IOM), p32.



and can enjoy their human rights without discrimination on account of their displacement.<sup>38</sup>

Protracted displacement renders IDPs extremely vulnerable, but also, in the absence of integrative durable solutions, often entirely dependent on state and humanitarian aid. This forced dependence, as well as being unsustainable, leads to dire consequences for the mental health of IDPs.<sup>39</sup> Moreover, as displacement lingers on, and humanitarian organizations suffer the funding consequences of donor fatigue, protection gaps increasingly arise. UNICEF reports that 232 IDP children suffered grave abuses of their human rights between early 2018 and early 2019,<sup>40</sup> and 'it is estimated that twenty-four per cent of IDP families are using emergency negative coping mechanisms to address their basic needs, including children dropping out of school to work, criminal acts, child marriage and forced marriage.'<sup>41</sup> Additionally, 'at least 155,000 IDPs living in critical shelters remain severely underserved' with camps that were designed as temporary measures having been providing shelter for several years now. The inadequate winterization of camps was demonstrated in the winter of 2018, when during torrential rain, several camps in Nineveh were flooded, resulting in 7,000 IDPs being evacuated to higher ground.<sup>42</sup>

## 4.2 Protection needs unique to Iraq

Whilst the general protection needs of the Iraqi IDP population may also be experienced by a large number of IDP communities across a wide range of countries, there are two specific groups of Iraqi IDPs who have protection needs relatively unique to the Iraqi context: perceived ISIS-affiliates and minorities.<sup>43</sup> These two categories of IDPs will be focused upon due to the combination of their increased vulnerability and the challenging nature of their protection needs. If Iraq is able to formulate a comprehensive protection framework that meets the needs of these two categories of IDPs alongside the more general protection needs of the broader IDP population, and the socio-economic vulnerabilities of host communities, it will set an extremely positive precedent in the field of IDP protection that accounts for a multitude of contemporary conflict dynamics.

## 4.3 Perceived ISIS-affiliates

Though terrorist groups, insurgent groups and militias exist across the world, often controlling pockets of territory, few, if any, rival ISIS in terms of the relative size of the territory captured and administered compared to that of the state, nor the extent of the terror they inflict upon the local population. Thousands of minorities and Shia Muslims were brutally murdered and tortured by ISIS, who also kidnapped and enslaved minority women, forcibly conscripted children as combatants and imposed a radical extremist version of Islam upon the areas they occupied.<sup>44</sup> They completely corroded the social fabric of the areas they administered, and destroyed homes, infrastructure and livelihoods. The trauma inflicted by ISIS will be present for generations. Though now ousted from the Iraqi territory they once controlled, and significantly weakened, small cells of ISIS remain throughout the Nineveh Plains, Anbar and Salah al-Din,<sup>45</sup> contributing to an ongoing atmosphere of fear and distrust among IDPs; particularly between minority ethnic and religious groups and Sunni Muslims originating from former ISIS strongholds.<sup>46</sup> It is against this context of trauma and fear that the protection needs of IDPs who are perceived as ISIS-affiliates should be examined, though this is not to detract from the significant protection needs, particularly psycho-social needs experienced by victims of ISIS, which are well documented elsewhere.

The 2019 needs assessment produced by OCHA describes perceived ISIS-affiliates as 'the most vulnerable beneficiaries that humanitarians serve'<sup>47</sup> due to the fact that they are at increased risk of harassment and arbitrary detention by security forces, they may face 'grave consequences' at the hands of both security forces and civilians, they 'are often subject to discriminatory practices in the provision of, and access to humanitarian assistance', and finally, 'within camps, they can be isolated and segregated, subjected to movement restrictions, denied access to humanitarian aid

38 IASC Framework on Durable Solutions for Internally Displaced Persons, "Quick Reference Guide": <https://www.unhcr.org/50f94cd49.pdf>

39 Nouri B, (9<sup>th</sup> April 2019), 'After Years of Conflict, Iraq Grapples with a Mental Health Crisis', *The Wire* online and United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p22.

40 United Nations International Children's Emergency Fund (UNICEF), (April 2019), 'UNICEF Report: Humanitarian Action for Children, Iraq', p1.

41 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p4.

42 Magid P, (25<sup>th</sup> February 2019), 'As Displacement Runs to Years, Northern Iraq Camps Need an Overhaul', *The New Humanitarian*.

43 Minorities, though always in need of protection, possess unique protection needs within the structural, social and political landscape of Iraq.

44 Higel L, (2016), 'Iraq's Displacement Crisis: Security and Protection', *Ceasefire Centre for Civilian Rights and Minority Rights Group International*, p15.

45 Ali S, (7<sup>th</sup> July 2019), 'Iraqi forces launch new anti-ISIS operation in 'desert triangle' with support of coalition aircraft', *Kurdistan 24* online.

46 *Ibid*, p11.

47 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p22.

and victimized by sexual violence and exploitation.<sup>48</sup> Women and girls with perceived ISIS-affiliation are at extreme risk of sexual and gender-based violence (SGBV): OCHA notes that they 'have often been subject to sexual violence, exploitation and abuse by security actors' within camp settings.<sup>49</sup> Meanwhile, the stigma attached to perceived ISIS-affiliates increases their marginalization, sometimes culminating in expulsion from the community. This, in turn, can lead to affected individuals engaging in negative coping mechanisms, such as survival sex, and is a grave protection concern for both women and children with perceived ISIS-affiliation.<sup>50</sup>

The prism of securitization through which Sunni Muslim IDPs from former ISIS-held areas are currently viewed by both the Gol and KRG presents significant protection concerns. Whilst some perceived, or proven, ISIS-affiliates from within the IDP population are detained under Article 4 of Iraq's Anti-Terrorism Law (2005),<sup>51</sup> many are arbitrarily detained without charge and 'held for months at a time, without trial or access to justice.'<sup>52</sup> Ceasefire Centre for Civilian Rights illustrates how perceived ISIS-affiliates are at great risk of torture whilst detained, stating that IDPs in detention 'report experiencing or witnessing: electric shock; being hung by arms or feet and beaten; showered with boiling water; and deprived of meals.'<sup>53</sup> These reports correlate with the well-publicised international outcry over use of torture by KRG security forces against children who are perceived as ISIS-affiliates in order to coerce confessions.<sup>54</sup> Alarmingly, due to institutional shortcomings, there is also the potential for detained IDPs to fall through administrative gaps in the prison system and become either accidentally or intentionally disappeared.<sup>55</sup> Furthermore, state reluctance to issue or re-issue identification documents to perceived ISIS-affiliates<sup>56</sup> exacerbates this protection gap immeasurably, whilst simultaneously furthering marginalization and increasing the risk of radicalization.

In response to abuses of the human rights of perceived ISIS-affiliates among the IDP population, OCHA notes that 'the humanitarian community has advocated consistently against: denial of humanitarian assistance; collective punishment; acts of violence; arbitrary detention and arrests; harassment and threats against legal aid actors; freedom of movement restrictions; and discriminatory rules and segregation.'<sup>57</sup> Non-discriminatory protection is crucial during displacement, yet despite concerted, coordinated advocacy on the part of humanitarian actors across Iraq, violations continue to occur, particularly violations associated with maintenance of the civilian character of camps. Between January – June 2019, 143 incidents of this nature were reported in refugee and IDP camps, resulting in 173 violations. 'The highest increase in the type of incidents was with respect to the presence of armed military / security actors in camps.'<sup>58</sup> Such violations against the civilian character of camps by security forces have largely been driven by concern on the part of Gol officials that '[ISIS] fighters [are possibly] infiltrating communities of IDPs.'<sup>59</sup>

The securitization of Sunni male IDPs has had serious ramifications upon freedom of movement for IDPs, including their ability to gain access to safety, particularly outside of camps. Since ISIS entered Iraq and made territorial gains in 2014, there have been numerous incidences of restrictions of movement perpetrated by both the Gol and KRG, which have endangered the safety of IDPs.<sup>60</sup> Compounding the issue of restricted movement of certain IDPs is the fact that 'many returnees who are alleged to be affiliated with [ISIS] have been forcibly evicted from their homes,'<sup>61</sup> resulting in secondary displacement.

