



ICRC

Humanitarian concerns in the aftermath of the military operations against the Islamic State group in Syria and Iraq

ICRC POSITION PAPER

The populations of Syria and Iraq continue to suffer the devastating effects of years of armed conflict. Too many have been killed or injured and thousands remain missing or separated from their loved ones. Extreme levels of violence, the destruction of livelihoods and essential infrastructure, as well as hatred and discrimination, have forced millions to flee. While discussions at the international level focus on stabilization and reconstruction, the humanitarian situation on the ground remains dramatic and reports of ongoing tensions in Iraq and further military operations in Syria are alarming.

The complexity of political, security and legal issues related to the conflicts in Iraq and Syria is daunting. In a conflict landscape marked by fragmentation, proliferation of armed groups and changing alliances, States are confronted with multilayered and interconnected dilemmas and tensions between security, justice and peace. The humanitarian situation of the populations affiliated or perceived to be affiliated with the Islamic State group (ISg), including foreign fighters and their families, illustrates these challenges and the volatility and fragility of the current situation.

The size of the population concerned, the diversity of their needs and the specificity of their personal situations are considerable. In parallel, some individuals within or around these populations may represent a legitimate security concern. Years of conflict have compounded the pressing need for security, justice and the rule of law. At the same time, political, religious and community divisions that fuel stigmatization, discrimination and revenge are on the rise.

It is understandable that governments and the international community struggle to deal with these challenges in an efficient and comprehensive manner. Yet, this complexity cannot be used as an excuse not to act and resolve situations of patent inhumanity. Operational, legal and policy solutions to these difficult questions are available and immediate action is required.

This paper provides an overview of the humanitarian protection and assistance needs and the challenges the ICRC observes on the ground in Syria and Iraq, with a specific focus on foreign fighters and their families. It presents a basic blueprint of main requirements and possible avenues to alleviate suffering and improve the precarious humanitarian situation of these individuals. Our intention is to provide our practical, humanitarian and legal expertise to support States and the international community in their efforts to explore, identify and implement principled and pragmatic solutions when confronted with difficult choices.

Security, justice and peace should not be pitted against humanitarian imperatives. Stigmatization, exceptionalism and disregard for the law are seeds for future conflict.

Over recent months, the world has been watching as thousands fled the fighting in areas formerly controlled by ISg. In Syria and Iraq, many were arrested and are now detained in prisons or held in camps. The vast majority of these people are Syrians and Iraqis, while others are foreign nationals.

There is a trend of public discourse portraying all of them – irrespective of nationality, personal situation, past actions or even their age – as an exceptional security threat requiring an exceptional response. Such stigmatizing narratives tend to brand all individuals perceived to be affiliated with the group as ‘terrorists’, placing them beyond the protection of the law and at risk of collective punishment. These people should not be treated as a unique and homogenous category of people deserving exceptional treatment, outside of normally applicable legal processes and standards. Claims of exceptionalism weaken normative frameworks provided for by international law and may create an environment conducive to abuse and violations.

Resentment and anger may be understandable when years of conflict and atrocities have divided communities and unraveled the social fabric, but they also risk fueling further cycles of violence and must be mitigated. History has shown that the way conflicts are fought and ended is closely related to how communities move beyond the rift that led to the conflict in the first place. Policies and practices that are driven by short-term considerations, stigmatize parts of the population, or introduce exceptionalism into the application of the law will not contribute to long-term stability.

States have a responsibility to rise above existing community tensions and divisions, to respect the fundamental rights of all individuals and to provide them with the support they need in line with their personal situation. Enabling them to reintegrate in their societies with all attendant rights and responsibilities is an essential building block of reconciliation. Both immediate action and long-term commitment are required to change the negative paradigms that dehumanize people and incite revenge and divisions at the expense of justice and reconciliation. States must not lower the protection standards and fundamental principles of the international legal framework. The basic tenets of humanity are simply non-negotiable.

