

**Islamic State, Disputed Territory and  
Ethno-Religious Diversity:  
An Opportunity for the Development of Iraq's  
National Policy on Displacement**



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National Policy on Displacement

*Policy Paper*

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## Contents

Abstract .....	4
Introduction.....	5
The Displacement Landscape in Iraq: Protracted displacement as the norm.....	6
Perceived IS-Affiliates .....	6
Minorities and the Disputed Territories .....	8
Iraqi State Response to Displacement to Date.....	9
Iraq’s 2008 National Policy on Displacement – A Missed Opportunity.....	9
Aligning Iraq’s National Policy on Displacement with Contemporary Protection Needs .....	11
The Kampala Convention: a brief overview .....	11
Conclusion .....	13
Recommendations.....	14
Iraqi and Kurdish Authorities: .....	14
The International Community & International Stakeholders:.....	15
Bibliography .....	16
Abstract Arabic .....	20
Abstract Kurdish.....	22

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## **Biography**

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## **Abstract**

The contemporary displacement landscape in Iraq is both problematic and unique. The needs of internally displaced persons (IDPs) in Iraq are many, particularly as protracted displacement becomes entrenched as the norm rather than the exception. However, minorities originating from the so called ‘Disputed Territories’ and perceived Islamic State (IS)-affiliates represent two of the most vulnerable groups of IDPs in Iraq. Iraqi authorities currently have 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.

This policy paper analyses the contemporary displacement context of Iraq, characterized as it is by the securitization of Sunni IDPs and returnees, as well as ongoing conflict and coercion within the Disputed Territories. By examining current protection issues against Iraq’s 2008 National Policy on Displacement, this paper identifies protection gaps within Iraq’s response to displacement, before drawing on the African Union’s Kampala Convention in order to make recommendations for an updated version of the National Policy on Displacement. These recommendations will ensure that a 2020 National Policy on Displacement will be relevant to the contemporary protection needs of Iraq’s most vulnerable IDPs, and will serve to prevent further conflict and displacement.

## Introduction

Though post war reconstruction is now underway in Iraq, and the number of internally displaced persons (IDPs) is 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 the so-called Islamic State (IS) 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> Meanwhile, the International Organization for Migration (IOM) estimates that 87% of current IDPs originate from previously IS-held territories.<sup>5</sup> Many returnees are perceived as IS-affiliates, and acts of revenge are being carried out against both people and property.<sup>6</sup>

The contemporary displacement landscape in Iraq is both problematic and unique. Protracted displacement<sup>7</sup> has become entrenched as a norm, with the 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 (GoI) and the Kurdistan Regional Government (KRG) over the resource-rich Disputed Territories, which are historically the most ethno-religiously diverse region of Iraq.

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. The needs of IDPs in Iraq are many, particularly as protracted displacement becomes entrenched as the norm rather than the exception. However, minorities originating from the Disputed Territories and perceived IS-affiliates represent two of the most vulnerable groups of IDPs in Iraq. Furthermore, how the GoI and KRG respond to IDPs who are perceived IS-affiliates will have

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

6 Ibid.

7 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.’ See: <http://www.internal-displacement.org/>

far-reaching, generational consequences. Leaving them to languish in camps, marginalized and vulnerable to abuse, will likely lead to radicalization, whereas taking steps towards integrative durable solutions will strengthen the conflict resilience of communities for the future.

## **The Displacement Landscape in Iraq: Protracted displacement as the norm**

With 1.8 million people displaced throughout Iraq, and over half of these having been displaced for more than three years,<sup>8</sup> OCHA has declared that ‘protection remains the overarching humanitarian priority in Iraq in 2019.’<sup>9</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>10</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>11</sup> Moreover, as displacement lingers on, and humanitarian organizations suffer the funding consequences of donor fatigue, protection gaps increasingly arise. For example, UNICEF reports that 232 IDP children suffered grave human rights abuses between early 2018 and early 2019,<sup>12</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>13</sup>

## **Perceived IS-Affiliates**

The 2019 needs assessment produced by OCHA describes perceived IS-affiliates as ‘the most vulnerable beneficiaries that humanitarians serve’<sup>14</sup> due to increased risk of harassment and arbitrary detention by security forces, ‘grave consequences’ at the hands of both security forces and civilians, and the fact that they ‘are often subject to discriminatory practices in the provision of, and access to humanitarian assistance.’<sup>15</sup> Moreover, ‘within camps, they can be isolated and segregated, subjected to movement restrictions, denied

