

Iraq: Situation of Internally Displaced Persons

[INTRODUCTORY TEXT: This case study presents two reports, one from the UN Special Rapporteur on the Rights of Internally Displaced Persons and the other from Amnesty International, describing the effects of the armed conflict in Iraq on internally displaced persons. This case study will focus on the treatment of internally displaced persons under IHL.]

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.

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A. REPORT OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS ON HIS MISSION TO IRAQ

[Source: United Nations Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Iraq, UN Doc. A/HRC/32/35/Add. 1, 5 April 2016, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/35/Add.1 (footnotes omitted)]

[...]

I. Introduction

1. In accordance with his mandate contained in Human Rights Council resolution 23/8 and at the invitation of the Government of Iraq, the Special Rapporteur on the human rights of internally displaced persons, Chaloka

Beyani, conducted an official visit to Iraq from 9 to 15 May 2015. The objective was to examine the human rights situation of internally displaced persons in the context of the ongoing conflict with the self-proclaimed Islamic State in Iraq and the Levant (ISIL), also known as Daesh, and other sectarian violence, as well as to consider legal frameworks, policies and programmes to respond to the displacement crisis.

[...]

II. Context of internal displacement in Iraq

4. The displacement crisis in Iraq is one of huge proportions; it is estimated that close to 3 million persons have been internally displaced since the beginning of 2014. Indeed, by 22 June 2015 the International Organization for Migration had estimated that the number of internally displaced persons, including those previously displaced (before the current crisis which began in 2014), was more than 4 million. The humanitarian country team estimated that 8 million Iraqis required some form of humanitarian assistance, which gives a stark demonstration of the deteriorating extent of the crisis. [...]

5. As recognized in the 2011 report of the former Representative of the Secretary General on the human rights of internally displaced persons, Walter Kälin, following his visit to Iraq in 2010, for decades Iraqi citizens have been forced to leave their homes in search of safety due to both prolonged conflict, sectarian violence and forced population movements targeting specific ethnic and religious groups [...]. Four major waves of displacement have been identified since the 1970s. The first corresponded to the political regime of Saddam Hussein from 1979 until 2003 during which different ethnic and religious groups faced oppression, targeted attacks and economic exclusion resulting in over 1 million internally displaced persons. The second wave followed the overthrow of Saddam Hussein in 2003 when some 250,000 persons were displaced over the following three years. Between 2006 and 2008 an upsurge in sectarian violence created a further 1.6 million internally displaced persons. Estimates by the Internal Displacement Monitoring Centre suggest that up to 1.1 million people are still living in protracted displacement following the 2006-2008 sectarian conflict. The latest displacement crisis began in January 2014 with the emergence of ISIL.

6. Between January 2014 and August 2015, 2.9 million persons fled their homes in three new mass waves of displacement following offensives by ISIL; there were also many smaller events. From January 2014 to May 2014, 480,000 people were displaced following violent clashes between the Iraqi security forces and militant groups in Anbar Province. In June 2014, ISIL took over the city of Mosul, the second largest city in Iraq, resulting in an estimated 500,000 people fleeing their homes, many to other parts of the Ninewa Governorate and to the Kurdistan Region of Iraq. From June 2014 to August 2014, the total number of newly displaced persons was 1.2 million of which 833,800 had fled their homes in the north-western province of Ninewa. From September 2014 to June 2015, an additional 1,378,200 individuals were displaced by the conflict.

7. The sectarian dimension of the conflict is evident, including in the profile and situation of different groups of internally displaced persons. Many groups, including minorities such as the Christians, Shabak, Turkmen, Yazidis and other ethnic and religious groups, are particularly vulnerable due to their ethnic or religious identity. Persecution of minorities in territories under the control of ISIL has been widely documented, a

situation which led the Special Rapporteur together with the Special Rapporteur on minority issues to issue a press release on 25 July 2014, raising the alarm and calling for greater protection for vulnerable minorities.

8. The prospect of vast new displacement is real and requires a level of preparedness that has been absent in the past. Disturbing developments, including the fall of Ramadi to ISIL on 15 May 2015, resulted in large-scale new displacement. After the fall of Ramadi, more than 100,000 residents fled their homes in two waves of displacement, many seeking refuge in Baghdad. Many were denied access on security grounds and the majority of those originating from Anbar remained displaced within that governorate. Government forces maintain that their objective is to regain control of Ramadi and other territory in Anbar, and significant new displacement can therefore be predicted.

