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Christian Minorities Returning to Their Homes in Post-Daesh Iraq – Challenges to The Right to Return

Abstract: The Daesh reign began to come to an end when the Global Coalition against Daesh launched a successful campaign. After the liberation of many parts of the Nineveh Plains in late 2016, some communities indigenous to the region expressed their wish to return to their homes. And indeed, these communities have the right to do so. However, this right to return may not mean anything if the numerous challenges facing their situation in the area are not effectively addressed. The paper discusses some of the practicalities of the right to return and scrutinises the main challenges faced by religious minorities preventing them from exercising their right to return. Firstly, the paper considers the law and policy pertaining to the right to return, looking at the international and domestic standards. Secondly, the paper explores the several challenges that the returnees have been facing and that may prevent them from returning unless they are adequately addressed, including the issue of reconstruction, security, and justice. The paper considers the case of Christian minorities in Iraq only, although many of the challenges discussed here will be shared by other religious minorities wishing to return to their homes after conflict-related displacement.

Keywords: Islamic State, human rights, Nineveh Plain, refugees, internally displaced persons

Abstrakt: Rządy Państwa Islamskiego zaczęły się kończyć, gdy Globalna Koalicja przeciwko Państwu Islamskiemu rozpoczęła udaną kampanię. Po wyzwoleniu wielu części równin Niniwy pod koniec 2016 r. niektóre rdzenne społeczności regionu wyraziły chęć powrotu do swoich. To prawo do powrotu może jednak nic nie znaczyć, jeśli kilka wyzwań związanych z ich sytuacją w regionie nie zostanie skutecznie rozwiązanych. Artykuł omawia niektóre z praktycznych aspektów i analizuje główne wyzwania, przed którymi stoją mniejszości religijne, uniemożliwiając im skorzystanie z prawa do powrotu. Po pierwsze, w artykule rozważono

prawo i politykę dotyczącą możliwości powrotu, uwzględniając międzynarodowe i krajowe standardy. Po drugie, w dokumencie przeanalizowano kilka wyzwań, przed którymi stanęli powracający, które mogą uniemożliwić im powrót, chyba że problemy zostaną odpowiednio rozwiązane, w tym m.in. kwestia odbudowy, bezpieczeństwa i sprawiedliwości. W artykule analizuje się przypadek mniejszości chrześcijańskich tylko w Iraku, jednak wiele omawianych tu wyzwań zostanie podzielonych przez inne mniejszości religijne, które chcą wrócić do swoich domów po wysiedleniu w wyniku konfliktu.

Słowa kluczowe: Państwo Islamskie, prawa człowieka, Równina Niniwy, uchodźcy, uchodźcy wewnętrzni

Introduction

In 2014 Daesh (also known as Islamic State, ISIS, ISL, IS) began to establish a self-proclaimed caliphate in many parts of Syria and Iraq. In order to establish a purely “Islamic state”, Daesh unleashed a campaign of terror against religious minorities in the area [UN Human Rights Council 2016]. One of the regions that Daesh managed to conquer in August 2014 was the predominately Christians region of the Nineveh Plains in Iraq, having forced thousands of Christians to flee overnight. Indeed, as Daesh was invading the Nineveh Plains, over 120,000 people were forcibly displaced, predominately to neighbouring Kurdistan. Many of them have subsequently travelled to other countries in pursuit of a safe haven. Daesh maintained its grip over the area for two years. During that time, Daesh plundered houses, churches, shops, and destroyed the infrastructure in the region. The patterns of destruction, and especially the targeted attacks on churches and places of worship, sent a very clear message that Daesh wanted to destroy every sign of Christians and Christianity ever being present in the area. Daesh did not leave any stone unturned, destroyed crosses and statues of Holy Mary, burned Bibles and other religious books, set churches on fire, desecrated graveyards and anything that Christians considered of religious significance.