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

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

10 Ibid.

11 Nouri B, (9th 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.

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

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

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

15 Ibid.



access to humanitarian aid and victimized by sexual violence and exploitation.<sup>16</sup> Women and girls with perceived IS-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>17</sup>

The prism of securitization through which Sunni Muslim IDPs from former IS-held areas are currently viewed by both the GoI and KRG presents significant protection concerns. Whilst some perceived or proven IS-affiliates from within the IDP population are currently detained under Article 4 of Iraq's Anti-Terrorism Law (2005)<sup>18</sup>, many are arbitrarily detained without charge and 'held for months at a time, without trial or access to justice.'<sup>19</sup> Ceasefire Centre for Civilian Rights illustrates how perceived IS-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>20</sup> These reports correlate with well-publicised international outcry over the use of torture by KRG security forces against children who are perceived as IS-affiliates in order to coerce confessions.<sup>21</sup> Alarming, 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>22</sup> State reluctance to issue or re-issue identification documents to perceived IS-affiliates<sup>23</sup> exacerbates this protection gap immeasurably, whilst simultaneously furthering marginalization and increasing the risk of radicalization.

More recently, at the end of August 2019, Nineveh governorate authorities began returning IDPs who do not originate from the area 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 the fact that, despite the IDPs in question having been subjected to security screening before removal, Anbar governorate authorities have refused many of these IDPs entry into the camps, while others have been prevented from returning home. Worryingly, several IDP families who were forcibly returned to Kirkuk and Salah al-Din governorates 'received death threats from community members,' due to the perception that they are affiliated with IS.<sup>24</sup>

This securitization of IDPs is not a phenomenon exclusive to 2019. In 2016, the UN Special Rapporteur on the Human Rights of IDPs recommended 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

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16 Ibid.

17 Ibid, p30.

18 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)

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

20 Ibid.

21 Human Rights Watch, (8th January 2019), Kurdistan Region of Iraq: Detained Children Tortured, Human Rights watch online.

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

23 Van der Wolff A, (5th 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).

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

international human rights law.<sup>25</sup>

## Minorities and the Disputed Territories

Many minority IDPs originate from the Disputed Territories, which sit between recognised GoI and KRG-administered governorates and cross 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>26</sup> 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. Furthermore, both Salah al-Din and Nineveh provinces, which were formerly occupied in whole or in part by IS, are situated within these territories.

Though 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 2004 Guiding Principles on Internal Displacement (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.’<sup>27</sup> For those IDPs who originate from the Disputed Territories, both the GoI and KRG present barriers to return and reintegration as they each vie to control the demographics of the region. 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...consequences [such as] intimidation, threats, arbitrary arrests and detentions.’<sup>28</sup> There have also been documented cases of torture.<sup>29</sup>

The GoI’s persistent emphasis on unsupported return as the most desirable solution, combined with the KRG’s inability, and possible unwillingness, to implement sustainable integrative durable solutions within the Kurdish region, is directly contributing to increased inter-communal tensions, increased vulnerability of IDPs and returnees, and 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 GoI or KRG-aligned factions seeking to consolidate their control of the region.<sup>30</sup>

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25 United Nations General Assembly, (5th 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.

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

27 See: (2004) Guiding Principles on Internal Displacement, Principle 28, p14. <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>

28 Ibid.

29 Ibid.

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

## Iraqi State Response to Displacement to Date

Despite entrenched corruption and ‘continuing lack of institutional capacity’,<sup>31</sup> a functioning Iraqi Ministry of Displacement and Migration (IMDM) 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>32</sup> In 2008, the Iraqi IMDM 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, and particularly the protection needs of minorities within the Disputed Territories and perceived-IS affiliates. Moreover, despite there being three internationally recognised durable solutions outlined under the 2010 IASC Framework on Durable Solutions for IDPs,<sup>33</sup> the IMDM and international stakeholders have consistently pushed exclusively for return.