More recently, at the end of August 2019, Nineveh governorate authorities began returning IDPs who do not originate from the governorate to camps in Anbar, Kirkuk and Salah al-Din governorates. Approximately 1,600 IDPs have been affected by these forced returns. Exacerbating the negative impact of this forced removal from IDP camps, is

48 Ibid.

49 Ibid, p30.

50 Ibid.

51 See: [http://www.vertic.org/media/National%20Legislation/Iraq/IQ\\_Anti-Terrorism\\_Law.pdf](http://www.vertic.org/media/National%20Legislation/Iraq/IQ_Anti-Terrorism_Law.pdf)

52 Higel L, (2016), 'Iraq's Displacement Crisis: Security and Protection', *Ceasefire Centre for Civilian Rights and Minority Rights Group International*, p20.

53 Ibid.

54 Human Rights Watch, (8<sup>th</sup> January 2019), Kurdistan Region of Iraq: Detained Children Tortured, *Human Rights watch* online.

55 Higel L, (2016), 'Iraq's Displacement Crisis: Security and Protection', *Ceasefire Centre for Civilian Rights and Minority Rights Group International*, p20.

56 Van der Wolff A, (5<sup>th</sup> May 2019), 'The Denial of Identity Cards to Islamic State Affiliates: A Recipe for Renewed Radicalization?', Middle East Research Institute (MERI) Policy Brief, 4 (31).

57 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (February 2019), Iraq Humanitarian Response Plan: January – December 2019, p20.

58 Protection Cluster: Iraq and Camp Coordination and Camp Management Cluster: Iraq, (August 2019), 'Civilian Character of Camps Incident Tracking Matrix', Quarter Two 2019 – Quarterly Report. (Internal report, but used and information from within published with permission of the Iraq Protection Cluster Coordinator).

59 United Nations General Assembly, (5<sup>th</sup> April 2016), 'Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his Mission to Iraq', A/HRC/32/35/Add.1, Human Rights Council, Thirty-second session, Agenda Item 3, p12.

60 Ibid.

61 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p31.

the fact that despite the IDPs in question having been subjected to security screening before removal, Anbar governorate authorities have refused entry into camps to many of these IDPs, while others have been prevented from returning home. Worryingly, several IDP families returned to Kirkuk and Salah al-Din Governorates 'received death threats from community members', due to the perception that they are affiliated with ISIS.<sup>62</sup>

This securitization of IDPs prompted the UN Special Rapporteur on the Human Rights of IDPs to recommend in 2016 that 'while legitimate security concerns require responses, these must be temporary, have a legal basis and be non-discriminatory both in international humanitarian law and international human rights law.'<sup>63</sup> As the above-described protection concerns demonstrate, security responses to IDPs who are perceived ISIS-affiliates are far from temporary or indiscriminatory, and they certainly contravene international human rights and humanitarian standards prohibiting arbitrary detention, detention without trial, torture, and restrictions on freedom of movement amongst other protections.

#### 4.4 Minorities and the Disputed Territories

Minority IDPs in Iraq face a complex variety of protection needs depending on where they originate from, the cause of their displacement, what discriminatory practices and / or abuses they have been (or continue to be) subjected to at the hands of any combination of ISIS / state forces / militias / civilians, and how their particular social group is perceived by majority society. Many minority IDPs originate from the Disputed Territories which sit between recognised Gol and KRG-administered governorates, crossing the north of the country from East to West. 'The Disputed Territories are historically one of the most ethnically, culturally, and religiously diverse regions of Iraq, and for centuries have been inhabited by Turkmen, Assyrian and Chaldean Christians, Yazidis, Shabak and other minorities as well as Kurds and Arabs.'<sup>64</sup> Both Salah al-Din and Nineveh provinces, which were formerly occupied in whole, or in part, by ISIS are situated within these territories.

The distinct causes of displacement experienced by many minorities, who fled unprecedented mass brutality at the hands of ISIS, have led to a significant proportion of the minority IDP population being in dire need of comprehensive, long-term psychological assistance. Perhaps the most internationally recognised minority community who suffered horribly under ISIS, are the Yezidi, of whom almost 10,000 were killed or captured within just a few days in 2014.<sup>65</sup> 'Many Yezidis are struggling to deal with the psychological aftermath of what a UN commission has deemed [to be] genocide',<sup>66</sup> with suicide rates among the community rising sharply. 'Among the most profoundly traumatized are those who survived ISIS enslavement, many of whom have still not [returned]'<sup>67</sup> to their homes.

Whilst many minority IDPs may remain too fearful to return home, the option of voluntary return (with assistance and support) should always be available in accordance with Principle 28 of the GPs, which states that 'authorities have the primary duty and responsibility to establish conditions... which allow [IDPs] to return voluntarily, in safety and in dignity, to their homes or places of habitual residence'. However, the current socio-political landscape of Iraq poses numerous obstacles to return being successfully implemented as a durable solution, especially if those returnees originate from the Disputed Territories. These territories are resource-rich, containing large oil reserves, and as such, have been the site of armed conflict for political and territorial control between the Arab and Kurd authorities and their proxy militias for decades. This struggle has often played out in such a way as to have a disproportionately negative effect on the minorities who live within the territories.

In discussing how policies relating to the Disputed Territories influence and affect stabilization and solutions to displacement, Nancy Riordan describes how 'the IDP crisis we are witnessing has a cumulative aspect that includes: the unresolved historical displacement of Iraq's Kurds, Turkmen and other minorities through successive measures by the Iraqi government under Saddam Hussein to "Arabize" the oil-rich northern territories; attempts by Kurdish authorities since 2005 to reshape the demographic balance in their favour, especially in Nineveh and Kirkuk; displacement during the years of U.S-led occupation; and the battle against [ISIS] which [triggered]... the largest wave of displacement in the country's history.'<sup>68</sup> Writing in 2008, Elizabeth Ferris suggested that 'displacement [from and within the Disputed Territories] is not just an accidental by-product of the [Iraqi] conflict, but is both an objective and a strategy in the military struggle – a way of consolidating territorial and political control.'<sup>69</sup> This suggestion is

62 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (August 2019), Humanitarian Bulletin Iraq, p1-2.

63 United Nations General Assembly, (5<sup>th</sup> April 2016), 'Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his Mission to Iraq', A/HRC/32/35/Add.1, Human Rights Council, Thirty-second session, Agenda Item 3, p21.

64 Human Rights Watch, (2009), 'On Vulnerable Ground: Violence Against Minority Communities in Nineveh Province's Disputed Territories', p5.

65 Dearden L, (9<sup>th</sup> May 2017), Almost 10,000 Yazidis 'killed or kidnapped in ISIS genocide, but true scale of horror may never be known', *The Independent* online.

66 Westcott T, (29<sup>th</sup> July 2019), 'Uptick in Suicides Signals Deepening Mental Health Crisis for Yazidis', *The New Humanitarian* online.

67 Ibid.

68 Riordan N, (2016), 'Internal Displacement in Iraq: Internally Displaced Persons and Disputed Territory', *New England Journal of Public Policy*, 28 (2), Article 10, p1-2.

69 Cited in *ibid*, p2.

supported by a 2009 Human Rights Watch report documenting violence against minority communities in Nineveh,<sup>70</sup> which provides a great deal of insight into the circumstances and lived experiences of minorities within the Disputed Territories. The report illustrates that minorities in Nineveh are vulnerable to forced expulsion and physical coercion by both the Arab and Kurdish authorities as they each try to alter the demographics of the territories in their favour.