However, the Daesh reign began to come to an end when the Global Coalition against Daesh launched a successful campaign against them and recovered significant parts of the region. After the liberation of many parts of the Nineveh Plains in late 2016, some communities indigenous to the region expressed their wish to return to their homes [Nineveh Plains Reconstruction Committee 2017]. And indeed, these communities have the right to do so. However, this right to return may not mean anything if the numerous challenges facing their situation in the

area are not effectively addressed. The paper discusses some of the practicalities of the right to return and scrutinises the main challenges faced by religious minorities preventing them from exercising their right to return. Firstly, the paper considers the law and policy pertaining to the right to return, looking at the international and domestic standards. Secondly, the paper explores the several challenges that the returnees have been facing and that may prevent them from returning unless they are adequately addressed, including the issue of reconstruction, security, and justice. The paper considers the case of Christian minorities in Iraq only, although many of the challenges discussed here will be shared by other religious minorities wishing to return to their homes after conflict-related displacement.

1. The Right to Return

The right to return is protected under international and domestic laws [Hannum 1987; Vasak, Liskofsky 1976]. The rationale behind it is to ensure that people can return to their countries and/or homes after the conflict that forced them to flee has ceased. Under international human rights law, the right to return is protected in two main human rights treaties, in Article 13 of the Universal Declaration of Human Rights (UDHR)¹ and Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR)², both of which are binding upon Iraq. While the international human rights provisions recognise the right of an individual outside their national territory to return to their country, there are two main issues that need to be considered here. Firstly, this may not cover the individuals who are displaced internally (IDPs), and secondly, the right to return does not refer to groups but individuals only.

Concerning the issue whether the international human rights provisions provide IDPs with the right to return, Kälin claims that:

there is no general rule in present human right law that explicitly affirms the right of internally displaced persons to return to their original place of residence or to move to another safe place of their choice within their own country. However, such a right can be deduced from the right to the liberty of movement and the right to choose one's residence as

¹ "1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country."

² ICCPR indicates: "No one shall be arbitrarily deprived of the right to enter his own country."

embodied in Article 12 ICCPR, which, however, can be limited under certain conditions (see Article 12(3) ICCPR) [Kälin ^{2008: 126}].

However, others such as Leckie, take a more inclusive approach and suggest that the right to return within these provisions is to be understood not only as a right to return after crossing the borders of one's country (for example, refugees) but should also benefit the IDPs as well [Leckie 2005: 3]. Furthermore, international humanitarian law follows such a broader approach. For example, Article 49 of the Geneva Convention IV, while prohibits deportations and forcible transfers of populations, recognises that in the cases of evacuations, those evacuated "shall be transferred back to their homes as soon as hostilities in the area in question have ceased."

The right to return under international human rights law is the right to be asserted by individuals and not groups. Indeed, Jagerskiold suggests that the right to return in Article 12(4) "does not deal with those issues and cannot be invoked to support a right to 'return'. These claims will require international political solutions on a large scale" [ibid.]. Similarly, Hannum claims that "the expulsion or flight of large numbers of persons from disputed territory is more appropriately viewed as an issue related to self-determination or national sovereignty, rather than forced into the constraints of the much more narrow question of whether or not there exists a right of entry or return" [Hannum 1987: 59]. Indeed, in cases like those internally displaced by Daesh, such a "significant population displacement... must be resolved as a matter of group rather than individual rights" [Rosand 1998]. Furthermore, the international humanitarian law recognises that "displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist" Rule 132].

This right to return is also protected under Iraqi domestic law – for example, in Article 44 of the Iraqi Constitution [2005], which states that: "1. Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq; 2. No Iraqi may be exiled, displaced, or deprived from returning to the homeland."