Focusing exclusively on return can obfuscate the 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 IS are littered with mines and unexploded ordinances),<sup>34</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>35</sup>

## Iraq’s 2008 National Policy on Displacement – A Missed Opportunity

Iraq’s 2008 NPD is notable for two reasons: it is one of only two national displacement policies in the Middle East<sup>36</sup> and it is one of only nineteen worldwide to explicitly endorse the IDP definition contained within the GPs.<sup>37</sup> 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 IMDM failing to disseminate it to relevant line ministries, or deliver targeted training to relevant Ministry staff.<sup>38</sup>

Since 2008, and specifically in the post-IS era, the displacement landscape within Iraq has evolved and complicated considerably. In a less complex displacement landscape, and with adequate funding, the 2008 NPD, if correctly implemented, might prove to be a robust policy. However, compared to the contemporary

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

32 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.

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

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

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

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

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

38 United Nations General Assembly, (5th 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.

displacement landscape in Iraq, including the unique protection needs posed by IDPs who are perceived IS-affiliates, or minorities originating from the Disputed Territories, there are several contextual short falls which will need to be identified and addressed in an updated version of the policy. These shortfalls will be discussed henceforth.

The drafters of the NPD recognised that ‘[l]ack of employment opportunities has driven some [IDPs] into joining terrorists and other illegally armed groups.’<sup>39</sup> They also acknowledge the importance of livelihood and employment opportunities for wider social cohesion, thus appearing to take a broad-based holistic approach to solutions. This 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>40</sup> However, the policy then reverts back to a much more traditional, and arguably, less sustainable framework for protection which focuses exclusively on IDPs rather than implementing socio-economic measures that will benefit IDPs and host communities together.

Furthermore, 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. In the absence of an explicitly included 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, this 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 the provision of humanitarian assistance to perceived IS-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>41</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 IS 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 IS-affiliates as well as those who are survivors of IS 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.

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39 2008 National Policy on Displacement, Ministry of Displacement and Migration (Iraq), section 2.3, p5.

40 Ibid, section 4.5, p6.

41 Ibid, p8.

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 [...].’<sup>42</sup> 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>43</sup> This is a commendable commitment, but one that must be applied equally to all IDPs, without discrimination, otherwise it is rendered meaningless. Perceived IS-affiliates (including men, women, and children) must all be offered the same protection as minorities and other vulnerable groups of IDPs. Integral to this protection, however, is the prevention of further violence and conflict during the enactment 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.

## **Aligning Iraq’s National Policy on Displacement with Contemporary Protection Needs**

### **The Kampala Convention: a brief overview**

The 2010 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) is widely recognised as the most comprehensive legally binding instrument for the protection of IDPs. It is therefore advantageous to look to this instrument as a means of adopting effective provisions for an updated Iraqi NPD. The Kampala Convention 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>44</sup> In a country such as Iraq, with high rates of unemployment, strong communal bonds, and a social reverence for culture and tradition, adoption of provisions that safeguard ESC rights would prove to be extremely beneficial for IDPs and the 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 the 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 within the field of IDP protection. The Kampala drafting process went beyond that recommended within the GPs, emphasizing ‘the principles of

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42 Iraq Ministry of Displacement and Migration, (2008) National Policy on Displacement and Migration, p17. <https://www.refworld.org/docid/5a26b2264.html>

43 Ibid, p17.

44 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.

participation, inclusiveness, partnership and ownership.<sup>45</sup> This approach led to the inclusion of government officials, thematic experts, civil society organizations, human rights and humanitarian NGOs, trade unions, and women's and youth groups in the drafting process.<sup>46</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>47</sup> ultimately contributing to a robust framework for durable solutions.

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>48</sup> and multinational corporations (including private military and security corporations),<sup>49</sup> their responsibilities in situations of armed conflict (and in the prevention of displacement), and the identification of acts that they will be held criminally responsible for. This provides a stronger protection provision than that detailed within the NPD, which focuses 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 encapsulates physical, mental and other types of harm.<sup>50</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.

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

46 Ibid

47 Ibid.

48 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.

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

50 Ibid, p273.

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## Conclusion

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 minority IDPs and returnees. Additionally, the presence of perceived IS-affiliates within the IDP population has resulted in securitization by state forces and a reduction in social cohesion.

The progressive nature of Iraq's 2008 NPD demonstrates desire on the part of the Iraqi authorities and IMDM to protect IDPs and resolve displacement. This resolve should not be buried under the myriad challenges posed by the Iraqi displacement landscape, which are indeed overwhelming. Rather, the IMDM should work alongside the KRG to protect the rights of IDPs without discrimination, and seize the opportunity to create and promote a contemporary NPD relevant to Iraq's current displacement context. The Kampala Convention is a useful tool through which to approach the formulation of a revised NPD in such a way as to prioritize prevention of further displacement and to promote integrative durable solutions, as elaborated upon in the recommendations below.

