

The Crime of Forced Displacement and the Application of International Humanitarian Law in Iraq

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Forced displacement is one of the crimes against the humanity. This study is based on a Meta-synthesis systematic literature review. The researcher reviewed the studies related to forced displacement and refugees all over the world, and in Iraq specifically. A review of the crime of forced displacement reveals that this crime is one of the crimes against human dignity. There must be a law in Iraq that regulates deportation or forcible transfer of population. The civilian population must also be protected from forcible deportation. Human dignity shall not be violated.

Key words: *Forced displacement, refugees, Iraq.*

Introduction

The forced displacement crime is one of the crimes against humanity. The expulsion or forcible displacement of the population conceals another crime; seizure of their land and property or disposing them (Jackson and Beswick, 2018). There are many acts that constitute a crime against humanity which can be committed against any civilian population; e.g. murder, extermination, enslavement, expulsion of populations or forcible transfer of population, imprisonment or deprivation of physical liberty, torture, rape, sexual slavery or coercion, enforced pregnancy, enforced disappearance, apartheid crime and other inhumane acts of a similar nature which intentionally cause severe suffering or other bodily, mental or physical harm (Dubernet, 2017). Forced displacement crime still raises widespread debate in international legal and political forums. Some scholars believe that forced displacement is the displacement of large numbers of people forcibly from one region to another within the policy of the government or under international authority. This is done on an ethnic or

religious basis. Sometimes it occurs in the form of a population exchange, to be agreed upon by two conflicting territorial parties, despite the opposition of the populations of both parties to this exchange process. They are transferred from one region to another without their consent but within a bilateral or international agreement to resolve regional problem conflicts (Long and Sabates-Wheeler, 2017).

There are many reasons enforcing individuals toward the status of refugees; human rights violations, political conflicts, religious, ethnic or any other causes. The UN Refugee Convention, 1951 defined that the term “refugee” shall apply to any person who as a result of events occurring before 1 January 1951, and owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Long and Sabates-Wheeler, 2017). The issue of refugees in Iraq is at the forefront of the issues of persecutions, violence and discrimination in Iraq. It controls the current political literature as a major dilemma in Iraq. The current wave of forced displacement is due to terrorist and criminal acts of organising the Islamic state (Green and Ward, 2017).

Theoretical study

The forced displacement crime can be defined through the articles of the International Criminal Court, Geneva Conventions and the Universal Declaration of Human Rights; this is called the Convention definition. The scholars also have a role in defining forced displacement crime, which is called the jurisprudential definition.

Definition of Forced Displacement

Forced Displacement Definition

The forced displacement crime can be defined through the articles of the International Criminal Court as well as through Geneva Conventions and the Universal Declaration of Human Rights; this is called the Convention definition. The scholars also have a role in defining forced displacement crime, which is called the jurisprudential definition (Boyd, 2018).

Convention Definition

Article 3 of the Statute of the ICTR referred to crimes against humanity by stating "The International Tribunal for Rwanda shall have the power to prosecute persons responsible for

the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecutions on political, racial and religious grounds; (i) Other inhumane acts (Boyd, 2018). Article 17 from Geneva Convention Additional Protocol indicates also that "The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict."

Jurisprudence Definition

Some scholars define forced displacement as "forcing numbers of residents legally residing on their land and in their homes to be relocated to another area of the State itself or abroad, based on a methodology supervised by the State or its affiliated groups or other powerful groups, for the purpose of racial, ethnic, national, religious or even political orientation in the area from which the population is excluded (Summers, 2018).

Forced Displacement Discrimination

Discrimination between Status of Refugees and Forced Displacement

A person is considered to be a refugee under this convention only if he meets the following conditions: he must be a refugee due to events that took place before 1 January 1951, and persecution must be valid because of his religion, race or nationality.

Article 7 (d) of the International Criminal Court Statute defines forced displacement as "deportation or forcible transfer of population" as forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law." (Smith, 2016).

The elements of forced displacement crime are: The accused one abandons or forcibly transfers one or more persons to another State or another place by expulsion or any other coercive act for reasons not recognized by the international law. The persons concerned shall be officially present in the area from which they have been removed or transferred. The accused is aware of the factual circumstances on which the legality of such presence was determined. Such conduct is committed as part of a widespread or systematic attack directed against a civilian population. The accused one knows that the conduct is a part of, or intends to be part of, a large-scale or systematic attack directed against a civilian population.

Refugees may have a similarity to those forcibly displaced internally, because both are forced to leave their place of residence, but refugees leave their place of residence and resort to a state other than their state. Those who are forcibly displaced internally may leave their homes and move to another part of their country because of the country's security situation. They have the right to voluntary return to their places when the security conditions are settled in their places of residence. The 1951 UN Convention on the Status of Refugees affirmed that refugees have all the rights granted to nationals of the state, as Article 3 of the Convention states that "The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin" (Valtonen, 2016).