While addressing the humanitarian needs of affected individuals, States should work to prevent impunity for crimes that were committed during the conflict. The ICRC urges States to take all possible measures to ensure that international crimes, violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) on all sides are investigated and prosecuted. Such accountability processes are crucial to the dignity of victims, to the stability of the region and to collective security. When guided by fear or revenge, instead of the law, these processes can perpetuate the very same cycles of violence they are meant to end, heal and prevent. It is therefore essential that States stand firm in respecting and ensuring respect for international law and take all necessary measures to guarantee that all individuals, including those who participated in hostilities, are treated in accordance with the law.

The specific case of foreign fighters and their families – From urgent and complex protection needs towards individualized and contextualized solutions.

The case of the so-called “foreign fighters and their families”¹ held in Iraq and Syria is a particularly illustrative example of these challenges. While this may be a relatively small group of people, the humanitarian and protection needs of this population illustrate the challenges at stake: the treatment they receive is emblematic of the broader situation described above. It is vital to immediately address their humanitarian needs, and to put in place a long-term framework and approaches to find the solutions that will balance and reconcile security and justice objectives with humanitarian imperatives.

In Syria

The situation in the camps and places of detention in the North East of Syria requires an urgent humanitarian response. Al Hol camp is a particularly striking example of the humanitarian challenges at play in the region. Recent estimates indicate that approximately 68,000 people – including 30,000 Syrians, 27,000 Iraqis and 11,000 foreign nationals from more than 70 different countries – are currently held there in dire conditions. The vast majority are children and women. Al Hol and other similar camps in North East Syria are not ‘traditional’ internally displaced persons (IDP) camps. Camps and prisons are located in the middle of militarily contested or particularly insecure areas that aggravate the vulnerability of those living there.

Living conditions in these places are far below international standards in terms of access to food, water and health care. Access to information about the fate of missing relatives is lacking and, together with general uncertainty about the future, generates acute distress. Recent public reports indicated regular spikes in child mortality rates due to malnutrition and treatable illnesses. Security is a constant issue in and around the camps where tensions among residents or with local authorities regularly lead to serious incidents, including fatal ones. The longer people remain in these camps, the greater the damage to their physical and mental well-being. Meanwhile, the individuals in detention, some of them below 18 years old, have specific needs and rights that should not be neglected.

Over the past few months, humanitarian organizations, including the ICRC, have significantly increased their emergency response in the camps but considerable security and logistical constraints remain. While immediate action is necessary to address life-saving needs, alternative solutions must be put in place to scale down these camps and build long-term solutions for their populations.

In Iraq

In Iraq, thousands of people have been arrested and more than 1,5 million persons remain displaced, unable to return to their places of origin. Some 30,000 persons charged under anti-terrorism legislation are in detention, including many foreigners. Foreign women charged with ISg affiliation, including through marriage or kinship, are similarly detained. Their young children, in the absence

¹ ‘Foreign fighters’ is not a legal term. In the Syrian and Iraqi contexts, it is understood as “nationals of one country who travel abroad to fight alongside a non-State armed group in the territory of another State. The term “foreign fighter and their families” is used here for convenience, in awareness of the fact that the term may carry a risk of stigmatization. The ICRC observes that stigmatization affects persons associated with armed groups designated as “terrorist” – and indeed can affect a wide range of individuals who have had any contact with such groups – regardless of whether they are third-country nationals. See upcoming ICRC 2019 Challenges Report.

of a viable alternative are accommodated together with them in prison. Prisons are not adapted for children: there is no space to run and play, no educational or recreational activities supporting their development. Wherever countries of origin have expressed interest in repatriating foreign children, Iraq has provided support and actively facilitated returns, to the extent possible.