## Recommendations

### Iraqi and Kurdish Authorities:

- The IMDM should move to rewrite the National Policy on Displacement in order to align it with the unique protection needs that characterize the Iraqi displacement context. Most notably, it should define those IDPs who are particularly vulnerable, and therefore in need of special protection. This list should explicitly include perceived ISIS-affiliates, minorities, and IDPs originating from, or resettled within, the Disputed Territories.
- The IMDM should, through cooperation with relevant line ministries, local government, and international and national stakeholders, establish regional working groups (including in the KRI) on the protection of IDPs who are perceived ISIS-affiliates. Community-based organizations should be proactively included in these working groups, as should human rights organizations. These working groups should strive to ensure, through a combination of policy formulation and monitoring, that perceived-ISIS affiliates are 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.
- Both the government of Iraq and the Kurdistan Regional Government should recognise their responsibility to prevent the marginalization of any social groups as a means through which to prevent further conflict and displacement. Accordingly, the IMDM should include, in an updated national policy on displacement, an emphasis on the necessity of including perceived ISIS-affiliates and minorities 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 both immediate IDP protection and long-term prevention of displacement. The IMDM should, in consultation with the Kurdistan Regional Government and impartial international stakeholders such as UNOCHA, produce a framework which clearly designates a division of roles and responsibilities for both authorities in terms of security and cooperation in the territories. Adherence to international human rights law and the Guiding Principles on Internal Displacement should be at the core of this framework. This framework should be clearly laid out within a revised version of the National Policy on Displacement.
- The IMDM should include, within an updated national policy on displacement, an emphasis on the voluntary and assisted nature of durable solutions offered to IDPs. Training on durable solutions and the rights of IDPs should be provided to all relevant government staff and affiliated armed forces or militias, as well as police and security forces. Furthermore, the revised policy should make explicit both criminal responsibility and corresponding punitive sanctions for breaches of IDP rights. A focal person and team should be established within the IMDM, and IDPs, returnees and other individuals or organizations should be encouraged to report any forced, coerced or prohibited settlement. As IDP camps are closing down across the country, this action is particularly urgent.
- The IMDM should follow the lead of the African Union's Kampala Convention when rewriting the national policy on displacement, and clearly stipulate the responsibilities of ANSAs, state-affiliated militias, and other non-state actors with regard to the prevention of displacement and adherence to human rights and humanitarian law. Criminal responsibility for breaches of these responsibilities



should be clearly outlined within the updated policy. The judiciary should be provided with training on this matter from a relevant international body, and strongly encouraged to apply criminal sanctions robustly and indiscriminately as a matter of course for any breaches.

- The IMDM should convene a round table of international experts in IDP and refugee protection in order to discuss the formulation of a contextually relevant framework for a participatory approach to durable solutions. A participatory framework is crucial in order to tailor relevant socio-economic initiatives for the regeneration of livelihood, services and infrastructure. This framework should be clearly presented within a revised national policy on displacement.
- The IMDM should introduce the revised national policy on displacement to relevant line ministries through comprehensive training as a matter of urgency. Furthermore, the Ministry, with the support of international stakeholders, should push the Council of Representatives to pass the national policy on displacement into national legislation, thus rendering the provisions legally binding.
- Decentralization of the implementation of a national policy on displacement will be crucial. The IMDM should designate regional leads within the local government who should be responsible for overseeing the implementation of this policy. The ministry should coordinate and monitor this regional implementation in order to ensure that protection mechanisms remain adhered to, but the definition of suitable protection measures and durable solutions should remain the remit of local authorities alongside local stakeholders, including marginalized groups from both the IDP and host community populations. An integral aspect of these measures should be dialogue-based community reconciliation initiatives, which work towards community resilience and community cohesion as a means of reducing future displacement.

## **The International Community & International Stakeholders:**

- The international community should earmark funding to be used for addressing the mental health situation in Iraq on a long-term basis. 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. The international community will need to take responsibility for funding and staffing shortfalls, with the most sustainable approach being to launch accredited, funded training of mental health professionals across Iraq.
- As IDP camps are increasingly being closed, and unsupported, forced returns are increasingly becoming the norm, the international community and international stakeholders must take the lead in raising funds, and liaising with Iraqi and Iraqi Kurdish authorities in order to provide services, infrastructure, and livelihood regeneration for communities of return and integration. These services and opportunities must be accessible for IDPs, returnees and members of the host community, in order to encourage and facilitate integration.