9. A likely military operation by the Government to retake Mosul from ISIL is also predicted to result in hundreds of thousands of newly displaced persons due to the conflict and other factors, including fear of reprisals against the residents of Mosul for their perceived collaboration with ISIL. The humanitarian country team is preparing for the likely displacement of between 800,000 and 1.2 million people from Mosul if Iraqi forces launch an attempt to recapture it. It is essential that all possible precautionary measures be taken before any offensive action to ensure that necessary protection is accorded, and humanitarian assistance is in place and ready to be distributed to internally displaced persons.

[...]

IV. Critical humanitarian and human rights challenges

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F. Security and freedom of movement

40. The Special Rapporteur received disturbing reports of internally displaced persons facing restrictions to their movement and being barred entry to safe locations on the basis of their ethnic or religious identity or place of origin. [...] Some governorates have refused access to internally displaced persons or only allowed them to transit. Reports indicate that in locations controlled by ISIL, civilians have been prevented from fleeing. Reports from Government-held territory still receiving internally displaced persons from the ISIL stronghold of Mosul, indicate that civilians attempting to flee face severe punishment if caught. Unverified reports suggest that ISIL has mined routes out of the cities resulting in deaths, while others, including children, have died while trying to leave on foot.

41. The Special Rapporteur was informed of sponsorship requirements for access by internally displaced persons to Baghdad and other locations, requiring families to provide a sponsor who is a resident. Many are not able to meet the criteria and are consequently turned back or left in precarious circumstances. Some families were asked to pay to obtain sponsors. In one case, 100 families seeking entry to Baghdad reportedly had to return to Ramadi where their homes had been damaged at a time when ISIL controlled much of the city. Ramadi subsequently fell to ISIL on 15 May 2015 causing a further wave of internally displaced persons.

Many thousands were prevented by the Iraqi army from crossing the Euphrates River to central Baghdad and were stranded for days in soaring temperatures without adequate shelter or basic services.

42. The Babil Governorate refused to admit displaced men aged between 15 and 50 years, putting them at risk and causing family separation as only women and children were allowed entry. The Government pointed out that that was due to constant security threats to the Governorate owing to its close proximity to Anbar Governorate and it was required to ensure security and safety of the population. [...]

43. The Special Rapporteur was informed that from mid-November 2015, approximately 1,800 individuals belonging to an Arab Sunni community were displaced from villages (Na'iniah, Gumat and Ayasha) in Telafar district, and were stuck between Peshmerga forces and ISIL. The Kurdistan authorities reportedly refused to permit passage to safe areas and humanitarian assistance due to allegations of the community's support for ISIL. While some left independently, approximately 105 families (559 individuals) reportedly remained stranded near Gumat village between a Peshmerga base and ISIL. They reportedly lacked food and water, were shelled by ISIL and warned to leave or face attack. They were reportedly informed that they would not be allowed to cross Peshmerga lines without clearance from the Kurdistan Regional Government.

44. Government officials stated that security concerns include ISIL fighters infiltrating communities of internally displaced persons. As a result the Government is required to restrict or carefully manage their movement. It was pointed out that following previous flows of internally displaced persons into Baghdad, the incidence of bombings in the city had markedly increased, justifying such restrictions. The Government maintained that where such security concerns existed, there were procedures that facilitated access for internally displaced persons to alternative safe locations and constructed camps, for example on the outskirts of Baghdad, in Bzeibeiz, Al-Khalidiya and Amiriyat al-Fallujah.

45. Internally displaced persons were reportedly arrested and detained, raising concerns, including with regard to due process, conditions and duration of detention, and access for lawyers and family members. Some internally displaced Sunnis in Debaga camp in the Kurdistan region informed the Special Rapporteur at the time of his visit that male family members had been detained and that they had had little or no information about their location nor any contact with them.

46. The Special Rapporteur emphasized the fact that all internally displaced persons have the right to move freely and to gain access to safe areas and humanitarian assistance. Measures should be taken to facilitate that right and to assist their movements in safety, irrespective of their ethnic or religious identity, as well as to provide them with all the necessary assistance. Any restrictions on movement must be justified, temporary, specified in law and non-discriminatory. While acknowledging legitimate security concerns, individuals should be vetted in safe locations, transparently and according to the law and tried or immediately released where no crime has been committed. All barriers to access to safe locations must be lifted. Family unity must be protected and it is unacceptable to separate men from their families without legal justification and due process in accordance with international standards.

