

Background Paper by
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The Problem of Migration
and the Displaced

The number of Iraqi nationals who have chosen, or been forced, to leave their country, added to those now called internally displaced persons (IDPs), as a result of the sectarian violence that broke out following the blowing up of the HOLY shrine of Imam Ali Alhadi and Hasan Alaskeri in Samara is estimated at some five million. I think these estimates are somewhat conservative because there are many migrants who have not registered with the Ministry of Displacement and Migration or with the international organizations concerned. In spite of the efforts made by the Iraqi government and local and international civil society organizations, the Ministry of Displacement and Migration has declared that only six thousand families have returned to their homes in all provinces in Iraq. The question is: where are the other thousands of families?

The answer to this question is that thousands of these families are still suffering the hardships of their bitter and inhuman displacement. They are now living under sharp climate conditions without proper shelters. Some of these families are lucky enough to find shelter with relatives. Others are not so lucky and have been forced to squat in abandoned public buildings previously ransacked by looters. A lot of IDPs have ended up living under make-shift tents provided by international NGOs in areas where the local authorities have failed to provide basic needs and services. Some families have been forced to break-in to houses left unoccupied by other families who have been displaced to another district. This has resulted in legal problems as some displaced families have decide to return to homes following recent improvements in the security situation, but only to find out that their homes have been occupied by other families displaced from other parts of the city or the country. Moreover, the houses of the families displaced during the sectarian violence, have been looted, if not practically destroyed. Such

problems arise when the family displaced has a house to return to. But the problems take a different shape with families that have been forced out of rented rather than owned property. When a family in this category decides to return to its former rented residence, it will invariably be faced with some legal action filed by the landlord who has won a court decision preventing the family from reoccupying the property in question on grounds of having failed to pay rent during the period of displacement, or simply because the property has been left unoccupied for a period specified in Article 7 of the Lease Law No. 87/1979. The people who have been forcibly displaced face many other problems because some of them have abandoned their private businesses, their public jobs, and their children's schools and colleges.

These problems are to be addressed through legislation to be adopted by the government, perhaps with the help of civil society organizations. I find it suitable to brief you on the role, which every party should play in this respect.

First: The Role of Civil Society Organizations

Since the state is preoccupied with other responsibilities, civil society organizations should take the lead to help the displaced families, ease their suffering, and work hard to return them to their houses. To strengthen the role of these organizations, it is imperative to remove the obstacles hindering their activities. Civil society organizations are new in Iraq and their role is still limited in comparison with the role of such organizations in the world. In recent decades, civil society organizations have started dealing with international problems, such as development, environment and human rights. This role has added a new dimension to the traditional political activity and help humanity find solutions to some international problems. Had civil society organizations not played their active role, we would have been living in a world of violence, human rights abuse, injustice and political oppression. All this has made civil society a pressure group.

Example of the role played by a civil society organization to address the displacement problem:

Time magazine has honoured Mrs. Madiha Al-Mousawi, Chairperson of the displacement committee of the municipal council of Eastern Karada in Baghdad. The

Magazine has put Mrs. Al-Mousawi amongst the most influential hundred persons in the world, as an example of the enduring and struggling Iraqi women. Mrs. Al-Mousawi was elected as a head of the displacement committee in the aftermath of the sectarian violence broke out after the blowup of the two shrines in Samara on 22 February 2006. The committee has started providing its services to the displaced families in coordination with international organizations, including the ICRC and the multinational forces. About 6632 families have been displaced from Salmanbak and Saba'albour to live in Eastern Karada.

Second: Suffering of the Iraqis living in Jordan: The plight of staying there and the challenges of returning home (governments role)

The Iraqis living in Jordan face an untenable situation. In addition to the difficult procedures and measures being imposed on them, they suffer from high prices of living, health services and school fees. This forces them to live in extreme poverty. To renew their residence in Jordan, the Iraqis must go through a long series of routine and strict procedures, which are applied to the Iraqis only. This costs USD500 per capita in addition to the wages of health test. Moreover, the fines imposed on the Iraqis whose residence is finished are so high that they cannot pay them, a matter which has become an added burden to their bitter suffering. The situation of the Iraqis living in Jordan, who are about one million people, is miserable where they live in difficult economic and social conditions and are deprived of health care and medical services. The Jordanian government states that it will not provide the Iraqis living in Jordan with medical services unless it gets financial support from the government of Iraq and international organizations. The government of Iraq has decided, therefore, to allocate several millions of US dollars for this end. The government of the United States of America has followed suit and allocated several millions of US dollars for that end. The US Undersecretary of State Department, Ambassador Lawrence Butler, declared in the Conference of States Hosting Iraqi Refugees held recently in Amman that his government has decided to allocate the amount of money to help the states hosting Iraqi refugees mitigate their suffering. The Conference has also approved a number of recommendations to ease the burden of the states hosting Iraqi refugees and help them support their infrastructures, and to support the efforts being made by the government of Iraq to improve human, living and security situation in Iraq so that the Iraqi refugees could willingly return to their homeland, and to encourage other Iraqis to stay in their country.