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## داعش، الأراضي المتنازع عليها والتنوع العرقي-الديني: فرصة لإستحداث سياسة وطنية حول النزوح في العراق

نبذة مختصرة

مشهد النزوح المعاصر في العراق إشكالي وفريد. إن احتياجات النازحين في العراق كثيرة، لا سيما وأن النزوح الذي طال أمده أصبح راسخاً باعتباره القاعدة وليس الاستثناء. ومع ذلك، فإن الأقليات التي تنتمي إلى ما يسمى بالـ«المناطق المتنازع عليها» والمحسوبين على ما يسمى بالدولة الإسلامية (داعش) تمثل مجموعتين من أضعف مجموعات النازحة في العراق. لدى السلطات العراقية حالياً فرصة حقيقية لوضع سابقة إيجابية لحماية النازحين من خلال صياغة حلول دائمة واقعية تتضمن أحكام الحماية غير التمييزية والتي تتخذ نهجا وقائياً تجاه النزوح في المستقبل.

تحليل التقرير السياسي هذا سياق النزوح المعاصر للعراق، الذي يتميز بهذا العنوان بسبب توريق النازحين السنة والعائدين، بالإضافة إلى الصراع المستمر وحالة الإكراه الموجود داخل الأراضي المتنازع عليها. من خلال دراسة قضايا الحماية الحالية، إعتماًداً على السياسة الوطنية للنزوح في العراق لعام ٢٠٠٨، تحدد هذا التقرير ثغرات في عملية حماية النازحين في إطار استجابة العراق للنزوح، قبل الاعتماد على اتفاقية «كمبالا» للاتحاد الأفريقي من أجل تقديم توصيات سياساتية هادفة إلى إصدار تعديل أو تحديث للسياسة الوطنية للنزوح. ستضمن هذه التوصيات أن تكون السياسة الوطنية لعام ٢٠٢٠ حول النزوح وثيقة ذات صلة باحتياجات الحماية المعاصرة للنازحين الأكثر ضعفاً في العراق، بينما تعمل أيضاً على منع المزيد من الصراع والنزوح.

ملخص التوصيات

### (١) إلى السلطات العراقية و إقليم كردستان العراق:

- ينبغي على وزارة الهجرة والمهجرين العراقية إعادة كتابة السياسة الوطنية بشأن النزوح، وعند القيام بذلك يجب أن تشمل الذين يزعم انتسابهم إلى تنظيم داعش والأقليات والنازحين الذين ينتمون إلى المناطق المتنازع عليها أو الذين أعيد توطينهم في إطار تعريف النازحين المستضعفين المحتاجين إلى حماية خاصة.
- يجب على وزارة الهجرة والمهجرين العراقية، من خلال التعاون مع الوزارات المختصة والحكومة المحلية وأصحاب الشأن الدوليين والوطنيين، إنشاء مجموعات عمل (بما في ذلك في إقليم كردستان) بشأن حماية النازحين الذين يعتبرون من المنتسبين إلى تنظيم داعش.
- ينبغي على كل من حكومتي العراق وإقليم كردستان الاعتراف بمسؤولياتهما عن منع تهمة أي فئة اجتماعية، وعليه ينبغي أن تسعى جاهدة لإدراج الفئات المهمشة، بما في ذلك المنتسبون إلى تنظيم داعش والأقليات في المشاورات بشأن الحلول الدائمة وسياسات بناء السلام.
- ينبغي على كل من حكومتي العراق وإقليم كردستان، بالتشاور مع أحد أصحاب الشأن الدوليين المحايدين مثل مكتب الأمم المتحدة لتنسيق الشؤون الإنسانية (UNOCHA)، وضع إطار للأمن والتعاون المشترك في المناطق المتنازع عليها. يجب أن يكون لهذا الإطار حقوق الإنسان وحماية النازحين.
- يجب على وزارة الهجرة والمهجرين العراقية التأكيد على المساعدة والطبيعة الطوعية للحلول الدائمة في السياسة الوطنية المنقحة لعام ٢٠٢٠ بشأن النزوح. تقدم الوزارة تدريباً على الحلول الدائمة وحقوق النازحين لجميع الموظفين الحكوميين المعنيين، والقوات المسلحة والمجاميع المسلحة الغير حكومية التابعة لها، وكذلك قوات الشرطة والأمن.