The political history of the Disputed Territories is multi-layered and extremely complex, being subjected to constant power-plays and changes of administration. As mentioned above, under Saddam's regime, a policy of Arabization was pursued by the state which sought to remove any non-Arab minorities from the region. After the U.S-led invasion however, with the tacit support of the U.S, the KRG incorporated the Disputed Territories into their own regional administration. More recently, in late 2017, as ISIS was being ousted from Mosul and the Nineveh Plains, Iraqi state forces, the Popular Mobilization Forces (PMF) and other allied militias reclaimed the Disputed Territories, placing them once again, under Gol control. In the latest turn of the political roundabout, Kurdish parliamentarians are currently alleging that a policy of Arabization of the territories is once again being pursued by the Gol.<sup>71</sup> However, for members of the KRG to express concern that Arabization will be detrimental for the rights of minorities would be disingenuous given its own post-invasion behaviour towards minorities in the territories. Human Rights Watch points to how minorities in the Disputed Territories 'bear...the brunt of the conflict...coming under intense pressure to declare their loyalty to one side or the other or face the consequences.' The group elaborates upon these consequences by detailing how minorities 'have been victimized by Kurdish authorities' heavy-handed tactics, including arbitrary arrests and detentions, and intimidation, directed at anyone resistant to Kurdish expansionist plans.<sup>72</sup> In an attempt to coerce minorities into identifying as Kurdish, or supporting the KRG as administrative authority in the territories, 'Kurdish forces have mostly relied on intimidation, threats, arbitrary arrests and detentions', but there have also been documented cases of torture.<sup>73</sup>

It is within this context of desperation, distrust and coercion which currently characterizes the Disputed Territories, that acts of 'retaliation and revenge'<sup>74</sup> against perceived ISIS-affiliates are being committed. The Gol and KRG's persistent emphasis on return as the most desirable solution, despite lack of support provided to returnees, is directly contributing towards increased inter-communal tensions, increased vulnerability of IDPs and returnees as well as secondary displacement. It is predominantly in the Disputed Territories that returnees have been forcibly evicted from their homes, prevented from returning, or forcibly returned by various Gol or KRG-aligned factions seeking to consolidate their control of the region.<sup>75</sup>

#### 4.5 Iraqi state response to displacement to date

The Gol has long struggled to adequately address the needs of the huge number of internally displaced within the state. Peter Van der Auweraert states that 'structural weaknesses affect all aspects of government institutions including the physical infrastructure, the staffing and the overall bureaucratic culture that civil servants need to work under.'<sup>76</sup> Deliberate mismanagement by the Baath regime under Saddam, post-invasion looting, corruption and an element of conflict-driven "brain drain" all contribute towards these structural inefficiencies. Meanwhile, institutional corruption is an insidious problem<sup>77</sup> which consistently serves to obstruct effective implementation of anti-discriminatory IDP protection and securement of durable solutions.

Despite entrenched corruption and 'continuing lack of institutional capacity',<sup>78</sup> a functioning Ministry of Displacement and Migration (MoDM) was established in 2003 and given the mandate of dealing with 'all matters pertaining to Iraqi refugees and displaced persons, including, but not limited to, matters associated with their repatriation, relocation, resettlement and reintegration.'<sup>79</sup> The MoDM serves as a focal point for organizations working with refugees and IDPs in Iraq, and is responsible for planning and implementing durable solutions. However, despite there being three internationally recognised durable solutions outlined under the 2010 IASC Framework on Durable Solutions

70 Human Rights Watch, (2009), 'On Vulnerable Ground: Violence Against Minority Communities in Nineveh Province's Disputed Territories'.

71 Shilani H, (4<sup>th</sup> July 2019), 'Kurdistan Parliament Investigates 'Arabization' in Iraq's Disputed Territories', *Kurdistan 24* online.

72 Human Rights Watch, (2009), 'On Vulnerable Ground: Violence Against Minority Communities in Nineveh Province's Disputed Territories', p5.

73 Ibid.

74 Ibid.

75 Riordan N, (2016), 'Internal Displacement in Iraq: Internally Displaced Persons and Disputed Territory', *New England Journal of Public Policy*, 28 (2), Article 10, p8.

76 Van der Auweraert P, (2011), 'Displacement and National Institutions: Reflections on the Iraqi Experience', *Middle East Institute and Fondation pour le Recherche Strategique*, p9.

77 Marfleet P, (2011), 'Displacement and Denial: Internally Displaced Persons in Today's Iraq', *International Journal of Contemporary Iraqi Studies*, 5 (2), p288.

78 Observation noted by the Internal Displacement Monitoring Centre, cited in *ibid*.

79 The MoDM was established by Coalition Provincial Authority Order 50. See Van der Auweraert P, (2011), 'Displacement and National Institutions: Reflections on the Iraqi Experience', *Middle East Institute and Fondation pour le Recherche Strategique*, p14.

for IDPs,<sup>80</sup> the MoDM and international stakeholders have consistently pushed exclusively for return.

Nadia Siddiqui points to how this emphasis on return is framed as 'the key to success in the aftermath of the conflict with ISIS', despite the fact that it neglects the reality of successful, sustainable return: it is a process that can take years.<sup>81</sup> Furthermore, Siddiqui explains how focusing exclusively on return can obfuscate implementation of human rights-based durable solutions, given the fact that for some, return is impossible (for example, approximately 2,522 square kilometres of land previously held by ISIS is littered with mines and unexploded ordinance),<sup>82</sup> whilst for others, their pre-displacement circumstances may have been characterized by a lack of rights, and therefore, in situations such as these, return is the least desirable durable solution.<sup>83</sup> An example of the failed return-focused policy is the 2018 state-assisted return to Mosul of IDPs from Harsham and Baharka camps in Erbil. The ensuing lack of livelihood and reintegration assistance, along with lack of provision of services in Mosul, proved to make long-term return untenable, therefore the returnees migrated back to the camps they had initially left in Erbil.<sup>84</sup>

Given the combination of socio-economic diversity that characterizes different governorates of Iraq, differing regional causes and consequences of displacement, disparity between numbers of IDPs present across different governorates, and the differing needs of host communities across the country, centralized governance makes effective response to displacement challenging. This is particularly so when considering that successful return-based and integrative approaches to durable solutions will require socio-economically and psycho-socially distinct sets of needs to be adequately addressed for both IDPs and host communities across different governorates. Additionally, in some instances, particularly within the Disputed Territories, central government authorities may be perceived as acting in a discriminatory fashion towards non-Arab IDPs and host communities in terms of the assistance provided which will only serve to ignite or perpetuate tensions between social groups.

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80 <https://www.unhcr.org/50f94cd49.pdf>

81 Siddiqui N, (2018), 'Balancing the Rights of Displaced, Returning and Remaining Populations: Learning from Iraq', *Forced Migration Review*, 53, p64.

82 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p30.

83 Siddiqui N, (2018), 'Balancing the Rights of Displaced, Returning and Remaining Populations: Learning from Iraq', *Forced Migration Review*, 53, p64.

84 Robinson A.C, (6<sup>th</sup> May 2018), 'Iraq's IDPs: If they don't visit the camps, how dare they ask us to vote?', *Rudaw* online.

## 5. Iraq's 2008 National Policy on Displacement – A Missed Opportunity

Iraq's 2008 NPD is notable for two reasons. First, as mentioned during the introduction, it is one of only two national displacement policies in the Middle East.<sup>85</sup> This is a considerable achievement given the aforementioned lack of capacity which characterizes Iraqi governmental institutions, combined with the fact that there is no regional legal instrument on the protection of IDPs specific to the Middle East or Arab countries. Though there is a regional human rights treaty; the 1994 Arab Charter on Human Rights,<sup>86</sup> which Iraq ratified in 2013, human rights should be viewed as complimentary in contexts of displacement due to the fact that they are often too general to adequately address specific displacement-oriented needs and contexts.