It is the ICRC's view that countries of origin have the primary responsibility for their own nationals – men, women and children alike. Rather than encouraging Iraq to funnel thousands of foreigners captured in Syria into their already overstretched penitentiary and judicial system, they should offer relief by repatriating their nationals in view of potential prosecution, or rehabilitation and reintegration. Where they decide not to do so, they owe Iraq substantial support in strengthening their penitentiary and judicial systems, so as to ensure that these and other defendants will be detained, investigated and prosecuted in line with international law and standards.

The situation of children

The utmost priority must be to address the situation of the thousands of children, being in detention or in the camps, who are currently living in conditions that are a direct threat to their lives. Some have suffered assault or injuries, and most have experienced severe psychological distress and trauma. Without access to medical assistance, psychosocial support or education, they are exposed to continuous suffering and risks of abuse, with no clear perspective or reassurance for the future. Many are orphans, or are otherwise un-accompanied, and without identification or information about their countries of origin or their filiation.

It is essential that these children be treated first and foremost as victims, irrespective of whether they, or their parents, have been associated with armed groups. We know from previous conflicts and in particular from the experience of children associated with armed forces or groups that it is fundamental to show humanity, empathy, understanding and support to children forced to live in a world of conflict and violence. This includes situations in which criminal prosecution has been launched against them. Due respect for internationally recognized juvenile justice standards is critical.

It is also essential that when assessing their specific protection needs, authorities ensure respect for the rules governing family unity and determine what solution is in the best interest of the child. While doing so, States should ensure the provision of appropriate documentation and pay specific attention to mitigating the risks of statelessness and arbitrary separation of family members. When considering repatriation, IHL requires the maintenance of family unity as far as possible. Children must therefore not be separated from their mothers and siblings, unless it is considered in their best interest by a competent authority after a thorough individual assessment subject to judicial review or in cases where genuine and non-coerced parental consent is given. Even in case of separation, the possibility to exchange family news must be preserved. In addition to immediate action, long-term planning is needed to ensure that children can reintegrate into their communities and become contributing members of society.

The situation of women

Women have a range of roles and experiences in this context. They have acute and distinct protection and assistance needs which require heightened attention. While some should be investigated about the role they may have had in supporting ISG or directly carrying out violent acts, many have been themselves victims of violence, including sexual violence. Some girls, who are now mothers, were

taken to the theaters of conflict by their parents as children. Today they are being stigmatized and rejected by their families, communities and States, and treated by default as criminals instead of victims.

The stigma and level of threat ascribed to these women place them at particular risk of discrimination vis-à-vis their fundamental rights. Many have been separated from their loved ones and are desperately asking for family news and information about their fate, terrified by the possibility of being separated from their children. It is essential that these women be treated in accordance with applicable laws and provided with adequate protection from stigmatization and exploitation, taking into account their specific and individual vulnerabilities as well as their right to family unity.

Individualized solutions are needed. When looking for alternative solutions to the current situation of these populations, one of the main challenges is its broad diversity in terms of profiles, nationalities and languages, levels of isolation or vulnerability. “Foreign fighters” and their families represent a patchwork of individuals with widely varying types and degrees of needs. Understanding this complexity is critical and explains the importance of individual assessments and approaches to define which legal framework applies, and what solution might be most efficient.

International Law provides a framework for principled and pragmatic solutions but political action – and courage – are also required.

International law provides a framework to guide States in ‘peeling’ back the different layers, scaling down the problem and ensuring respect for fundamental rights, while dealing effectively with security threats and accountability challenges. Developing case-by-case, step-by-step approaches will deconstruct the issues and help in breaking down complex dilemmas into a set of concrete, manageable and contextualized problems with corresponding solutions.

First and foremost, States must take responsibility for their citizens. This is not only a humanitarian imperative but also smart policy because it challenges prejudices, breaks the logic of revenge and provides justice for the victims. Concerned States should not turn their back on these populations and their citizens. Leaving them in temporary camps or legal limbo for indefinite periods of time is unsustainable.

