Detention programming in Iraq

Global Protection Cluster Conference

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Iraq Context

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

- **Defacto detention** in specific camps for families w/ perceived affiliations, with severe movement restrictions
Prior to the Mosul offensive, GOI adopted a Concept of Operations (ConOps) that put protection of civilians at its heart.

The military ConOps was complemented by a humanitarian ConOps developed by UN CM Coord team in Sept 2016, with substantial inputs from PC.

These docs enabled the engagement between the humanitarian community (through CM Coord) and military actors for the protection of civilians, albeit with challenges.

While ConOps positive and laudable, actual conduct of the Mosul offensive and treatment of civilians departed from those plans raising serious protection concerns.
CONOPS stated that **security screening will take place only in designated screening sites**. However, reports of screening and detention taking place received: in informal sites on displacement routes (after crossing the frontline); door-to-door in newly retaken areas; in camps, often with the involvement of pro-government armed groups.

Although **many reports of detention** were obtained from IDPs upon their arrival in camps, the information was difficult to verify due to **informal nature of the screening process** resulting in detention.

In initial stages of Mosul emergency, **very limited capacity to address the large scale detention** in newly retaken areas. High number of detention cases identified through protection monitoring, but limited protection interventions for detention cases.
Detention related successes in Mosul response

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

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

- High-level advocacy resulted in Prime Minister’s order to the security forces to provide information to families who fled during Mosul campaign about their detained relatives (June 2017). No evidence available on whether this order was implemented on the ground.

- December 2017: first coordination meeting of detention legal partners under Ninewa Legal Partners Meeting:
  - Mapping of detention partners
  - Joint advocacy on barriers in provision of legal assistance in Ninewa i.e. risks of detention in civil directorates and courts for individuals with perceived affiliations who wish to secure civil documents; verbal threats, hostility and general animosity against NGO lawyers representing IDPs with perceived affiliations; lack of coordination between security forces leading to re-arrests, etc.

- Close cooperation with ICRC: bilateral contacts by legal partners, establishing referral mechanism for detention/arrest cases b/w ICRC and Ninewa PWG partners (particularly for those detained in MoJ facilities).
Key Dilemmas

- **Provision of legal representation to “easy” cases** (e.g. name similarity) vs. engagement on more complex cases under Art. 4 of the Anti-Terrorism Law, which involve higher risks for NGO lawyers and impact on overall operational space for protection activities.

- **Use of the death penalty in Iraq** for those convicted for terrorism-related offences. Given the flaws of the Iraqi justice system, it appears extremely doubtful that strict due process and fair trial guarantees are followed. This raises the prospect of **irreversible miscarriages of justice and violations of the right to life**. OHCHR has urged Iraqi authorities to halt all executions, establish an immediate **moratorium on the use of the death penalty** and carry out an urgent and comprehensive **review of the criminal justice system**.

- **Human rights organizations proposed creative detention programming** by humanitarian actors - e.g. court monitoring to ensure access to due process and fair trials.

- **However, counter-terrorism policies of some humanitarian donors** may impede work on difficult cases.

- Donors indicated that **detention programming would entail a costly and longer-term restructuring of the criminal justice system**, and should be left to rule of law / development actors.
UNICEF/CP SC work on juvenile justice

- Republic of Iraq national law: **age of criminal responsibility** is above 9 (11 in KR-I)
- Many boys were separated from families to be screened during military operations
- Development actors with Juvenile Justice programs (e.g. UNICEF & partners) stepped up during emergency response, especially through: representation of children in juvenile court, and improvement of conditions in juvenile detention facilities (observation houses and reformatories), including access to social workers, and educational services

**Challenges:**
- **Different legal frameworks** in the Kurdistan Region of Iraq, and in the Central-South Iraq
- **Prolonged pre-trial detention, and limited access** of humanitarian actors during pre-trial period
- **Reintegration program framework yet to be agreed**, for children released from detention (e.g. family and community acceptance, livelihood support, etc.)
THANK YOU