

## Inception Paper to explore solutions for East Mosul Camps' former detainees' caseload and their families.

**East Mosul Camps residents' profile:** It is home to approximately 11,700 individuals, primarily from Ninewa, with a small number from Kirkuk and Salahuddin. A notable portion of female-headed households (about 7,500). Population in East Mosul Camps face severe mobility restrictions and limited access to services or income opportunities. These households, many associated with Da'esh, encounter difficulties regarding civil documentation, harassment, and safety. Approximately 480 families (around 1,900 individuals) from 13 surrounding villages in disputed territories and 600 individuals released from detention by KRG authorities or convicted of crimes related to ISIS affiliation reside in the camps.

**Former detainees in East Mosul Camps:** It is assumed that their solution requires greater political alignment between Federal authorities and the Kurdish Regional government and that legal action to facilitate the issuance of release papers will not necessarily offer sufficient protection in their cases. This is substantiated by two arrests that took place in Hawija for recent returnees from Hassan Sham in 2023, who were later convicted of terrorism charges and received a court order of 20 years in jail each. An additional arrest case was recorded in a facilitated voluntary departure from the U2 camp in March 2024. The arrest occurred despite security clearance and close coordination with the Joint Operations Command (JOC), raising concerns, especially about the departure prospects of the former detainees residing in East Mosul Camps.

**Background:** In 2017, during the offensive in Hawija, several minors and adults whom ISIS had recruited surrendered to the Peshmerga forces and were subsequently detained by Kurdish authorities. Both juvenile and adult ex-combatants underwent trials in the Kurdistan region of Iraq, receiving sentences ranging from two years to five years. Some remain incarcerated, having not yet fulfilled their terms. Post-release, these individuals were relocated to East Mosul Camps, which are located in disputed territory between Federal Iraq and the Kurdish Region of Iraq, yet under Kurdish Peshmerga control perimeter, with Iraqi Security Forces stationed approximately 2 kilometres away from the camps.

Kurdish authorities continue to provide these former detainees with release letters detailing their court ruling and confirming time spent in detention. Nevertheless, these documents do not necessarily safeguard against re-prosecution for the same crimes or new charges being pressed against them, a concern for a subset of the released. Among the 600 individuals, 60 are composed of single individuals with no relatives. Those who had been accused and detained for crimes tied to Da'esh were either sentenced and served time in KRI detention facilities or released by KRI courts without a sentence due to insufficient evidence or acquittal.

Camp	Total Population (HH)	Former Detainees with Family	Former Detainees without Family	Total Former detainees
Khazir - (M1)	714	1	0	1
Hassansham - (U2)	578	59	0	59
Hassansham - (U3)	1,147	444	96	540
<b>Overall number of people of concern</b>				<b>600</b>

As more individuals complete their sentences, the population of former detainees in the camps grows. However, returning to Federal Iraq territories may subject them to repeated trials, potentially violating the principle of 'double jeopardy' under international law. Even in the occasion of measures are put in place to prevent double jeopardy, anecdotal evidence suggests that these former detainees could still face trials on new charges.

The presented preventative measures, such as the issuance of release letters by Kurdish authorities, were not considered a sufficient guarantee of protection from re-trials. This is due to the inconsistencies in counter-terrorism laws between Federal Iraq and the Kurdistan Region, as well as the fragmentation in the country's security and law enforcement architecture, which leaves these former detainees in a state of uncertainty and vulnerability.

It's important to note that some former detainees, according to federal authorities, have not received sentences proportional to their alleged crimes. There is also a legitimate fear of human rights violations, mistreatment, or abuse unless government commitment is made to ensure adherence to due process if, in the future, any of those former detainees have returned and faced trial.

Separately, integration within the Kurdistan region of Iraq poses a separate set of challenges. Notably, Kurdistan is where many of these individuals faced trial and where their time served in prison is recognised as sufficient within the local legal jurisdiction. Yet, all released detainees were issued decisions by Kurdish courts following the release prohibiting them from entering Kurdistan Region of Iraq after serving their sentences.

**Overarching considerations:** Given the complexity of the situation, the role of the UN and organisations with relevant mandates, such as the ICRC, in supporting the addressing of this caseload is pivotal. The approach needs to be principled, with a clear focus on upholding human rights, ensuring justice, and facilitating durable solutions to ensure a sustainable and safe future for the people of concern.

A multi-faceted strategy is imperative. It necessitates establishing a framework or arrangement that mediates these legal and administrative barriers and ensures former detainees' and their families' protection and rights—especially given this caseload's intertwining legal, political, security and humanitarian nature. Central to the UN approach, there is a need for a risk analysis and classification of associated risks pertaining to the former detainees and their families.

There is a need to accurately assess and classify the cases of the detainees to determine their legal status and security risks and determine their best interest in relation to return vs resettlement. While the government of Iraq is seeking UN support in the implementation of its decision to close camps in KRI, it is imperative that the government offer assurance that returning individuals will not face arrests during the return process, especially on the occasion that relevant authorities have provided security clearance.