The second reason for which Iraq's NPD should be applauded is that it is one of only thirty laws and policies worldwide to explicitly mention the GPs. Furthermore, it is one of only nineteen to explicitly endorse the IDP definition contained within the GPs.<sup>87</sup> In this sense, the NPD is extremely progressive in terms of content, as in the absence of an international binding treaty on the rights of the internally displaced, the GPs are the most comprehensive international instrument operating to improve the protection of IDPs. However, whilst the NPD is progressive in terms of content, and in 2008 had the potential to set a very positive precedent in terms of IDP protection, it was never passed into domestic legislation, nor was it implemented in practice, with the MoDM failing to disseminate it to relevant line Ministries, or deliver targeted training to relevant Ministry staff.<sup>88</sup>

Since 2008, and specifically in the post-ISIS era, the displacement landscape within Iraq has evolved and complicated considerably. This paper will evaluate the contents of the NPD against the contemporary displacement context in Iraq in order to evaluate whether it would provide sufficient protection if passed into law as it is, or whether, if necessary, it could feasibly be developed into a robust protection mechanism that could address the protection concerns unique to Iraq. Due to the fact that the NPD is built upon the foundation of the GPs, the GPs will be examined in relation to the current Iraqi displacement context first, followed by the NPD. This approach will allow identification of shortcomings in both instruments in order to illustrate why the GPs should not necessarily represent a ceiling in IDP protection.

### 5.1 The Guiding Principles in the Iraqi displacement context

The GPs are relatively unique in terms of international protection instruments since they constitute "soft law" and are therefore non-binding as a stand-alone instrument. Though containing protection provisions which are binding at their source, or within customary international law, the GPs can arguably be viewed as representing a set of aspirational standards. One such example of their aspirational nature is the definition of an IDP contained within, which encompasses individuals fleeing 'the effects of armed conflict, situations of generalized violence, violations of human rights' as well as 'natural or human-made disasters.'<sup>89</sup> As Menaka Lecomwasam points out, 'the description of IDPs stated in the [GPs] is not a legal definition, but only a 'descriptive identification of the category of persons whose needs are the concern of the GPs.'<sup>90</sup> Therefore, this broad definition is extremely beneficial in terms of inclusive IDP protection only when incorporated, in full, within domestic, regional or international binding legislation.

The drafting process for the GPs has, according to some scholars, been key to their success and Roberta Cohen argues that three distinct features of this process are integral. First, she points to the grounding of the GPs in all three branches of law pertaining to the protection of IDPs: human rights, humanitarian and refugee law, therefore ensuring the applicability of the GPs 'to most situations of internal displacement.'<sup>91</sup> Secondly, she asserts that the drafters of the GPs employed a needs-based approach, examining existing law applicable to IDPs as a means through to which identify protection gaps. Thirdly, she identifies that though the GPs contain protection provisions for IDPs, they do not privilege IDPs over other vulnerable, non-displaced groups.<sup>92</sup> Though Cohen's implied confidence that protection gaps have been filled by the GPs is being overly optimistic, particularly within the Iraqi context, and specifically with regard to perceived ISIS-affiliates, the third factor is crucial for the success of securing durable solutions to displacement.

With reference to Cohen's second point concerning identification of protection gaps, the GPs do indeed contain many essential provisions for protection of IDPs without prejudice. Importantly, Principle 1 confers upon IDPs the

85 Nicolau I & Pagot A, (2018), 'Laws and Policies on Internal Displacement: Global Adoption and Gaps', *Forced Migration Review*, 59, p9.

86 <https://www.refworld.org/docid/3ae6b38540.html>

87 Orchard P, (2018), 'Implementing the Guiding Principles at the Domestic Level', *Forced Migration Review*, 59, p10.

88 United Nations General Assembly, (5<sup>th</sup> April 2016), 'Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his Mission to Iraq', A/HRC/32/35/Add.1, Human Rights Council, Thirty-second session, Agenda Item 3, p5.

89 The 2004 Guiding Principles on Internal Displacement, 'Introduction: Scope and Purpose', 2.

90 Kalin W, (2008), p9 cited in Lecomwasam M, (2014), 'The Internally Displaced in South Asia: Lessons from Kampala', *Asia-Pacific Journal on Human Rights and the Law*, 15 (1&2), p151.

91 Cohen R, (2014), 'Lessons from the Development of the Guiding Principles on Internal Displacement', *Forced Migration Review*, 46, p13.

92 Ibid.

same rights and freedoms as other citizens, whilst Principle 4 articulates their right to freedom from discrimination. In Iraq, these provisions are particularly useful for offering security and protection to minorities, especially within the Disputed Territories. The GPs can arguably be recognised as protecting minorities in general terms, but they have yet to accommodate the distinct protection needs of perceived ISIS-affiliates. For example, Principle 10 protects IDPs from 'enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death', but stops short of prohibiting arbitrary (yet acknowledged) detention or indefinite detention. Within the context of a sectarian, post-conflict environment recovering from terrorism, and specifically the brutality of ISIS, this is a significant shortcoming, as in such an environment arrests can be driven by political ambition and framed within the discourse of securitization to give an air of legitimacy, thus disguising the abuse of extremely vulnerable IDPs.

The Iraqi displacement landscape is a challenging arena in which to formulate and implement workable durable solutions, with the situation in the Disputed Territories demonstrating the absolute need for protection from forced return, prohibited return, forced secondary displacement and forced resettlement. Emphasis on the voluntary nature of any durable solution frameworks will be crucial for longevity and integration. Principle 28 of the GPs is maybe the most enlightened feature of the entire instrument, as it breaks the protection mould in order to provide for not only the voluntary nature of solutions to displacement, but also the responsibility of state authorities to 'endeavor to facilitate the reintegration of returned or resettled IDPs.' It also requires 'full participation of [IDPs] in the planning and management of their return or resettlement and integration.' This stands in opposition to the Gol and KRG's current emphasis on return above all else, with return also often being implemented in an unsupported, myopic manner.

An important note to make when evaluating the GPs is that whilst they do offer significant protection, they do not sufficiently address protection gaps rendered by contemporary post-conflict societies, particularly those where terrorist groups or other, irregular militias, have played an important role in conflict dynamics. Moreover, though they are forward-thinking in terms of advocating for reconciliation initiatives and participatory approaches to planning, in most situations, they nevertheless come into effect only after displacement has taken place. Principle 6, for example, protects individuals from being 'arbitrarily displaced from his or her home or place of habitual residence', but the examples provided under this principle are predominantly applicable only to state authorities. Whilst technically preventative, Principle 6 is very limited in its scope and vision, stopping short of taking a more holistic approach to prevention of displacement which would also incorporate non-state actors and civilians. Furthermore, with no immediately accessible mechanisms for enforcement available, if provisions within the GPs prove to be too inconvenient, states can circumnavigate several of them without repercussion, as demonstrated by both the Gol and KRG in relation to perceived ISIS-affiliates and attempts to manipulate demographics in the Disputed Territories.

## 5.2 The 2008 Iraq National Policy on Displacement: An overview

Iraq's NPD suffers from a significant disjuncture between the written provisions contained within the policy, and the physical implementation (or, more precisely, failed implementation) of those provisions. The policy references the GPs throughout, whilst also outlining the rights of IDPs applicable under Iraq's 2005 national Constitution. Additionally, the policy draws upon the Sphere Standards<sup>93</sup> in order to outline the basic needs of IDPs to be met in order to comply with international humanitarian best practice. In a less complex displacement landscape, and with adequate funding, the 2008 NPD might prove to be a robust policy. However, there are several contextual short falls which sit alongside positive aspects of the policy, which will now be examined.