G. Discrimination and violence against internally displaced persons

47. Internally displaced persons of Sunni Arab identity face particular discrimination and restrictions to their

freedom of movement and ability to reach safe locations. Some have faced threats and violence in locations including Baghdad where Sunnis are treated with suspicion, including by security forces and militias. Human Rights Watch reported abuse, shouting of anti-Sunni slogans and the houses of Sunnis being set on fire, which resulted in thousands leaving Baghdad and seeking refuge in Erbil. On 28 April 2015 unidentified armed men in military and police uniforms raided the house of a displaced Sunni family in the Jihad neighbourhood of Baghdad. Eight Sunni men were allegedly taken away blindfolded and later shot in the head at a school building. No investigation was undertaken into the attack.

48. Internally displaced persons of some ethnic or religious backgrounds have allegedly been prevented by security forces from returning to their homes while others of different identity are allowed to return and to occupy the property of others. In northern Ninewa and in Diyala, Sunni Arabs were reportedly barred from returning to their homes in areas controlled by Kurdistan forces. The authorities cite the state of war and the need for further security checks. Many Arab villages reportedly remain empty in northern Ninewa, despite the fact that the territory is under Kurdistan Regional Government control and the Sunni Arab population has been displaced to nearby areas.

49. The creation of independently operating militias known as Popular Mobilization Forces and their activities and control over certain areas is cause for concern. The Special Rapporteur was informed of allegations of militias destroying homes, forcing people to leave their homes or preventing their return on the basis of factors including ethnic or religious identity. The Special Rapporteur highlights the fact that the actions of all armed persons must conform to international law and standards for the treatment of civilians, including internally displaced persons. Any selective return policy or barriers to the return of those belonging to certain groups on the basis of their ethnic or religious identity would be discriminatory and illegal under national and international law and standards, including the Guiding Principles on Internal Displacement.

[...]

V. The situation of particularly vulnerable groups

[...]

C. Minorities

[...]

56. Violence appears to be part of a systematic strategy by ISIL to permanently remove some communities from areas where they have lived for centuries. Christian communities, for example, were told to leave Mosul or face execution. The Shabak people numbering 200,000 to 500,000, located for centuries in the Ninewa plain area, are viewed as heretics by Islamist militias who have targeted them as a result. The Shabak population in Mosul was forced to flee harassment and killings, many taking refuge in Karbala and the Kurdistan region. ISIL militants regard Yazidis as infidels and they have been regularly targeted. In August 2014, the Special Rapporteur joined other special procedures mandate holders in urging the international

community to protect tens of thousands of Yazidis forced to flee their homes in Sinjar, northern Iraq.

[...]

58. A systematic campaign by ISIL to eradicate the culture, history and identity of ethnic and religious communities in the areas under its control has resulted in buildings, monuments and other sites of immense religious, cultural and historical importance being destroyed – including churches, mosques and tombs, as well as irreplaceable ancient manuscripts and texts belonging to Iraqi Assyrians, Shabak, Turkmen, Yazidis and other minorities.

VI. Internally displaced persons in the Kurdistan Region of Iraq

[...]

63. The Special Rapporteur also visited a temporary displacement centre near the village of Debaga situated 44 km south-west of Erbil. Some 710 Sunni Arab families were living there at the time of his visit, having been displaced from villages along the front line of the conflict between Erbil and Mosul due to the ISIL offensive in 2014. The Kurdistan authorities restrict access without sponsorship to Erbil city and other camps in the governorate for that group of displaced persons on the grounds of possible security concerns among the population. It was pointed out that they were allowed access to Kirkuk. The Mayor stated that their choice was either to go to ISIL or to stay with them.

64. Internally displaced persons in the Debaga settlement were entirely dependent on aid, had no source of funds and very limited opportunities to work, for example, as agricultural labourers. Some stated that they had not received the one-off cash grant of ID 1 million that the Government provided. They lived in extreme conditions in tents with a chronic lack of water, which has to be supplied by tankers on a daily basis. It was also pointed out that internally displaced persons were facing restrictions to their freedom of movement and had no option but to remain at the site, which contravened their rights to freedom of movement and to freely choose their location. In comparison, displaced Christians and Yazidis were allowed freedom of movement.