**History of UN engagement on this caseload:** UN agencies have been engaged in various degrees in addressing the needs of former detainees residing in East Mosul Camps (EMCs). The UN Refugee Agency (UNHCR), through its implementation partner InterSOS, is providing legal assistance and civil documentation. This includes facilitating access to birth certificates, marriage certificates, and Unified IDs, particularly for female heads of households and complex cases involving former detainees. The objective is to facilitate access to essential services like education and healthcare and to alleviate obstacles to durable solutions such as return.

The International Organization for Migration (IOM) also delivers legal services directly to former detainees. Their activities range from representing individuals before courts to obtain release papers to counselling on civil documentation and due process matters. Additionally, they conduct awareness-raising activities and data collection efforts to enhance knowledge and advocate with relevant authorities to prevent double jeopardy for those serving sentences in the Kurdistan Region of Iraq (KRI).

Furthermore, the United Nations Office on Drugs and Crime (UNODC) and the United Nations Office of Counter-Terrorism (UNOCT) are considering future involvement in providing legal services to this caseload. Their proposed activities include promoting post-care support, in line with relevant laws, to address housing, employment, education, mental health, substance abuse treatment, healthcare, legal assistance, financial management, reintegration programs, community supervision, and peer support.

The overarching objective is to ensure that individuals who have served their sentences are supported to prevent recidivism and continue accessing basic services.

**Internal UN consultation:** Several key points regarding this complex caseload were highlighted in an internal UN practitioner's consultation meeting in March 2024. There was a pressing call for a comprehensive **joint UN due diligence exercise**, recognising the momentum in Erbil and Baghdad to address displacement in the camps and the urgency for the UN to set its parameters of engagement cohesively across agencies, including identification and improved overall awareness of UN limitations for engagement while exploring avenues for coordination and advocacy.

The consultation also shed light on the redefinition of risks, with anecdotal evidence challenging the assumption of double jeopardy risk and instead emphasising the risk of new charges being pressed against the former detainees, albeit not ruling out the possibility of double jeopardy in specific cases. The role of law and due process was acknowledged, stressing the importance of respecting due process while expressing concerns about government practices deviating from adherence.

Case-by-case assessment was noted as a priority intervention, though there was a need for further clarity on the assessment's nature and potential involvement from relevant agencies. Additionally, there was a recognition of the lack of assessment on the perception of the caseload's return to their areas of origin, including security and acceptance considerations, highlighting the importance of addressing these factors in the overall assessment.

Legal assistance in obtaining release papers from Kurdish courts was deemed important but insufficient for protection against future arrests by federal authorities, indicating the need for enhanced legal support. Finally, discrepancies between KRI and Federal Iraq regarding sentencing under the Counter Terrorism Law were identified as posing complications for the caseload, underscoring the challenges in navigating legal frameworks between different jurisdictions.

**With the result of the initial UN consultation, a joint UN due diligence exercise is proposed with the following objectives:**

1. To assess the legal, political, security, and humanitarian dimensions of the cases of former detainees and their families in East Mosul Camps.
2. To identify key challenges and barriers preventing former detainees' reintegration, resettlement, or return to their communities of origin.
3. To develop a risk analysis and classification system to determine the legal status, security risks, and best interests of the former detainees and their families.
4. To propose principled solutions that uphold human rights, ensure justice, and facilitate durable solutions for the individuals of concern.
5. To ensure safeguards to reduce reoffending through rehabilitation, reintegration, and utilisation of post-release care and support.

**Proposed Methodology:**

- 1- Desk review of all former and current UN and INGO assessments conducted pertaining to this caseload.
- 2- Conduct interviews and consultations with relevant stakeholders, including representatives from the Iraqi government, Kurdish Regional Government (KRG), UN agencies, international organisations, civil society, and affected individuals and communities.
- 3- Review existing legal frameworks, policies, and practices related to the detention, trial, release, and post-care of individuals associated with Da'esh in Iraq, with a focus on the Kurdistan region.
- 4- Analyse case studies and documented experiences of former detainees to understand their challenges regarding access to an attorney, obtaining civil documentation, accessing services, and other relevant types of support.

- 5- Assess the feasibility and implications of potential solutions, including integration within the Kurdistan region, legal reforms, support for documentation processes, and risk mitigation measures.
- 6- Identify and clearly streamline UN advocacy efforts and UN limitations for engagement on this caseload.

**Key Considerations:**

1. There is a need to prevent individuals from returning to situations where they may face human rights violations, mistreatment, or abuse.
2. The concept of double jeopardy and the risk of individuals facing repeated trials or prosecution for the same crimes upon return to their communities of origin.
3. The importance of addressing the root causes of radicalisation and extremism, including socioeconomic marginalisation, discrimination, and lack of opportunities.
4. Addressing the root causes of recidivism, including promoting the continuation of basic services after release (post-care).
4. The role of international law, human rights standards, and due process in guiding the development of solutions and interventions.

**Proposed timeframe:** 3 months

**Coordination:**

- Resident Coordinator’s Office
- OHCHR
- UN OCHA

**Participating Agencies:**

- UNHCR
- IOM
- UNDP
- UNODC
- UNOCT