- عند إعادة كتابة السياسة الوطنية بشأن النزوح، يجب أن يشمل وزارة الهجرة والمهجرين العراقية مسؤوليات الجهات الفاعلة المسلحة الغير حكومية والمجاميع المسلحة التابعة للحكومة والجهات الفاعلة الأخرى فيما يتعلق بمنع النزوح والالتزام بحقوق الإنسان والقانون الإنساني. يجب تحديد المسؤولية الجنائية بوضوح في نفس السياسة.
- يجب على وزارة الهجرة والمهجرين العراقية عقد اجتماع مائدة مستديرة للخبراء في قضايا المهجرين وحماية اللاجئين للمساعدة في صياغة إطار تشاركي للحلول الدائمة.
- يجب أن يوفر وزارة الهجرة والمهجرين العراقية وبأسرع وقت تدريبًا شاملاً للوزارات المعنية على السياسة الوطنية لعام ٢٠٢٠ المعاد صياغتها بشأن النزوح.
- يجب على وزارة الهجرة والمهجرين العراقية ، بدعم من أصحاب الشأن الدوليين، دفع مجلس النواب لتمير السياسة المعاد كتابتها إلى قانون وطني، مما يجعلها ملزمة قانونًا.
- يجب أن تعين وزارة الهجرة والمهجرين العراقية قادة محليين من أجل تطبيق اللامركزية على تنفيذ السياسة المعاد كتابتها. يجب على الوزارة تنسيق ومراقبة التنفيذ لضمان الالتزام بتدابير الحماية، ولكن يجب توفير قدر كبير من الاستقلالية للقيادات الإقليمية.

## (٢) الى المجتمع الدولي / أصحاب الشأن الدوليون

- يجب على المجتمع الدولي تخصيص تمويل لمعالجة حالات الصحة النفسية في العراق على المدى الطويل. سيكون توفير التمويل للتدريب المعتمد لأخصائيي الصحة النفسية داخل العراق طريقة مستدامة للتعامل مع هذا.
- يجب على المجتمع الدولي وأصحاب المصلحة أخذ زمام المبادرة في جمع الأموال والاتصال بالسلطات العراقية والكرديية من أجل توفير الخدمات والبنية التحتية وفرص كسب الرزق للمجتمعات المضيفة ومجتمعات العودة. يجب أن تكون هذه الخدمات والفرص في متناول المجتمع المضيف وكذلك النازحين واللاجئين.

## داعش، و ناوچه جیناکۆکه کان و هه مه پرهنگی ره گهز و ئاین:

### دهرفه تیک بۆ داهینانی پۆلهسی نیشتیمانی سه بارهت به ئاواره بوون له عیراقد

#### پوختهی راپۆرت

دیمه نى ئاواره بوون له عیراقدى نویدا پرکیشسه یه و بیهاتویه. پیدایهستی ئاوارهکان له عیراقد زۆرن، به تابهتی که ئاواره بوونی درێژخایه ن بووه حاله تیکى بنه پره تی نهک نامۆ. له گه ل ئه وه شدا، ئه و پیکهاته نه نى که سه ر به و ناوچه نه ی به ناو (جیناکۆک) ن وه یان له سه ر ریکخراوی به ناو ده ولته تی ئیسلامی (داعش) حیسه سابکراون، به لاوازترینی نیو ئاوارهکان له قه له م ده درین. ده سه لاتدارانی عیراقدی دهرفه تیکى راسته قینه یان له به رده ستدا یه تاوه کو ده سپیشخه ریه کی بئ پشینه بۆ پاراستنی ئاوارهکان له خۆبگرن، ئه ویش له ریکه ی دارپژتنی ریکه چاره ی هه میشه یی و واقیعه بینانه له خۆ بگریته که کۆمه لێک حوکمی پاراستنی بئ جیاکاری تیدابن و بگریته ریکه یه ک بۆ ریکگرتن له ئاواره بوون له ئاینده دا.