Discrimination between Forced Displacement and Internally Displaced Persons

The humanitarian conditions of the internally displaced persons may be similar to those of the refugees, but the difference between them lies in the reason for people displacement, as well as the crossing of state territory borders. The Guiding Principles on Internal Displacement defines IDPs as persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border"(WHO, 2017).

The 27th International Conference of the Red Cross adopts that all parties in an armed conflict should ensure that, in the event of internal displacement, adequate assistance is provided to IDPs and that they enjoy the rights and freedoms of both international and national laws similar to citizens of their states (Holst-Roness, 2006).

Forced Displacement Crime Elements

Forced displacement crime is one of the crimes committed against humanity. It has four elements as follows:

The Physical Element

Physical element refers to acts or omissions that form an international crime, i.e. deliberate misdeeds to destroy villages and the environment, hide people and conduct experiments on them by using biological and chemical weapons. The physical element is based on three components: the act, the result and the causal relationship. The act is the activity that is produced by the perpetrator in order to achieve a criminal goal, and the result is the aggression truly infringing one right due to the perpetrator's act (Papastergiadis, 2018). Concerning this element, Article 7 (d) of the International Criminal Court Statute states

"forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."

The Moral Element

Crime against humanity is a crime in which the moral element takes form of *mensrea*. *Mens Rea* on which the offense is related, is a particular one along with a general one. The general intent requires knowledge and will; the offender must know that his behaviour is a serious attack on fundamental human rights, either in the form of its total loss or in the form of lowering its value. To fulfil the moral element of deportation or forced transfer, as crimes against humanity, the perpetrator of the crime should know that his behaviour includes force, which in the normal course of events leads to the transfer of person or persons from any group of civilian population from the place where they are legally present, even if they are moving outside or inside the country (Papastergiadis, 2018).

Legal Element

The second paragraph of Article (7) of the Statute of the International Criminal Court stipulates that the persons concerned be affected by expulsion or other coercive acts from the area in which they are lawfully present. In order to carry out the offense of deportation or forcible transfer of the civilian population, this crime must be committed against a civilian population residing in the areas from which they were unlawfully transferred or deported. Deportation or forced transfer of population crimes necessitates established legitimate existence by the civilian population on the ground or territory that urges their deportation or transfer. Article (85/4/1) of the first Additional Protocol considers the transfer of the occupying state to its citizens to the occupied territory as a serious violation. This means that the presence of its population on this territory is illegal (Asthana, 2018).

International Element

It is the international element that secures international crime from internal criminal crime, and the availability of this element necessitates the definition of international crime. The basic condition to describe crimes against humanity as international crimes is to be accomplished through the order of the state on which populations are present and become victims to the oppression. The international element of the crime is available if an assault is committed against interest or right protected by international criminal law (Asthana, 2018).

Forced Displacement in Iraq

The US occupation in 2003 and the barbaric and sectarian violence that followed up to 2010 led to the displacement of five million Iraqi citizens inside and outside Iraq. Then internal displacement of the population became limited considerably and forced displacement stopped for the period 2010-2012. Limited internal displacement of minorities continues as the ethnic government was unable to control it, despite taking a number of decisions and measures aimed at encouraging and motivating the return of displaced persons and refugees to their homeland with security and relative stability (Lischer, 2017).

Reasons for Migration and Forced Migration

After the formation of the modern government of Iraq in the early twenties, and high tones of discrimination and chauvinism, the law No 243/1963 was formulated. Minorities suffered by the procedures taken by the governing authorities at that time as qualitative decisions. In the years 1941-1950, the Jews were persecuted, seized and deported. The Iraqi government permitted them to leave Iraq because of Britain insistence. They were given a chance to abandon their Iraqi citizenship. About 125,000 Jews left after the seizure and confiscation of their properties. In Iraq, Saddam Hussein was the leading violator of human rights and demographic liberties in his era, which has become full of crime and terrorism, turning the total forced displacement of villages and towns and dropping the nationality of thousands of Iraqi families, forcing the rest to cross the border to escape the effects of the use of chemical weapons and brutal bombing (Fukuyama, 2017).

The number of displaced people in 2014 has reached about 2 million Iraqis who have been subjected to forced displacement throughout Iraq, according to the reports and statistics of the international humanitarian organisations of the United Nations as (UNHCR), amounting to nearly one million displaced from Al-Din, Mosul, Kirkuk, Anbar and Diyala to Iraqi Kurdistan because of terrorism (Wright et al., 2017).