Despite the above discussed provisions, it is crucial to recognise that having the right to return does not equate to being able to return. Indeed, in a post-conflict situation, there may be several challenges that prevent individuals from exercising their right to return. As the former UN High Commissioner for Refugees, Mrs. Sadako Ogata [1993], has stated:

refugees have fled their homes and their homelands for compelling reasons, which include violence and human rights abuses. For them to return home safely and voluntarily, there must be a significant change in the conditions which caused their flight.... Assuring these requires a comprehensive approach that addresses the political, security, human rights, humanitarian and development aspects of the problem.

Such steps are crucial as the right to return is paramount to human dignity. The desire to return home is considered to be “innate in human nature to yearn to be back home” [Nsereko 1981].

In order to assist in turning the right to return, including of the IDPs, into a meaningful one, the UN produced several guidance documents to assist with this arduous task, including two documents focused specifically on the IDPS, namely, the Guiding Principles on Internal Displacement (the Guiding Principle) and the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons (the IASC Framework).

The Guiding Principles [GP]³ is a document that complies and reaffirms the human rights and humanitarian legal provisions that are relevant to IDPs. Despite not being legally binding, it is authoritative and has gained international recognition and acceptance [Cohen 2004: 459-480]. Among others, the Guiding Principles identify the principles relating to return, resettlement and reintegration. Principle 28 established the main preconditions on durable solutions for IDPs including, placing the “primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country” [GP 28.1].

The second relevant document, the IASC Framework was produced after the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons launched an in-depth study and consultation into the needs of IDPs. The IASC Framework identifies rights-based principles and processes needed to provide a durable solution to internal displacement. Among others, the IASC Framework [2010: A4] recognises several criteria as identifications of durable solutions, including, long-term safety, security and freedom of movement, access

³ The Guiding Principles on Internal Displacement E/CN.4/1998/53/Add.2.

to effective mechanisms that restore their housing, land and property or provide them with compensation, but also an adequate standard of living, including access to adequate food, water, housing, health care, basic education, employment and means of earning a living. Further indicators may include participation in public affairs at all levels on an equal basis with the resident population and effective remedies for displacement-related violations, including access to justice, reparations and information about the causes of such violations [ibid.].

The IASC Framework emphasises that “exercising the right to choose a durable solution requires that different options (return, local integration, resettlement elsewhere) are available” [ibid.: 12].

The below analysis takes into consideration that some of the Iraqi Christians who fled Daesh are to be considered as refugees and some as IDPs. Nonetheless, the solutions sought should be able to address the challenges faced by them independently of their legal status.

2. Addressing the Challenges Faced by Christian Minorities in Iraq

Ensuring that the communities can return to their homes post-conflict is a massive project requiring substantial financial resources as well as requiring changes to the legal and political climate. Indeed, ensuring that the right to return is a meaningful one does not only involve the physical reconstruction of homes and infrastructure but also, as identified in the previous section, ensuring safety in the fragile post-conflict environment, combating impunity for the atrocities and strengthening the protection afforded to those targeted. These aspects require further consideration. In this section, I explain the challenges faced by Christian minorities and that ultimately affect their right to return, and try to answer the question of what needs to be done to ensure that religious minorities can return to their homes and preserve their future in the region.

2.1. The Issue of Property Restitution and Reconstruction

In order to be able to return to their homes, the refugees or IDPs would have to be able to re-gain access to (and sometimes also ownership over) their homes and land [Leckie 2007]. This is complicated by the fact that the homes were destroyed by Daesh during their reign in the Nineveh Plains. Indeed, a 2017 report by Aid to the Church in Need, a pontifical organisation providing assistance to the persecuted Church around the world, estimated the cost of rebuilding the destroyed houses in nine villages in the Nineveh Plains in excess of \$200 million Nineveh Plains

Reconstruction Committee 2017]. The assessment made by Aid to the Church in Need and the Nineveh Reconstruction Committee identified that over 14,035 homes (including 1,040 totally destroyed, 3,292 burnt, 9,703 partially destroyed homes), 363 churches and associated properties, and 140 public properties were destroyed by Daesh and needed to be rebuilt [ibid.].