Conforming to the standard set by the GPs in terms of formulation, the NPD was also created through a consultative approach which included the MoDM, the KRG 'and a large number of stakeholders at the local, regional and national levels in Iraq. The consultations also involved the groups and communities affected by displacement (both... IDPs and host communities).'<sup>94</sup> Details of the consultation process are not included within the policy, but it certainly seems that at least some attempt was made to follow the formulative process of the GPs and incorporate the views of concerned stakeholders. However, in terms of durable solutions, the host community has been entirely overlooked by this policy, as it focuses exclusively on livelihood creation and socio-economic assistance for IDPs.

As it stands, section two of the NPD identifies and details two phases of displacement: that prior to 2003, and that post-2003 up until July 2008, when the policy was published. An updated version of the policy for 2020 requires a third phase to be added: that of displacement caused by ISIS and the subsequent conflict against them. The reason for the need to include ISIS-induced displacement as a distinct phase is due to the unprecedented damage the group caused to the fabric of society in the territory they occupied, and beyond, resulting in consequential acute protection needs for certain groups of IDPs (for example, the Yezidis). These protection-specific needs interact with factors contributing to ongoing protracted displacement, with many minority IDPs being too afraid, or physically

93 Information on the Sphere Standards can be found here: <https://spherestandards.org>, whilst the 2018 edition of the Sphere Handbook can be downloaded here: <https://spherestandards.org/handbook/editions/>

94 2008 National Policy on Displacement, Ministry of Displacement and Migration (Iraq), p3.

unable to return home.<sup>95</sup> Moreover, ISIS are the catalyst for the existence of the new demographic of IDPs, who OCHA has identified as being the most vulnerable in contemporary Iraq: perceived affiliates.<sup>96</sup> Failure to include this third, post-2014 wave of displacement in an updated version of the policy, will severely limit the success of any attempts at durable solutions, whilst continuing to neglect the very specific needs of both IDPs who are perceived as ISIS-affiliates, and IDPs (and host community members) who are survivors of ISIS atrocities. Such a balancing act is unlikely to be achievable through a generalized humanitarian response.

The drafters of the NPD seem to take a muddled approach to causes of, and responses to, displacement throughout the policy. For example, section 2.3 states that as a result of displacement, '[m]any people lost their jobs and sources of income. Lack of employment opportunities has driven some of them into joining terrorists and other illegally armed groups.'<sup>97</sup> This statement is not worded in such a way as to specifically apply to IDPs, but rather can be interpreted as referencing displacement-affected communities in general, which is an important distinction for the planning and implementation of durable solutions. As noted by Cohen above, one of the reasons behind the successful implementation of the GPs is that they do not differentiate between IDPs and other vulnerable individuals. This holistic perspective taken by the NPD looks promising when viewed in conjunction with the fact that it describes durable solutions as 'based on three elements – long-term security, restitution of or compensation for lost property and an environment that sustains the life of former displaced persons under normal economic and social conditions.'<sup>98</sup> However, the policy then reverts back to a much more traditional, and arguably, less sustainable framework for protection which focuses exclusively on IDPs. For example, the provisions for employment and livelihood generation contained within Article 7.7 are exclusively addressed towards IDPs, simultaneously perpetuating their exclusion from the host community and privileging IDP needs over those of socio-economically vulnerable members of the host community. Moreover, though the NPD does not explicitly cite return as the desired solution, the protection provisions regarding education and shelter are likely financially unsustainable during situations of protracted displacement, and in the absence of explicit inclusion of a framework through which to pursue local integration or resettlement as options, return is left as the de facto option for increasingly desperate IDPs, without it necessarily being truly voluntary, as required by Principle 28 of the GPs.

The current situation within the Disputed Territories raises a number of concerns which need to be addressed in an updated version of the NPD in order for IDP protection in Iraq to be effectively conducted in a non-discriminatory manner. Though freedom of movement is well provided for within the 2008 policy, the policy is neither binding nor implemented. Thus, a proactive approach towards IDP protection within the Disputed Territories would be to include an Article exclusively dedicated to this region of Iraq, in which a framework for protection and security cooperation between the GoI and KRG is outlined, including details of shared responsibilities, as well as clearly formulated avenues for communication. This framework, in conjunction with adherence to it, should be overseen by a committee of local and international stakeholders who are given full authority to monitor and report on the behaviour of both parties.

A further protection omission related to the principle of non-discrimination, which has severe implications for a number of IDPs, both inside the Disputed Territories and elsewhere in Iraq and Iraqi Kurdistan, is the current failure to apply the principle of non-discrimination in protection and provision of humanitarian assistance to perceived ISIS-affiliates. Article 6.2 of the NPD references Article 14 of the Iraqi Constitution, which 'stipulates the principle of non-discrimination regardless of sex, race, origin, colour, religion, faith, sect, belief, opinion or socio-economic status.'<sup>99</sup> The recognised grounds for discrimination are comprehensive indeed, but for the purposes of the NPD, Article 6.2 should be updated to include the provision of protection for those who are perceived ISIS or extremist-affiliates, until they are charged and tried in a court of law according to due process. For this strand of protection to be successfully implemented, a sensitive, balanced, approach must be taken which protects both perceived ISIS-affiliates as well as those who are survivors of ISIS and likely coping with a great deal of trauma. This leads to the final area in which the NPD is lacking: dialogue based initiatives for integration, reintegration and reconciliation.

The conclusion of the NPD explains that it 'provides a framework for the rights of displaced Iraqis before, during and after displacement as enshrined in the Iraqi Constitution and national and international laws...' It goes on to state that '[i]n particular, [the GoI] will give special attention to the issue of protecting IDP and returnee women and children as well as other vulnerable groups from all types of exploitation and violence.'<sup>100</sup> This is a commendable commitment, but one that must be applied equally to all IDPs, without discrimination, otherwise it is rendered meaningless. Perceived ISIS-affiliates (including men, women and children) must all be offered equal protection as

95 See Magid P, (25<sup>th</sup> February 2019), 'As Displacement Runs to Years, Northern Iraq Camps Need an Overhaul', *The New Humanitarian* and United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p4 and 6.

96 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (November 2018), 'Iraq: Humanitarian Needs Overview 2019', p22.

97 2008 National Policy on Displacement, Ministry of Displacement and Migration (Iraq), section 2.3, p5.

98 Ibid, section 4.5, p6.

99 Ibid, p8.

100 Ibid, p17.



minorities and other vulnerable groups of IDPs. Integral to this protection, however, is prevention of further violence and conflict during a process of voluntary, supported durable solutions. Within the context of fractured communities divided along ethnic and sectarian lines, an updated version of the NPD should prioritize the widescale implementation of dialogue-based initiatives to repair relations between different ethnic and religious groups, therefore building resilience against future conflict.