65. The Special Rapporteur was concerned by the close proximity of the internally displaced persons to a militia training camp and by reports that many of the displaced men had been recruited into the militia. He emphasized the importance of maintaining the civilian character of all the facilities for displaced persons and the risks posed, including forced or coercive recruitment of men and boys and the threat to civilians who might be associated with the militia. Following the Special Rapporteur's visit, the militia was moved from the campsite and in October 2015 the internally displaced persons in Debaga were moved to a newly completed camp comprising concrete houses, accessible to humanitarian organizations.

66. [...] Internally displaced persons interviewed had not been able to visit detained relatives and had only been able to communicate occasionally through the International Committee of the Red Cross. Some 70 detention cases of mostly Arab men were documented at the time of the visit. Some have been charged with acts relating to terrorism.

VII. Progress towards achieving durable solutions

[...]

69. In many locations of possible return, houses and infrastructure have been totally destroyed. Some houses have reportedly been wired with explosives by ISIL and a state of fear prevents internally displaced persons from returning. Concerns were also raised that some returns to certain locations were being encouraged by the Government without a full assessment of safety and security in those localities and that consultation and consent criteria were not being met. Unconfirmed reports indicated that buses were provided to return some internally displaced persons to their places of origin and payments to them were conditional upon their return. Any returns must be voluntary, monitored, safe and dignified. Many areas require complete reconstruction before return becomes a possibility.

[...]

Discussion

I. Classification of the Conflict and Applicable Law

1. (*Paras 4 – 5*) The Special Rapporteur identifies four major waves of displacement in Iraq. For each phase, please classify the situation in Iraq. If you identify armed conflicts, please state whether they are international or non-international, and list the parties to the conflict(s). (GC I-IV, Common Arts 2 and 3; P I, Art. 1; P II, Art. 1)
2. What legal frameworks concerning internally displaced persons are applicable in Iraq? Is your answer different for Northern Iraq? Do these legal frameworks bind all parties to the conflict equally?
3. (*Para. 49*) Do the UN Guiding Principles of Internal Displacement form part of IHL? IHRL? Do they apply equally to armed groups? On what basis do you found your answer? Are they legally binding? Do they provide more protection than the relevant IHL rules? (GC I-IV, Common Arts 2 and 3; P I, Art. 1; P II, Preamble; UN Guiding Principles on Internal Displacement, Introduction (3))

II. Forced Displacement

4. 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? (GC I-IV, Common Art. 3; GC IV, Arts 4, 44; P I, Arts 50, 73; P II, Art 13; CIHL, Rule 131; UN Guiding Principles on Internal Displacement, Introduction (2))
5. Legally, does it make a difference whether a group of displaced persons fled to escape from the hostilities or because they were forcibly expelled? (P II, Art. 17; CIHL, Rule 129; UN Guiding Principles on Internal Displacement, Introduction (2))
6. (*Para. 9*) Do you agree with the Special Rapporteur that precautionary measures have to be taken before offensives with regard to protection and assistance for internally displaced persons? Do you think this forms part of the conduct of hostilities rule on precautionary measures? (P I, Art. 57; CIHL, Rule 15; UN Guiding Principles on Internal Displacement, Section III)
7. (*Paras 40 – 46*)

a. What is the difference between IHL and IHRL concerning the right to security and freedom of movement? Does IHL foresee the right of civilians to move about without restriction? Of internally displaced persons more specifically? Does IHL require that internally displaced persons are granted access to safe locations? Do you agree with the statement of the Special Rapporteur in para. 46 that “all internally displaced persons have the right to move freely and to gain access to safe areas and humanitarian assistance” and that “[a]ny restrictions on movement must be justified”? (GC IV, Arts. 27, 35, 48; UN Guiding Principles on Internal Displacement, Principle 14)

b. May belligerents subject the entry of internally displaced persons into territories under their control to conditions? How do you evaluate the legality of the sponsorship requirements for access to Baghdad (para. 41)? The legality of the separation of displaced families in Babil Governorate (para. 42)? Can security concerns, such as those mentioned in para. 44 justify such barriers to access to safe locations? (GC IV, Arts 15, 26, 27, 64; Hague Convention IV, Art. 43; P II, Art. 17; CIHL, Rules 105, 129, 131; UN Guiding Principles on Internal Displacement, Principles 14-15)

c. Is it a violation of IHL to prevent persons from fleeing? (GC IV, Art. 35, 48; UN Guiding Principles on Internal Displacement, Principle 15)