In order to ensure that the refugees or IDPs can return to their homes, their houses need to be rebuilt. Despite the level of destruction in the area, reconstruction commenced shortly after the area was liberated. In August [2019], the Nineveh Reconstruction Committee reported that close to 55% (7,681) of all damaged houses have been restored. It further reported that 46.54% (9,230) of families have returned to the Nineveh Plains [ibid.]. The reported data suggests that the progress is slow but steady. The reconstruction project has benefited greatly from the assistance of organisations such as Aid to the Church in Needs as well as from states that identified the reconstruction as a priority to preserve Christianity in the region, including the US, Hungary and Poland. Nonetheless, the road toward reconstruction is long. Furthermore, over the years, other issues have emerged that affect the progress of reconstruction, including the issue of corruption.⁴ Indeed, this was one of the reasons why the US changed its approach to providing financial assistance to the region.

2.2. Long Term Safety and Security

In order to ensure that religious minorities may return to the region once plundered by Daesh, the area must be safe and secure. Despite Iraqi Christian communities returning to the region, security continues to constitute a serious challenge that remains unaddressed and Daesh (and other similar groups) continue to pose a threat.

Despite the fact that the Iraqi government announced that Daesh had been defeated in Iraq [Government of Iraq 2017], the statement refers predominately to the territorial victory over Daesh. Indeed, it is crucial to emphasise that there are still some hotspots of Daesh fighters in Iraq. Furthermore, the territorial victory over Daesh does not change the fact that the ideology that poised Daesh to commit genocidal atrocities continues to rage on. Therefore, the issue of security remains a hot topic that requires further attention.

⁴ See: [Rasche 2017].

Apart from the threat posed by Daesh, the security in the area is significantly affected by the ongoing dispute between Baghdad and Erbil. As long as the parties continue to claim the so-called “disputed territories” that include the Nineveh Plains, it will remain a fragile region at risk of falling victims of the dispute [Christian Solidarity Worldwide 2017]. Indeed, October 2017 has seen this risk materialise when the parties clashed outside of Teleskuf, Iraq, forcing Christians who has returned to the village to flee again [ibid.].

One of the proposals to address the issue of security is to ensure that the area is autonomous and protected by its own security apparatus, consisting of individuals belonging to the minority groups living in the area [Adaktusson 2017]. Indeed, religious minorities must have a say and stake in their own security. This is a crucial consideration especially in light of the allegations of Peshmerga fighters, who were meant to protect Yazidis, yet left them unprotected in Sinjar despite knowing that Daesh was coming after them [UN Human Rights Council ONZ 2016: A / HRC / 32 / CRP.2]. Indeed, as per the Guiding Principle discussed above, “special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration” [GP 28.2].

2.3. Access to Justice

Furthermore, in order to provide a durable solution, the refugees and IDPs who once had to flee for their lives from the sword of Daesh must see justice being done during their lifetimes. In order to combat the growing atmosphere of impunity, Daesh fighters and any other complicit actors must be brought to justice. This means prosecuting the Daesh fighters for a litany of atrocities that they have perpetrated or were complicit in, whether murder, torture, abuse, slavery, rape and sexual abuse, forced displacement and much more, or for international crimes like genocide, crimes against humanity or war crimes. However, such prosecutions of Daesh fighters continue to be rare and even the conducted prosecutions fall short of ensuring justice for the victims.

It is considered that the Iraqi courts have been trying Daesh fighters. However, reportedly, such prosecutions are conducted for terrorism-related offences only and not for any other offences like murder, torture, rape, sexual violence, or international crimes (genocide, crimes against humanity, war crimes). The trials are further surrounded by controversy as they last for several minutes only, victims are not involved or even asked for testimonies, and the Daesh fighters are handed

death sentences [Coker, Hassan 2018]. And while the domestic prosecutions cannot satisfy the due process requirement and ensure justice for the victims, currently, there is no other viable options on the international level that could assist with prosecutions.