### 5.3 Reasons for the failure of Iraq's 2008 National Policy on Displacement

As has been outlined above, overall Iraq's 2008 NPD was a progressive instrument for the protection of IDPs, which incorporated the GPs and referenced both the 2005 National Constitution of Iraq and the international humanitarian Sphere Standards. Although adjustments would need to be made in order to align an updated, 2020 NPD with the contemporary displacement context within Iraq, the NPD remains a potentially useful policy. However, in order to examine whether a 2020 version of the NPD would offer adequate protection, it is necessary to first identify the reasons for the lack of protection afforded by the 2008 policy, which does not seem to have been implemented at all, despite its potential for success.<sup>101</sup>

In January 2011, Iraq's Deputy Minister of Displacement and Migration 'spoke of a plan to resolve the problem of [displacement] within a year, and to create durable conditions for the return and reintegration of IDPs and refugees.'<sup>102</sup> This plan did not materialize, meaning that when ISIS took territory in Anbar and Nineveh in 2014, the forced movement of millions of Iraqis occurred amidst a scenario already characterized by protracted displacement. The various reasons for the failed implementation of the NPD boil down to lack of capacity and failed coordination. During a visit to Iraq in 2016, the UN Special Rapporteur on the Human Rights of IDPs found 'it was evident that there was little awareness of the [NPD] and its provisions. There was a lack of adherence to those provisions by line Ministries and other institutions, rendering their potential to assist in guiding government action unfulfilled in practice.'<sup>103</sup> The Special Rapporteur went on to point out that 'civil society groups emphasized that the policy existed only on paper, and that consequentially, there was an urgent need for a functioning legal and policy framework, as well as training and awareness-raising for public officials' and line Ministries.<sup>104</sup>

The importance of training government officials on displacement issues is highlighted by Elizabeth Ferris et al, who describe it as 'a key element of the exercise of national responsibility', and one that 'can contribute to the effectiveness of all aspects of the government's response.'<sup>105</sup> Ferris et al. recognise that Iraq's NPD represents a high level of government acknowledgement of the scale of the displacement crisis in the country, but they draw attention to the fact that effective response to displacement requires legislative action, and this is where the 2008 NPD suffers the most: it was never passed into domestic law. Without a concerted effort to coordinate with relevant line ministries and provide training to relevant government officials and stakeholders, a promising policy fell by the wayside. If it had been passed into law at the same time as being the subject of a national action plan for awareness raising and implementation, the NPD would likely have secured a significant level of protection for the majority of IDPs (excluding perceived ISIS-affiliates), though it would still likely have failed to secure truly durable solutions due to its emphasis on return, provisions for socio-economic assistance which exclusively target IDPs, and lack of concrete framework for reconciliation and integration.

There is of course a final factor upon which successful implementation of any policy will balance: that of funding. Section 3.4 of the NPD states that the Gol will '[a]llocate funds and develop relevant financial procedures for the implementation of this policy.'<sup>106</sup> In a situation such as Iraq's a great deal of funding (and corresponding political will) will be required from the international community.

101 United Nations General Assembly, (5<sup>th</sup> April 2016), 'Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his Mission to Iraq', A/HRC/32/35/Add.1, Human Rights Council, Thirty-second session, Agenda Item 3, p5.

102 Ferris E, Mooney E & Stark C, (2011), 'From Responsibility to Response: Assessing National Approaches to Internal Displacement', *The Brookings Institution – London School of Economics Project on Internal Displacement*, p34.

103 United Nations General Assembly, (5<sup>th</sup> April 2016), 'Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his Mission to Iraq', A/HRC/32/35/Add.1, Human Rights Council, Thirty-second session, Agenda Item 3, p5.

104 Ibid.

105 Ferris E, Mooney E & Stark C, (2011), 'From Responsibility to Response: Assessing National Approaches to Internal Displacement', *The Brookings Institution – London School of Economics Project on Internal Displacement*, p53.

106 2008 National Policy on Displacement, Ministry of Displacement and Migration (Iraq), p5.

## 6. Aligning Iraq's National Policy on Displacement with Contemporary Protection Needs

This research has, so far, discussed the contemporary displacement landscape within Iraq in terms of the relatively unique challenges it presents for protecting IDPs who are perceived as being affiliated with ISIS, as well as minority (and other) IDPs originating from the Disputed Territories. The 2008 NPD has also been examined against the context of the contemporary displacement landscape in order to ascertain where protection gaps exist. Three areas of the 2008 NPD require addressing in order for it to provide sufficient protection to IDPs in Iraq from 2020 onwards. First, perceived ISIS-affiliates must be explicitly included within the remit of the provisions prohibiting discrimination. Secondly, IDP protection within the Disputed Territories must be addressed through a specific framework which outlines roles for both the GoI and KRG in a cooperative relationship working towards maintaining security in the territories whilst simultaneously ensuring that protection provisions are met. Finally, durable solutions must be secured which are both voluntary and either integrative or reintegrative; assisting the vulnerable within the broader community and contributing towards community cohesion rather than focusing exclusively on IDPs. Moreover, the integrative and reintegrative aspects of such durable solutions should include long-term dialogue-based initiatives aiming to rebuild trust between different ethnic and religious groups, thereby building community resilience to conflict and ensuring that solutions remain sustainable.

This remainder of this paper will examine those provisions of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention)<sup>107</sup> from which lessons can be learned for a redrafting of the NPD that would optimize protection of IDPs, including through prevention of displacement, which both the GPs and Iraq's NPD currently approach in a superficial manner. The Kampala Convention also proves to be illuminating with regard to durable solutions, which may well be the result of the fact that it was drafted by the African Union rather than Europeans or other "Western" nations, and therefore represents, and responds to, the concerns of more community-oriented perspectives and developing economies.

### 6.1 The Kampala Convention: a brief overview

The Kampala Convention is widely recognised as the most comprehensive legally binding instrument for the protection of IDPs. As well as being the only instrument to adopt the description of IDPs provided by the GPs, thereby making it a legally binding definition, it contains four main characteristics and provisions which distinguish it from other IDP-related instruments.

First, the Kampala Convention differs markedly from other, often UN-drafted human rights instruments, in that great importance is placed on collective, socio-economic and cultural (ESC) rights, reflecting the priorities of many African countries, but also 'a growing recognition of the intimate relationship between the protection of ESC rights and rates of displacement...[which] has resulted in an understanding that unfulfilled basic needs constitute the deepest cause of conflict.'<sup>108</sup> In contrast to the Kampala Convention, Lauren Groth points out that '[a]lthough ESC rights are conveyed in the GPs...they do not explicitly confer protection for the broad range of ESC rights as a whole.'<sup>109</sup> In a country such as Iraq, with high rates of unemployment, strong communal bonds and social reverence for culture and tradition, adoption of provisions that safeguard ESC rights would prove to be extremely beneficial for IDPs and wider society – particularly within the Disputed Territories where certain groups may be coerced into assimilation. Thus, protection of ESC rights could prove to be crucial for development of a plan through which to achieve durable solutions, whilst concurrently establishing and maintaining a higher standard of IDP protection than that provided by the GPs.

The broad, collective approach to human rights taken by the Kampala Convention, likely stems from the drafting process, which in line with the GPs was conducted in a consultative manner. This is the second characteristic which likely contributes to its uniqueness in the field of IDP protection. The Kampala drafting process went beyond that recommended within the GPs, emphasizing 'the principles of participation, inclusiveness, partnership and ownership.'<sup>110</sup> This approach led to the inclusion of government officials, thematic experts, civil society organizations, human rights and humanitarian NGOs, trade unions, women's and youth groups in the drafting process.<sup>111</sup> Prisca Kamungi points to how this broad participatory base including grassroots groups 'provided useful criticism and expertise that helped capture disparate causes of displacement and contextual challenges to effective response,'<sup>112</sup> ultimately contributing to a robust framework for durable solutions.

107 <https://www.refworld.org/docid/4ae572d82.html>

108 Agbakwa S C, (2002) p178 cited in Groth L, (2011), 'Engendering Protection: An Analysis of the 2009 Kampala Convention and its Provisions for Internally Displaced Women', *International Journal of Refugee Law*, 23, p238-239.

109 Groth L, (2011), 'Engendering Protection: An Analysis of the 2009 Kampala Convention and its Provisions for Internally Displaced Women', *International Journal of Refugee Law*, 23, p240-241.