The ICRC therefore urges States to take all feasible measures to repatriate all their nationals from Syria and Iraq – whether they are former fighters or civilians. Repatriations would facilitate humane treatment, compliance with applicable standards and afford the best chances to enable reintegration, without jeopardizing security and justice objectives. The situation is particularly urgent for children, the elderly, and the sick and wounded who should be given priority in light of their specific needs.

States must handle repatriations and transfers carefully and lawfully. When repatriation or other transfers of individuals are considered for prosecution, detention or other reasons, it is essential that transferring parties assess whether those transfers are lawful in view of the principle of non-refoulement. Systems must be put in place to ensure that risks to fundamental rights are assessed individually and with respect to applicable legal safeguards, including in situations of potential subsequent transfer.

An individualized approach is required. A first step towards individualized solutions is the case-by-case determination of the legal basis for detention, which enables the respect of rights afforded to detainees in the framework of armed conflict. Individualized screenings are also a critical step in identifying the vulnerabilities of those being detained and in treating them accordingly. Absence of such case-by-case screening leads to costly and disproportionate security measures that perpetuate a situation in which thousands are perceived as a homogenous – threatening – mass.

The ICRC firmly believes that those responsible for crimes must be prosecuted and sentenced in accordance with the law. Repatriations are not incompatible with accountability. They are one of the solutions available to ensure justice and security at the same time and should therefore not be precluded solely because of anticipated security risks. Existing national and international laws provide States with tools to deal effectively with security threats, while ensuring accountability and fundamental rights. When necessary, these tools can be developed or adapted in their legal frameworks to allow for effective security risk management and due process. In addition to criminal justice, lessons learned from transitional justice experiences – such as reintegration, rehabilitation and reconciliation programs – can provide additional venues and solutions to deal with the devastating consequences of the conflict in the region.

There are no alternatives to international cooperation. While each State is confronted with a specific set of political constraints and legal requirements that demand contextualized solutions, it is evident that such complex and transregional humanitarian challenges require dialogue and cooperation among States. In the situation of ‘foreign fighters and their families’, there are no alternatives to international cooperation. International exchanges may reveal creative solutions and we have indeed observed different approaches.

The ICRC encourage States to work together and exchange information and good practices on the different dimensions of these situations – including security risks assessment and related procedural tools, alternatives to detention as well as reintegration and rehabilitation programs. Positive examples of repatriations exist and good practices of individual follow-up mechanisms, mental health and psychosocial assistance, educational and livelihood support programs should be shared. States may need to show flexibility while applying existing procedural requirements regarding identification procedures of young children given the complexity of the individual circumstances.

The ICRC believes that through discussions and exchanges in appropriate bilateral and multilateral settings, States can agree and design contextualized solutions to guarantee in parallel short and long-term security and humanitarian objectives. The ICRC offers its humanitarian and legal expertise to support and inform such discussions. We seek to engage all relevant actors to secure access to relevant places and people, to ensure that humanitarian aid reaches the people in need and improves living conditions. We propose discussion on what other steps are feasible and where the ICRC could best add value. Some needs will fall outside our mandate or will not be possible for us to fulfil; in such cases we may help facilitate discussion with other who may be in a better position to do so.

The cost of further violence is too high: setting the right example for future generations

The situation is critical. On the ground, it continues to change rapidly, causing significant humanitarian consequences for the civilian populations affected, and additional challenges for States. Inaction will dramatically jeopardize the chances of lasting peace in the region and States ought to act while it is possible. No humanitarian response alone can ever fully resolve or address the challenges at stake for these populations in Syria and Iraq. Political solutions and courage are also required. While further security and military operations in the region are underway, humanitarian imperatives must be given heightened attention and put at the center of political decision-making to ensure a balanced approach. Understanding the political challenges linked with the complex security situations in Iraq and Syria, we urge States to ensure that short-term political considerations are not pitted against urgent and longer-term humanitarian requirements. Solutions in Syria and Iraq depend on political will and commitment.

The ICRC stands ready to assist all States in working through these difficult tasks as they balance security concerns, legal obligations and humanitarian imperatives.