Third: Legal Aspects of Addressing the Complexities of Forcible Displacement:

As I have mentioned in the beginning of this paper, the forcible displacement has resulted in many legal problems. The most outstanding problem is that most of the displaced people have left their houses to other districts. These houses have been occupied by other families who have been forcibly displaced from other districts. Some of the displaced families have managed to reach a reconciliatory solution for this problem through living in the houses of each other. However, there are houses which are forcibly occupied and the occupants refuse to evacuate them. Civil society organizations and local councils can mediate a reconciliatory solution to such problems. If they fail, the owner of the house has no other choice but to file a case before the courts. Articles 192-201 of the Iraqi Civil Law No.40 of 1950 address the cases of usurpation, including estate usurpation. Article 197 reads as follows: (the usurper is obliged to return the usurped estate to its owner along with its rental. He is also obliged to compensate the owner for any damages inflicted upon the estate or if its value is decreased). To get his estate back, the owner must file a non-objection case before the Court of Instance. If the Court of Instance issues a non-objection decision allowing the owner to get his estate back, the defendant may appeal this decision before the Cassation Court. These proceedings may take long time, one year or more, in addition to the expenses the owner must bear. It is hopeful, therefore, that civil society organizations to find a reconciliatory solution for such problems.

The other case, which is addressed by the Iraqi valid law, is the situation of the lessee who has been forcibly displaced and wishes to return to the house in which he has been living. Here, we confront the provisions of Lease Law No. 87 of 1979, which provide for the evacuation of the estate in either case of the following:

1. Paragraph 1 of Article 17 of the Law reads as follows: (if the lessee does not pay the rental seven days after its due date, the lessor shall warn him through notary public to pay within eight days from the date of notification. The lessee shall pay all the expenses incurred thereof. The lessee may benefit from this protection only one time a year starting from the date of the latest warning. Then, the lessor may claim for evacuation, if the lessee does not pay the rental within 15 days after its due date.) This

text gives the lessor the right to get his estate back if the lessee, who is forcibly displaced, does not pay the rental.

2. Paragraph 7 of Article 17 of the Law reads as follows: (if the leased estate remains uninhabited for more than 45 days without any excuse, the lessor may claim for evacuation.) This happens when the lessee is forcibly displaced. When the lessee comes back, he finds that the lessor has filed a claim for evacuation. The courts may consider forcible displacement as an excuse, if the Ministry of Migration or municipal council supports the lessee plea. However, the legal problem arises when the proceedings are done in default and the court issues a final sentence. In this case, the lessee cannot do anything.

To address these cases, it is necessary to enact a law suspending the claims for evacuation and the final decisions issued by the courts therein for one year starting from the date of publishing the law in the official gazette. The court should make sure, through the Ministry of Migration and the municipal councils, that the lessee is forcibly displaced. The state should pay the accumulated rentals to the lessor, since the lessee is no position to pay the rentals burdened him.

Conclusion

The fundamental human rights provide, inter alia, decent life, freedom and equality. Undoubtedly, there is a clear failure in meeting the needs of the citizens who have been forced to leave their houses. The national duty calls upon all to develop a national project that secures a decent life for them. The following are a set of proposals for that end:

1. The period during which the employees are displaced should be considered as a leave and full service.
2. To find suitable jobs for the displaced employees at the state departments in the new districts they live in till they return to their original districts.

3. To return the displaced students to school and compensate them for the years during which they left school.
4. The Iraqi who emigrated from Iraq for economic reasons should be entitled to the same rights enjoyed by other emigrants.
5. To instruct all border outlets to facilitate the entry of the Iraqis who come back and to exempt their luggage and furniture from customs duties.
6. To request states hosting Iraqis to exempt them from the fines imposed on them for residence reasons. Otherwise, the government of Iraq should pay those fines.
7. To compensate the displaced families for their houses or property, which were burnt or stolen, in a manner that helps them live a decent life.
8. To suspend the decision on evacuating the displaced families from public buildings, pursuant to the decision taken by the Council of Representatives on 3 June 2008, calling upon the government to suspend the evacuation decision.
9. The government should coordinate with civil society organizations to facilitate the return of the displaced families to their original districts.
10. To take all necessary steps to enact legislations addressing the claims for evacuation which have been filed against the forcibly displaced families.

Finally, the problem of the Iraqi refugees in the neighboring countries or those who are internally displaced must be tackled as soon as possible, since they are in bad need for assistance to meet their humanitarian needs. They are amongst the most vulnerable groups because they live in a situation that might force them to join the armed groups. The most outstanding example of this is that Taliban movement has started its activity by a group of Afghani refugees in Pakistan. It is necessary, therefore, to make all efforts with a view to finding sound solutions for this problem and avoid any serious consequences.

Judge