Internal and Forcible Displacement

About three million are displaced in 17 camps in Iraq, mostly in the Kurdistan region and Baghdad. The rapporteur in the Commission on Human Rights said that there are few topics agreed upon by the Iraqis, but the description of 2014 as a year of sadness or a black year is agreed by everyone, as that year was loaded with cruel memories and conditions concerning most Iraqis, such as: the security collapse, political crises and civil strife. The suffocating economic crisis made everyone describe 2014 as a year of pessimism. Perhaps one of the most prominent tragedies left behind in 2014 is internal and forcible displacement from home

by the systematic terroristic attacks on cities of the north and west and central Iraq (Cohen & Van Hear, 2017).

Forced Displacement Undeclared Civil War in Iraq

After a temporary period of forced displacement in various governorates of Iraq, this methodical process was repeated in several areas and was a direct result of the political conflict on the ground, which was translated into displacement and violence. This process aims at completing the forced displacement operations that took place after the occupation in 2013, being more evident and common after the bombing of the Shrine of the Military Imams in Samarra on 22 February 2006.

Forced Displacement Rates

The number of internally displaced persons in Iraq was highest at the end of 2009, according to the United Nations High Commissioner for Refugees (UNHCR), which declared that the number of displaced persons reached 27,641 in January. The number started to decline in early 2010; according to (UNAMI), the number of internally displaced persons by the end of 2010 was (1343568), and then it dropped to (1258934) displaced person on June 3, 2011. But the number has returned to an increase in one monthly statistics record in 2013. The number of displaced families until 25/6/2012, excluding the governorates of Kurdistan (Erbil, Suleimaniya, Dohuk) reached (188702) families and totalled (1074909) persons. In new statistics from Kurdistan, the numbers of displaced persons to the region after 2003 are about (37941) families and a total of (208675) persons. This means that the total number of IDPs inside Iraq reached (123584). Nineveh province, which includes many ethnic and religious minorities of the total population of Iraq also, has its records (Carment & Sadjed, 2017).

Cause of Forced Displacement

The phenomenon of forced displacement by terrorist gangs that displace and kill, and thus the destruction of the social structure in Iraq is marginalised by the structure that has lived in Iraq since ancient times, taking advantage of the weaknesses experienced by the Iraqis. For example, the number of unemployed was more than tens of thousands of Iraqi citizens, a large proportion, also a means of exploitation was the difficult psychological crisis experienced by Iraq during the period of the Baathist government fanatical, as well as weak water and electricity services, which are the basic elements of society. Finally there is also corruption. Despite these reasons, the most important reason is sectarian fanaticism in the form of the ideology of treason, which is clearly manifested in extremist Wahhabi ideas. That those who kill Shiites enter paradise, such poisonous ideas have entered many minds, not only since the time of occupation, but even in the time of the dual system. There were many

who espoused the ideas of treason, which arose out of Western colonialism to control resources, especially in Iraq (Davenport, 2017).

Methodology

This study is based on a Meta-synthesis systematic literature review. In order to reach this study purpose, the researcher relied on a literature review of books, periodicals, magazines and other sources that were relevant to the subject. This study is based on integrates, evaluates and interpretive findings of multiple qualitative research studies. The researcher depended on reviewing the studies related to forced displacement and refugees all over the world, and in Iraq specifically.

Results Analysis

A review of the crime of forced displacement reveals that this crime is one of the crimes against human dignity. It is also clear that the deportation or forcible transfer of the population from their territory conceals another crime: the seizure or disposition of their land and property. The crime of forced displacement differs from that of refugees who leave their country because of security conditions or difficult circumstances and go to another country to live in. Internal displacement may be within the borders of the State. It may be externally where residents are forced to leave their homes and move out of the country in which they live. The crime of forced displacement is based on four elements: material, moral, legal and international. Forced displacement crime is distinct from the status of refugees who crossed the borders of the state and from the internally displaced. The forcibly displaced persons may be displaced within the borders of the state or may be forced to leave their homes and go to another state to live in. There is no law in Iraq dealing with the issue of forced displacement. There is no provision in Iraqi law that defines the forced displacement crime, but it is defined through the provisions of the International Criminal Court and the Geneva Conventions.

Study Recommendations

There must be a law in Iraq that regulates deportation or forcible transfer of population. The civilian population must also be protected from forcible deportation. Human dignity shall not be violated. There is a need for governmental attention and responsible parties in the security aspect as the main factor in the whole process inside and outside the state. It is necessary to alleviate the suffering of the displaced so as not to feel insulted, with attention to low income.

There is a need to work hard to return these persons to their places after the creation of conditions appropriate to them. There should also be follow-up bodies that take action against forced displacement. There is a need to assist displaced families to help them overcome this



temporary situation. There is a need to take a number of educational decisions that return displaced students to their seats. There is a need to open psychiatric hospitals to treat and follow up the displaced people suffering from psychological diseases such as depression and others, as well as treatment of those who have been released from those who are in dire need of such services. And to compensate displaced families for all material and moral damage caused by the displacement. Finally, all media need to take care of cultural programs that reduce the factors of violence.



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