ئهو راپۆرتیه پۆلهسیه ره وتی ئاواره بوونی هاوچه رخ له عیراقد شى ده کاته وه که له ئیستادا کیشیه ی ئاواره سوننه کان وه یان گه راوه کان به ئاسایه سکراره، ئه وه ش سه رباری ناکۆکیه به رده وامه کان و حاله ته کانی زۆره ملن که له ناوچه جیناکۆکه کاندایه ده کری. له چوارچێوه ی کاردانه وه ی ولاته که بۆ ئاواره بوون، وه به پشته ستن به پۆلهسی نیشتیمانی سالی ۲۰۲۰ سه بارهت به ئاواره بوون له عیراقد و به ریکه وتنه نامه ی «کامپالا» ی یه کیته ئه فریکا، ئه و راپۆرتیه که لینه کانی نیو پرۆسه ی پاراستنی ئاوارهکان ده ستنیشان ده کات. ئه وه ش به مه به سته پشکه شکردنی کۆمه لێک پشینه یاز و به ئامانجی هه موارکردنه وه ی وه یان نوێکردنه وه ی پۆلهسی نیشتیمانی بۆ ئاواره بوون. پشینه یاز هه و راپۆرتیه دا هاتوون (درێژه که ی له کۆپیه ئیگلیزه یه که دایه) بۆ خاتری دلنیا بوونه له وه ی که پۆلهسی نیشتیمانی سالی ۲۰۲۰ سه بارهت به ئاواره بوون بگریته به لگه نامه یه کی وا که په یوه ست بئ به پیدایه سته سه رده میه کانی پاراستنی ئاواره هه ره لاوازه کانی عیراقد، وه له هه مان کاتدا کار بۆ ئه وه ده کات که ریکه له ناکۆکی و ئاواره بوونی زنده بگری.

#### پوختهی پشینه یاز هه کان

#### (۱) بۆ ده سه لاتدارانی عیراقد و هه ریعی کوردستان

- پیویسته وه زاره تی (الهجرة والمهجرین) ی عیراقدی سه رله نوێ پۆلهسی نیشتیمانی سه بارهت به ئاواره بوون بنووسیته وه، به جۆرێک که ئه وانه ش بگریته وه که گوا یا سه ر به ریکخراوی داعشن و پیکهاته کان و ئاوارهکانی سه ر به ناوچه جیناکۆکه کاندان.
- پیویسته وه زاره تی (الهجرة والمهجرین) ی عیراقدی، که به هاوکاری وه زاره ته په یوه ندیداره کان و حکومه تی خۆجیعی و لایه نه په یوه ندیداره نیوده ولته تی و نیشتیمانیه کان، کۆمه لێک تیمی کارکردن پیک به یخ (به هه ریعی کوردستانیه وه) بۆ پاراستنی ئه و ئاوارانه ی که واده زانری که سه ر به ریکخراوی داعشن.
- پیویسته هه ردوو حکومه تی عیراقد و هه ریعی کوردستان دان به به رپرسیاری تیان دابنن له مه ر پشته گو یخسته نی هه ر توێژیکى کۆمه لگا، و پیویسته کاری جیددی بکه ن بۆ پیک کردنی توێژه پشته گو یخراوه کان، به وانه شه وه که واده نری که سه ر به ریکخراوی داعش وه یان له پیکاته کاندان، وه سه بارهت به ریکه چاره ی هه میشه یی و پۆلهسی ئاشته وایی پرسیان بئ بگریته.
- پیویسته له سه ر هه ردوو حکومه تی عیراقد و هه ریعی کوردستان، به راوێژکردن له گه ل یه کیک له لایه نه نیوده ولته تیه بیلایه ن و په یوه ندیداره کانی وهک UNOCHA، که چوارچێوه یه ک بۆ ئاسایش و هاوکاری هاو به ش له ناوچه جیناکۆکه کان دابنن. پیویسته ئه و چوارچێوه یه لایه نی مافی مرؤف و پاراستنی ئاوارهکان له خۆ بگریته.