d. Does IHL require that belligerents protect and care for civilians in circumstances such as those described in para. 43? (P II, Art. 13; CIHL, Rules 15, 131; UN Guiding Principles on Internal Displacement, Principle 15) 8. (Para. 69)

a. Do internally displaced persons have a right to return to their homes? In all circumstances? Are internally displaced persons required to return to their homes? Do your answers depend on whether the conflict is international or non-international in character? (GC IV, Art. 49; CIHL, Rules 132, 133; UN Guiding Principles on Internal Displacement, Principles 28-29)

b. May a State make payments to displaced persons conditional upon their return. Do such payments affect the voluntary character of their return? Must a State first complete reconstruction of the homes of displaced persons before they return or may it expect them to engage in such reconstruction? (UN Guiding Principles on Internal Displacement, Principles 28-29)

III. Non-Discrimination/Non-Adverse Distinction

9. (Paras 7, 47 – 49 and 55 – 58)

a. Does IHL contain rules that prohibit discrimination based on religion or ethnicity? In general, only in the application of IHL rules, or in every aspect of humane treatment? In your opinion, how do these rules differ from IHRL rules on non-discrimination? (GC I-IV, Common Art. 3; CIHL, Rule 88)

b. 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 forcibly displaced/allowed to return to their homes? (CIHL, Rule 88; UN Guiding Principles on Internal Displacement, Principle 4)

c. Does the Special Rapporteur’s reference in paras 56 and 58 to “systematic strategy” or “systematic campaign” by ISIL targeting minorities point to the commission of international crimes? If so, which crimes might these be?

IV. Treatment of Civilians and Detention

10. (Paras. 45 and 66)

a. May belligerents confiscate the private property of civilians? If so, under what circumstances and to what ends? Is your answer the same for IACs and NIACs? Do you think the confiscation of identity cards of

internally displaced persons was consistent with IHL? Why/Why not? (GC IV, Arts. 33, 147; CIHL, Rules 51, 156; (UN Guiding Principles on Internal Displacement, Principle 20)

b. When may civilians be detained in an IAC? In NIAC? Is preventive detention of civilians permitted under IHL? For what reasons? May civilians be detained collectively as a security measure, or is an individual decision required for each civilian detained? May civilians be detained simply because they are males of fighting age? (GC IV, Arts. 41, 42, 78; CIHL, Rules 88, 99)

c. What protections are available to detained civilians in this type of conflict? Are they entitled to receive visits from family members? The ICRC? May they communicate with counsel? (P II, Art. 5; CIHL, Rules 105, 124 and 126)

d. In what circumstances may families be legally separated in conflict? Do they apply here? (GC IV, Arts 26, 82; CIHL, Rule 105)

11. (*Para. 65*) Please comment on whether you think the recruitment of male internally displaced persons into the militia was consistent with IHL. Is there any additional information you need in order to evaluate this incident? (GC IV, Art. 51; UN Guiding Principles on Internal Displacement, Principle 13)

V. Conduct of Hostilities

12. (*Paras 65, 69*)

a. Is locating an IDP camp near a militia training camp a violation of IHL? If the IDP camp is located next to the militia training camp, does this exonerate an attacker from their obligations under the IHL rules of proportionality and precautions? (P I, Arts. 51, 57-58; CIHL, Rules 18, 22, and 24)

b. Following the Special Rapporteur's visit, the IDP camp was moved. What fundamental rule of IHL has been complied with in this case? (CIHL, Rule 15 and Rule 24)

VI. Miscellaneous

13. (*Paras 9, 42, 45, 48, 49, 66 and 69*)

a. What is a reprisal? Are measures taken against residents of Mosul for their perceived collaboration with ISIL reprisals? If yes, are such reprisals prohibited by IHL? Even in NIACs? Are reprisals at all conceivable in NIACs? If not, which IHL rule is violated by such measures? (GC IV, Arts. 33; CIHL, Rules 103, 145-48)

b. What is the meaning of "collective punishment"? How does this differ from the concept of reprisals? Are collective punishments 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)

c. If it was proven that some displaced persons were affiliated with a terrorist group, would they lose the protection afforded to them by IHL? Does this depend on the nature of the affiliation? Family members? Close friends? Neighbours? What kind of affiliation is relevant under IHL to claim that a certain person may be detained? (P II, Arts. 4, 13; CIHL, Rule 6)