Indeed, currently, there is no international tribunal that would have the jurisdiction to prosecute the crimes of Daesh fighters in Iraq. Iraq is not a party to the Rome Statute, and hence, the only permanent international tribunal in existence, the International Criminal Court (ICC), does not have the mandate to engage. The other methods of engaging the ICC, either by way of Iraq voluntarily accepting the jurisdiction of the ICC [Rome Statute 12] or the UN Security Council referring the situation in Iraq to the ICC [ibid.: 13 b)], are very unlikely at this stage. Another option would be for the UN Security Council to establish an ad-hoc tribunal to prosecute the perpetrators, as in the case of Bosnia [1993: ONZ S / RES / 827] or Rwanda [1994: ONZ S / RES / 955]. While this option has not been taken yet, some of the recent developments may suggest that such an ad-hoc tribunal could be established in the future. Indeed, on 21 September 2017, the UN Security Council unanimously passed a resolution establishing an investigative team to collect and prepare the evidence of Daesh atrocities for future prosecutions [2017: ONZ S / RES / 2379]. The new mechanism resembles the bodies established by the UN Security Council in the cases of Bosnia Bośni [1992: ONZ S / RES / 780 (1992), 2] or Rwanda [1994: ONZ S / RES / 935] to collect and analyse the evidence of the atrocities perpetrated there. The next logical step would be for the UN Security Council to establish an ad-hoc tribunal, and so mirror the approach taken in relation to the crimes perpetrated in Bosnia or Rwanda. As more states are looking into the option of establishing an international tribunal to prosecute Daesh fighters, this option remains open.

2.4. Protecting the Rights of Minorities

Lastly, in order to guarantee the future of minorities in the region, it is crucial that their rights are comprehensively protected in law and adequately implemented and enforced. Unfortunately, this is not the case and minorities continue to face several legal challenges that do not give much hope for their future in Iraq. Some of these challenges pre-date the Daesh genocidal campaign.

Indeed, it is crucial to recognise that religious minorities have faced discrimination and persecution for years before the Daesh established its presence in the Middle East. Such acts have been widely reported after the fall of Saddam Hussein

and only increased in frequency over the subsequent years. Because of the long-standing discrimination and persecution of religious minorities, it is crucial to ensure that religious minorities are adequately protected under the law, and in accordance with the minimum standards under international law, as per Article 18 of the UDHR and Article 18 of the ICCPR. Furthermore, minorities should benefit from the protections enshrined in Article 27 of the ICCPR. The law must accommodate these protections adequately.

However, and equally, more needs to be done to ensure that the protections are then implemented and enforced. In order to do so, Iraq may need to introduce new oversight mechanisms that would help to monitor the situation, identify the red-flags and respond to prevent the situation from escalating. Furthermore, Iraq could follow in the footsteps of other states and introduce a new mechanism of a special rapporteurs or special advisors on freedom of religion or belief. Its mandate could incorporate monitoring the situation in Iraq and working with international partners on sustainable change. Ensuring better protection of the rights of religious minorities in Iraq, and their affective implementation and enforcement, is a needed step to preserve Christianity (and other religious minorities) in the region.

Conclusions

Iraqi Christians have a right to return to their homes in the Nineveh Plains. However, this right does not mean much without decisive steps translating this right into reality, as discussed in this paper. The steps ranging from reconstruction to security measures, from justice to improving protections to minority religious groups are closely linked and interrelated. Failure to address any of the steps may mean the collapse of the whole project. Unity of purpose and commitment to comprehensive strategies are required to preserve the persecuted groups, like Christians and other religious communities now standing on the verge of annihilation after Daesh's genocidal campaign.

The steps explored in this paper are the minimum that needs to happen to ensure that religious minorities may return to the Nineveh Plains and be able to stay. However, there are several other approaches that may need to be considered to ensure a durable solution to the enforced displacement that they suffered.

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