110 Kamungi P, (2010), 'Beyond Good Intentions: Implementing the Kampala Convention', *Forced Migration Review*, p53.

111 Ibid

112 Ibid.

A third factor contributing to the widely recognised success of the Kampala Convention is the fact that a great deal of attention is paid to armed non-state actors (ANSAs)<sup>113</sup> and multinational corporations (including private military and security corporations),<sup>114</sup> their responsibilities in situations of armed conflict (and prevention of displacement) as well as identification of acts that they will be held criminally responsible for. This provides a broader protection provision than those detailed within the NPD, which focus exclusively on the role of state actors as enshrined within national legislation.

Finally, the Kampala Convention takes an extremely broad-based, holistic approach to durable solutions, which seeks to eradicate the root causes of displacement, whilst simultaneously recognising that restitution is not simply limited to housing, land and property issues, but also physical, mental and other types of harm.<sup>115</sup> Thus, the Kampala Convention takes a contextually relevant approach to addressing displacement in the short, medium and long terms, founded upon a rounded sense of human need.

## 6.2 Prevention of Displacement: Lessons from Kampala

According to comparative research conducted by Ferris et al,<sup>116</sup> 'prevention [of displacement] is paramount, but is probably the most difficult measure to take and the least likely to be taken' in all countries.<sup>117</sup> One reason for this, they argue, is that government response to displacement is heavily influenced by politics, resulting in a near unanimous global preference for return as a durable solution, to the exclusion of local integration and resettlement. Ferris et al. point out that 'preventing displacement during conflict requires a high-level commitment by national authorities and the engagement of security forces.'<sup>118</sup> Framed in this way, and viewed against the context of contemporary post-conflict Iraq, it is easy to understand why displacement within Iraq is ongoing, particularly within the Disputed Territories. Not only do Iraqi institutions suffer from corruption, dysfunction and lack of capacity, the GoI, over the past sixteen years, has also been completely consumed by consecutive and overlapping conflicts such as conflict with the KRG over the Disputed Territories, eradicating ISIS, battling a complex insurgency, reducing tensions between different sectarian and ethnic groups, and generally struggling to maintain state monopoly on violence as a means of maintaining the establishment which underpins the Iraqi state. In short, both the GoI and the KRG have been tackling the symptoms of displacement rather than addressing the causes.

The Kampala Convention approaches prevention of displacement from a collective perspective, focusing on the ESC rights of communities, rather than individual rights, and requiring states parties to prevent and mitigate displacement 'by eradicating the root causes, such as persistent and recurrent conflicts and the effects of natural disasters.'<sup>119</sup> Article 3(b) provides that states parties must 'prevent political, social, cultural and economic exclusion and marginalization, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion,' providing a particularly robust approach to ESC rights. The Convention therefore 'approaches displacement from a responsibility standpoint'<sup>120</sup> in contrast to the GPs. This approach is best demonstrated through the fact that the Kampala Convention 'places an obligation on state and non-state actors alike to respect, promote and respect the rights of IDPs';<sup>121</sup> imposing criminal sanctions on groups or corporations that violate this provision. Developing the argument for the nexus between exclusion and marginalization and displacement (or prevention of displacement), Eelco Kessels and Christina Nemr, explain that 'heavy-handed security responses, arbitrary implementation of laws or regulations and a lack of access to justice can contribute to grievances that raise tensions between communities and governments.'<sup>122</sup> The web of negative social factors these scholars identify is clearly evident within Iraq, particularly in relation to the Disputed Territories and securitization of Sunni-male IDPs who are often perceived as potential ISIS-affiliates<sup>123</sup> without evidence, potentially resulting in continued tensions, conflict and subsequent displacement.

113 Lecamwasam M, (2014), 'The Internally Displaced in South Asia: Lessons from Kampala', *Asia-Pacific Journal on Human Rights and the Law*, 15 (1&2), p165-166.

114 Kuwali D, (2013), 'From Durable Solutions to Holistic Solutions: Prevention of Displacement in Africa', *African Journal of Legal Studies*, 6, p272.

115 Ibid, p273.

116 Ferris E, Mooney E & Stark C, (2011), 'From Responsibility to Response: Assessing National Approaches to Internal Displacement', *The Brookings Institution – London School of Economics Project on Internal Displacement*.

117 Ibid, pxii.

118 Ibid, p22.

119 Kamungi P, (2010), 'Beyond Good Intentions: Implementing the Kampala Convention', *Forced Migration Review*, 33, p53.

120 Lecamwasam M, (2014), 'The Internally Displaced in South Asia: Lessons from Kampala', *Asia-Pacific Journal on Human Rights and the Law*, 15 (1&2), p164.

121 Ibid.

122 Kessels E & Nemr C, (2016), 'Countering Violent Extremism and Development Assistance: Identifying Synergies, Obstacles and Opportunities', *Global Centre on Cooperative Strategy Policy Brief*, p5

123 Higel L, (2016), 'Iraq's Displacement Crisis: Security and Protection', *Ceasefire Centre for Civilian Rights and Minority Rights Group International*, p11 and 20; and United Nations General Assembly, (5<sup>th</sup> April 2016), 'Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his Mission to Iraq', A/HRC/32/35/Add.1, Human Rights Council, Thirty-second session, Agenda Item 3, p12.

Finally, by incorporating the fundamental right of IDPs not to be displaced, the Kampala Convention has elevated this preventative measure of protection 'from an ethical consideration to a legal duty.'<sup>124</sup> The obligatory nature of this protection is essential in times of conflict or fragility of governance when certain sections of the population may otherwise be vulnerable to arbitrary, forced displacement.

### 6.3 A holistic approach to durable solutions: return is not enough

A logical starting point when examining the case of perceived ISIS-affiliates is how to integrate them into host communities or reintegrate them into their communities of origin. Siddiqui points to how the security screening process which is already well established in IDP camps can be utilized in order to reassure host communities and communities of return that those perceived as ISIS-affiliates, are, in fact, not affiliated at all. She explains that if the screening process was made completely transparent and results provided to communities, a reduction in conflict would likely occur.<sup>125</sup> This would however comprise merely a first step to securing sustainable integration for perceived ISIS-affiliates, with a number of other inter-related factors also playing an important role, as detailed below.

Any durable solutions programming must target both host community and IDPs together. Here a valuable lesson can be applied from the Kampala Convention: durable solutions are reliant on the protection of collective ESC rights, and so creation of jobs, improvement of infrastructure and effective, non-discriminatory provision of services are crucial to encouraging successful integration or reintegration of IDPs.<sup>126</sup> There needs to be a shift away from the containment-based policies and approaches to displacement currently being implemented across Iraq, and which are also present to a certain extent within the three traditional durable solutions. Rather, IDPs should be supported in their informal, internal migration, with migration being viewed as a positive contributing factor to economic development in such circumstances,<sup>127</sup> particularly when such migration takes place against a backdrop of decreased securitization and increased socio-economic assistance for communities. Such an approach, however, should not overlook the distinct vulnerabilities of specific groups. Long-term psycho-social assistance will be an integral component of durable solutions and could be implemented as a precursor to social cohesion programmes based upon cross-communal dialogue.

An institutional shift away from return as the only desirable durable solution is also required, in order to recognise the reality for IDPs and formulate pragmatic policy response. A complete overhaul of policy formulation is required in Iraq, which currently implements approaches to displacement in a very centralized top-down approach. Rather, a coordinated, regionalized response is required, which enables local communities to participate in the formulation of responses to displacement in a bottom-up manner. This will enable the MoDM to incorporate lessons learned from the Kampala Convention regarding prevention of marginalization through the inclusion of all sectors of society, including the grassroots, who are able to offer a critical perspective on both the causes of, and solutions to displacement. It is vital that such a participatory approach employs a non-discriminative approach to consultations, and thus perceived ISIS-affiliates, minorities, women and youth must all be included. Such an approach is particularly important in the Disputed Territories, and both the GoI and KRG must be receptive to the message they receive from residents of the area, however unpalatable they may find it. Continuing instability and power-struggles in the territories will only serve to act as a catalyst for continued conflict and displacement.