- پېويستە وەزارەتى (الھجرە والمھجرىن) ى عىراقى كە لە پۆلەسى نىشتىمانى بۇ سالى ۲۰۲۰ سەبارەت بە چارەسەرى ھەمىشەى كىشەى ئاوارەكان، جەخت لەسەر ھاوكارىكردن و لايەنى خۆبەخشانه بىكاتەوھ. وەزارەت رايھىنان لەسەر چارەسەرى ھەمىشەى و مافى ئاوارەكان پىشكەش بىكات بە سەرجم كارمەندە حكومەتتە پەيوەندىدارەكان و ھىزە چەكدارەكان و كۆمەلانى چەكدارى ناكومى سەر بە دەولەت و ھەروھە ھىزەكانى پۆلىس و ئاسايشەوھ.
  - لە كاتى نووسىنەوھى پۆلەسى نىشتىمانى سەبارەت بە ئاوارەى، پېويستە وەزارەتى (الھجرە والمھجرىن) ى عىراقى بەرپرسىيارىتى ھىزە چەكدارە كاراكانى حكومى و ناكومى سەر بە دەولەت و لايەنە كاراكانى دىكە لەخۇ بگىرى بۇ رىگرتن لە ئاوارەبوون و پابەند بوون بە مافى مرؤف و ياساى مرؤفايەتى. پېويستە لە ھەمان پۆلەسىدا بەرپرسىيارىتى تاوان بە روونى ديار بگىرىت.
  - پېويستە وەزارەتى (الھجرە والمھجرىن) ى عىراقى مېزگىردىك بۇ پسپۇرانى بوارى كۆچكردوون و پاراستنى پەناھەندە رىكبىخات بۇ ھاوكارىكردن لە دارپىرتنى چوارچىوھەكى ھاوبەش بۇ چارەسەرى ھەمىشەى.
  - سەبارەت بە مەسەلەى ئاوارەبوون، پېويستە بە زوتىرىن كات وەزارەتى (الھجرە والمھجرىن) ى عىراقى رايھىنانى گىشتگىر لەسەر پۆلەسى نىشتىمانى ۲۰۲۰ ى (سەرلەنوئى دارپىرتراو) پىشكەش بە وەزارەتە پەيوەندىدارەكان بىكات.
  - پېويستە وەزارەتى (الھجرە والمھجرىن) ى عىراقى، وھ بە پالپىشتى لايەن نىودەولەتتە پەيوەندىدارەكان، پەلەمانى عىراق ھان بدەن بۇ تىپەراندىنى پۆلەسى سەرلەنوئى دارپىرتراوھەكە وھ ياساىھەكى نىشتىمانى، تاوھكو بە ياسا بىسەپىنى.
  - پېويستە وەزارەتى (الھجرە والمھجرىن) ى عىراقى سەركرەدى ناوچەى (لۆكالى) دابمەزىنئ بۇ خاترى بەرجەستەكردنى لامەركەزىيەت لە جىبەجىكردنى پۆلەسى سەرلەنوئى دارپىرتراوھەكە. پېويستە وەزارەت ھەماھەنگى بىكات و چاودىرى جىبەجىكردن بىكات بۇ زامىنكردنى پابەندبوون بە ئامادەباشى بۇ پاراستن، بەلام پېويستە سەربەخۆىيەكى زۆر بۇ سەركرە لۆكالى و ناوچەىيەكان زامىن بگىرى.
- (۲) بۇ كۆمەلگاي نىودەولەتى، لايەنە پەيوەندىدارە نىودەولەتتەكان.
- پېويستە كۆمەلگاي نىودەولەتى دارايى تەرخان بىكات بۇ چارەسەركرەنى حالەتەكانى تەندروستى دەروونى لە عىراق لە مەوداى درىژدا. تەرخانكردنى دارايى بۇ رايھىنانى متمانەپىكراوى پسپۇرانى تەندروستى دەروونى لەناوھەى عىراق رىگايەكە بۇ درىژەپىدانى مامەلەكردن لەگەل ئەو بابەتە.
  - پويىستە كۆمەلگاي نىودەولەتى و لايەنە پەيوەندىدارە نىودەولەتتەكان دەسپىشخەرى بىكەن لە كۆكردنەوھى دارايى و پەيوەندىكردن بە دەسەلاتدارانى عىراقى و كوردى بۇ خاترى پىشكەشكردنى خزمەتگوزارى و ژىرخان و دەرفەتى مسۆگەركرەنى بژىوھى ژيان لە كۆمەلگاكانى خانەوخوئ و كۆمەلگاكانى كە دەگەرپىنەوھ. پېويستە ئەو خزمەتگوزارى و دەرفەتانە لەبەردەست ھەموو كۆمەلگاكانى خانەوخوئ و ئاوارە و پەناھەنەكاندا بن.

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