

Iraq, Forced displacement and deliberate destruction

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Iraq: Banished and Dispossessed: Forced Displacement and Deliberate Destruction

[Source: Amnesty International, "*Iraq: Banished and Dispossessed: Forced Displacement and Deliberate Destruction*", 20 January 2016, AI Index number: MDE 14/3229/2016, available at: <https://www.amnesty.org/en/documents/mde14/3229/2016/en/>, footnotes omitted]

[...]

SUMMARY

[1] Over three million people have been displaced by the ongoing conflict in Iraq, the highest number and fastest rate of people displaced in the world in 2015 according to the International Committee of the Red Cross (ICRC).

[2] In five provinces most of the displaced cannot return to their homes as their towns and villages, taken over by the armed group calling itself "Islamic State" (IS) since mid-2014, remain under IS control or have been recaptured by Iraqi and Kurdish forces and militias but remain unsafe or have sustained extensive damage in the fighting.

[3] Many of the displaced are being prevented from returning by the Kurdish Peshmerga and Iraqi government forces and paramilitary militias who recaptured the areas from IS in an attempt to consolidate their control over territories which have long been disputed.

[4] This reports focusses on areas of northern Iraq where Peshmerga forces of the semi-autonomous Kurdistan Regional Government (KRG) are preventing residents of Arab villages and Arab residents of mixed Arab-Kurdish towns from returning to their homes, and in some cases have destroyed or permitted the destruction of their homes and property – seemingly as a way to prevent their return in the future.

[5] Some of the displaced families fled their homes when IS fighters captured their villages in the second half of 2014. Others only fled when fighting broke out between IS and Peshmerga forces, as the latter drove IS fighters out from the areas in late 2014 and in 2015. Some families were expelled from their homes by Peshmerga forces after these had taken control of the areas.

[6] Displaced families took little or nothing with them when they fled, thinking they would soon return home. Many farmed the land and herded animals in and around their villages, and have not only lost their homes but also their livelihood. Displaced families are now sheltering in camps for internally displaced persons (IDPs), where conditions are dire and humanitarian assistance woefully inadequate, or in disused or unfinished buildings lacking sanitation and basic facilities, many without access to humanitarian aid. Some are being hosted by relatives in already overcrowded homes and others rent accommodation which they may soon have to give up as their savings run out.

[7] The displaced are also subject to restrictions on their movements imposed by the KRG authorities, which severely limit their ability to work, study or even access medical care. [...]

[8] KRG officials have offered various explanations of why residents are not allowed to return to their villages: Because the areas are not yet safe; because Arab residents of these areas cooperated or may cooperate with IS or that residents have gone to IS-controlled areas and will not return. [...]

[9] As well, KRG officials have implicitly or explicitly justified the forcible displacement of Arab residents as a way to reverse the mass displacement of Kurds in previous decades, notably during the Saddam Hussein regime, which attempted to “Arabise” Kurdish regions through demographic engineering”. [...]

[10] While some homes and properties of displaced Arab residents may have been damaged or destroyed in the fighting, in many cases they were looted, intentionally burned down, bulldozed or blown up after the fighting had ended and Peshmerga forces were in control of the areas.

[...]

[11] The organization is aware that a large number of Iraqis displaced by the conflict in Iraq, from all ethnic and religious communities, including many Arabs, have sought refuge in areas controlled by the KRG, and that the KRG authorities have been faced with significant humanitarian and security challenges as a result. However, the cases of forced displacement of residents and unlawful destruction of civilian homes and

property highlighted in this report are not isolated incidents. Rather, they are examples of a wider pattern across the disputed areas of northern Iraq, where parties which had long vied for exclusive control of these areas are now intent on consolidating territorial gains they have made as a result of battlefield successes against IS. Further, these abuses appear to have at times been committed in retaliation for residents' family or community ties or perceived support for members of IS or other armed groups who perpetrated widespread atrocities against civilians and Peshmerga forces in the areas.

[12] Such practices are in violation of international law regulating the conduct of the parties to a non-international armed conflict, which prohibits the displacement of civilians and the destruction or seizure of property not required by imperative military necessity. Suspicion or vague allegations that a certain population group or community may support or cooperate with the enemy does not constitute imperative military necessity and cannot justify measures which amount to collective punishment. Amnesty International considers that such cases of forced displacement and unlawful destruction of civilian property should be investigated as war crimes.

[...]

KRG OBLIGATIONS UNDER INTERNATIONAL HUMANITARIAN LAW

[13] International humanitarian law, or the laws of war, governs the conduct of the parties to an armed conflict. It sets out rules of humane conduct that aim to minimize human suffering and offer special protection to civilians and those not directly participating in hostilities.

[14] These rules are legally binding on all parties to the conflict, state armed forces as well as non-state armed groups. Serious violations of international humanitarian law constitute war crimes and those who commit or order war crimes are individually responsible and must be brought to justice. States have an obligation to investigate alleged violations of the laws of war, to bring to justice those responsible, and to ensure reparation for the victims of such violations.

[15] Iraq is a state party to the Geneva Conventions of 1949 and their Additional Protocol of 1977 relating to the Protection of Victims of International Armed Conflicts (Protocol I), which, together with the Hague Regulations of 1907, make up the backbone of the laws of war governing the methods and means of warfare. Under customary IHL, most of the rules on the conduct of hostilities -- and all those relevant to this briefing -- apply in non-international armed conflicts - such as that involving Iraqi and Kurdish government forces, state-backed militias, and armed opposition groups and are binding on state and non-state forces.