Dialogue-based initiatives and reconciliation programmes will be foundational to the success of establishing truly durable solutions. These initiatives should also be formulated through a participatory approach at community level rather than imposed in a top-down uniform manner. Individual communities will have distinct sets of grievances to be addressed, and the most beneficial approach would be for the GoI and KRG to support tribal reconciliation processes which 'being cross-sectarian in their very nature... have been more efficient than the state in dealing with extremely violent sectarian conflicts.'<sup>128</sup> Siddiqui notes the importance of state and tribal councils cooperating on peacebuilding initiatives, stating that, post-ISIS, 'even in tribally oriented areas where the formal rule of law is secondary to tribal arbitration, divisions in the social fabric are now too great for a tribal process alone to heal.'<sup>129</sup>

This leads to the final, most difficult evolution required in the Iraqi state's response to displacement. Since the American invasion in 2003, sectarianism has become increasingly institutionalized. A change of national discourse is required at the national political level as well as among regional authorities and local civil society groups which emphasises the shared bonds of Iraqi citizenship rather than identitarian divisions. Compounding the obstacles to peacebuilding and durable solutions presented by institutionalized sectarianism, is the centralized nature of gover-

124 Adeola R, (2018), 'The Kampala Convention and the Right not to be Arbitrarily Displaced', *Forced Migration Review*, 59, p15.

125 Siddiqui N, (2018), 'Balancing the Rights of Displaced, Returning and Remaining Populations: Learning from Iraq', *Forced Migration Review*, 53, p65.

126 United Nations General Assembly, (5<sup>th</sup> April 2016), 'Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his Mission to Iraq', A/HRC/32/35/Add.1, Human Rights Council, Thirty-second session, Agenda Item 3, p8.

127 Zetter R and Long K, (2012), 'Unlocking Protracted Displacement', *Forced Migration Review*, 40, p35.

128 Ali Z, (2018), 'Women and Gender in Iraq: Between Nation-Building and Fragmentation', p138.

129 Siddiqui N, (2018), 'Balancing the Rights of Displaced, Returning and Remaining Populations: Learning from Iraq', *Forced Migration Review*, 53, p65.

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nance, which due to Iraq's ethno-sectarian and socio-economic diversity, makes a 'diversified, regionalized approach [to securing durable solutions] hard to achieve.'<sup>130</sup>

Certain facets of durable solutions should remain centralized. For example, all ANSAs should be made aware of their responsibilities under international law, and it should be made clear that they will be held criminally responsible for breach of these responsibilities, regardless of which region they are operating in. Likewise, all relevant government staff should be made aware of their protection responsibilities through provision of human rights, IDP-specific and NPD-specific training. Breaches of human rights should be investigated and tried in a non-discriminatory manner according to a national rights-based legislative framework which aligns with the Arab Charter of Human Rights and other international norms. However, provision of services, livelihood creation, urban regeneration and approaches to reconciliation and integration should be overseen at a regional level, ensuring relevance and thus sustainability. Importantly, government and international stakeholders must recognise that achieving truly durable solutions will be a lengthy process and commit funds accordingly.

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130 Van der Auweraert P, (2011), 'Displacement and National Institutions: Reflections on the Iraqi Experience', *Middle East Institute and Fondation pour le Recherche Strategique*, p11.

## 7. Conclusion and Recommendations

The contemporary displacement landscape in Iraq poses several unique and challenging factors to be considered when striving to secure durable solutions. Protracted displacement has become entrenched as a norm, partly due to an exclusive focus on return, while the ongoing conflict between the GoI and KRG over the Disputed Territories continues to have a destabilizing effect, with corresponding disproportionately negative implications for minorities and minority IDPs and returnees. Additionally, the presence of perceived ISIS-affiliates within the IDP population has resulted in securitization by state forces and reduction of social cohesion.

Ferris et al. provide useful guidance on what they consider to be integral provisions of an effective national policy on displacement, which are informative for a redrafting of the Iraqi NPD. They describe how it should 'encompass the various causes of displacement and address all phases of displacement, including actions to prevent arbitrary displacement, to ensure protection and assistance during displacement, and to secure durable solutions to displacement. It should also address the needs of specific groups.'<sup>131</sup> Thus, in the context of Iraq, in the interests of protection, including pursuit of durable solutions, IDPs who are perceived ISIS-affiliates, minorities and those originating from, or being resettled in, the Disputed Territories should be included within an updated NPD as distinct groups in need of specific forms of protection.

As an identified group with special protection needs, perceived-ISIS affiliates should be afforded the following: protection from arbitrary arrest and detention; protection from restrictions on freedom of movement; protection from discriminatory treatment in the distribution of aid and provision of assistance; and supported reintegration or integration built upon long-term dialogue-based social cohesion initiatives. Borrowing from the Kampala Convention, in working to integrate, or reintegrate, perceived ISIS-affiliates, the state should recognise its responsibility to prevent marginalization of any groups as a means through which to prevent further conflict and displacement, and so, the NPD should emphasise the necessity of including perceived ISIS-affiliates in consultations on durable solutions and peacebuilding policies.

The Disputed Territories pose a particularly sensitive and combustible situation, and should therefore be addressed as a matter of urgency in terms of immediate IDP protection, but also in terms of prevention of displacement. A framework should be included in an updated NPD which clearly designates division of roles for both the GoI and KRG in terms of security and cooperation in the territories, with adherence to human rights principles and IDP protection at its core. An updated NPD should emphasize the voluntary and assisted nature of durable solutions, with the introduction of impartial monitoring mechanisms to ensure that this is implemented.

The NPD should adopt similar provisions to those in the Kampala Convention which clearly stipulate the responsibilities of ANSAs, state-affiliated militias and other non-state actors with regard to prevention of displacement and adherence to human rights and humanitarian law. Criminal responsibility for breaches of these responsibilities should be clearly outlined within an updated NPD, with such criminal sanctions being applied robustly and indiscriminately as a matter of course for any breaches. IDP protection cannot be permitted to fall prey to corruption.

Again, drawing from the Kampala Convention, the collective ESC rights of host communities as well as IDPs should be addressed, but not to the detriment of the distinct protection needs of IDPs. Thus, an updated NPD should provide a framework for a participatory approach to formulating durable solutions, which incorporates feedback from a variety of social groups, including the grassroots, from both the host and IDP communities. Such feedback should be used to tailor relevant socio-economic initiatives for regeneration of livelihood, services and infrastructure. At the same time, the psycho-social needs of IDPs (and vulnerable members of the host community) should be addressed through long-term programmes rather than short-term policies measured in terms of immediate indicators.

Finally, the NPD should be introduced to relevant line ministries through comprehensive training at the least, though a preferred route would be to use the policy as the basis for IDP-specific national legislation, thus rendering the provisions legally binding. Furthermore, decentralization of implementation of the policy will be crucial. The MoDM should coordinate and monitor its regional implementation in order to ensure that protection mechanisms remain adhered to, but the defining of components for protection and durable solutions should be the remit of local authorities alongside local stakeholders, including marginalized groups from both the IDP and host community populations. An integral aspect of these components should be dialogue-based community reconciliation initiatives, which work towards community conflict resilience and community cohesion as a means of reducing future displacement.

In 2020, Iraq has the potential to significantly change the landscape for IDP protection in the Middle East. The Iraqi authorities should take full advantage of this opportunity in order to build a robust and holistic NPD which incorporates provisions from the Kampala Convention, and which therefore serves as an instrument for peacebuilding as well as immediate protection.

<sup>131</sup> Ferris E, Mooney E & Stark C, (2011), 'From Responsibility to Response: Assessing National Approaches to Internal Displacement', *The Brookings Institution – London School of Economics Project on Internal Displacement*, p75.

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