[16] The forced displacement and deliberate destruction of civilian homes and property documented in this report violate international humanitarian law.

DESTRUCTION OF HOMES AND PROPERTY

[17] "Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict is prohibited; and constitutes a war crime in non-international armed conflict according to the Rome Statute of the International Criminal Court.

[18] The punitive destruction of homes and property on grounds of ethnicity or on other discriminatory grounds, or because a family member is suspected of affiliation with the adversary constitutes “collective punishment”, which is likewise prohibited and a war crime.

[19] In the cases investigated by Amnesty International some of the homes and property destroyed were or were likely to have been damaged or destroyed by IS forces prior to their withdrawal, in the context of IS-Peshmerga fighting, or because of explosive charges (booby traps) left by IS. However, all available evidence – the testimonies of victims and witnesses, including members of the Peshmerga forces, and the pattern and scale of the destruction observed by Amnesty International on the ground and through satellite imagery analysis – indicates that large scale destruction was carried out deliberately with no military necessity, after the areas had been captured and secured by Peshmerga forces. The denial of permission for residents to return/access to these areas also suggests that the destruction may have been intended to prevent the return of residents to the areas. Destruction of homes and property and forced displacement on such a basis is unlawful, whether carried out in retaliation for acts allegedly committed by members of families and the community or to “redress” decades-old “Arabisation” policies.

FORCED DISPLACEMENT

[20] International humanitarian law prohibits the displacement of civilians during non-international armed conflicts except for their own security or for imperative military reasons. When displacement occurs, the displaced persons have the right to voluntary return in safety to their homes as soon as the reason for their displacement ceases to exist, and their property rights must be respected.

[21] The UN Guiding Principles on Internal Displacement further underscore that every person has the right to be protected from being arbitrarily displaced from her or his home (Principle 6(1)). The Principles “shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction.” (Principle 2(1)). Prior to displacement, authorities must explore all feasible alternatives (Principle 7(1)).

[22] Whatever the original circumstances of the displacement, the competent authorities have the responsibility to help establish conditions for, and to facilitate, the safe, voluntary return of the displaced to their homes (Principle 28(1)). And they have the duty to help the displaced recover their property and possessions, and where this is not possible, to obtain appropriate compensation or another form of just reparation (Principle 29(2)).

[23] In the cases investigated by Amnesty International the KRG authorities have not only failed to facilitate the safe return of the displaced, but have been actively obstructed it.

[...]

Discussion

I. Classification of the conflict and applicable law

1. (*Paras [2]-[5], [11]-[12]*) How would you classify the conflict in Northern Iraq? Who are the parties to the conflict?
2. (*Paras [13]-[16]*) What law is applicable in this case? Is IHL equally applicable to States and non-State actors?
3. (*Paras [21]-[23]*) Do the UN Guiding Principles on Internal Displacement form part of IHL? Do they apply equally to armed groups? On what basis do you found your answer? Are the Guiding Principles applicable to the situation in northern Iraq? Are they legally binding? In your opinion, do they provide more protection than the relevant IHL rules?

II. Destruction of homes and property

4. How would you define a civilian object? Is it ever lawful under IHL to intentionally destroy a civilian object? Under what circumstances does a civilian object become a legitimate military objective? Is unintentional destruction of civilian property during the conduct of hostilities always lawful? Always unlawful? What information do we need to make an assessment about the legality of an attack that involves unintentional destruction of civilian property? From this account, is it possible to conclude that all instances of destruction of civilian homes and property constituted violations of IHL? (CIHL, Rules 8, 9, 14, 15; P I, Arts 51(5)(b), 52, 57)
5. (*Paras [10], [19]*) Which rules of IHL were violated when civilian objects were "looted, intentionally burned down, bulldozed or blown up after the fighting"? Does the distinction between military objectives and civilian objects matter for the destruction allegedly undertaken by Peshmerga forces when they were in control of the places where particular objects were situated? Is the destruction of a house in such circumstances always unlawful? (CIHL, Rules 50, 88, 133)
6. (*Paras [12], [18]*) What is the meaning of "collective punishment"? Is this prohibited by IHL? Are there any circumstances where the imposition of collective punishment may be justified? How are the IHL rules on collective punishment relevant to the facts of this case? (P II, Art. 4(2)(b); CIHL, Rule 103)

III. Forced displacement

7. What is the legal difference between the terms "internally displaced persons" and "refugees"? Are both categories of persons protected in the same way by IHL? What rules of IHL were violated due to the population displacements mentioned in the report? (P II, Art. 17; CIHL, Rule 129 B)
8. (*Paras [3], [4], [8],[9], [19], [20]*) Under what circumstances may the displacement of a population be lawful? Is it ever lawful to prevent residents from returning to their homes? What is your reaction to the KRG's explanations as to why residents are not allowed to return to their homes? Do any of these explanations serve to legitimise the KRG's actions? Could the conduct of the KRG be justified if Kurds were, in previous decades, forcibly displaced from their villages and replaced by Arabs?
9. In your opinion, are there any additional concerns raised by the fact that the ethnicity of displaced persons plays a role in whether they are allowed to return to their homes? (CIHL, Rule 88)