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**ISIS CRIMES IN SINJAR: FILING A LAWSUIT BEFORE ICC AND
REPARATION MECHANISMS
CRITICAL AND ANALYTICAL REVIEW ARTICLE**

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Abstract:

This review article analyses ISIS crimes in Sinjar according international criminal law. It has reviewed four main articles and books in this field. It used analytical approach in order to analyse the reviewed articles and books and find out the gaps in such studies. It attempts to answer such questions of whether how to file a lawsuit before ICC and what are the mechanisms of compensating victim of international crimes. The review article revealed that ISIS crimes in Sinjar are considered genocide, crimes against humanity and war crimes. It also found out that there are only three ways that can be relied upon in order to file a lawsuit before the ICC. Finally, the victims of such international crimes are deserved to be compensated according to international and national laws. It is recommended that an academic research shall be conducted about the ISIS crimes in Sinjar which will explain the procedures of bringing the case to ICC and mechanisms of compensating victims of ISIS crimes, because there is a gap in the researches being conducted in this field.

1. Introduction:

There are four types of crime in international law which are considered as crimes of fear and distorting international community, and these crimes are genocide, crimes against humanity, war crimes and crimes of aggression. Each of these crimes has its own legal ground and different rules. At the same time, there are significant similarities among these crimes in terms of their rules, conditions and legal features. All these four crimes are related to the breach of human rights, and they are in common in terms of the criminal act which leads to committing the crime. Since, the purpose of genocide is to eradicate a group; it has driven international law scholars to describe this crime as ‘the crime of crimes’ or ‘the most disgusting crime’. Thus, it is one of the reasons that has led the aggrieved groups of mass-killing to insist and make campaigns in order to consider the crime, which has triggered them, as genocide and not crime against humanity.

In other words, the acts which produce genocide are the same acts that led to occurring crimes against humanity. Therefore, at the time of committing international crimes there is an ambiguity and overlap and different analysis are provided for such crime. The newest example of international crimes is the attacks of ISIS terrorists on Sinjar in Kurdistan Region of Iraq on 3rd August 2014. Such criminal acts have led to having different analysis about introducing this crime according to the principles of international criminal law to find out whether these criminal acts go to which four crimes which are presented in International Criminal Court. This research attempts to answer the aforementioned questions by relying on scientific sources, principles and measures of international law.

1.1. Background of review article:

In this review article, we analyse a number of academic researches that are related to the title of this review article which are as follows:

First: Human Rights Council, ‘They Came to Destroy’: **ISIS Crimes Against the Yazidis**’ (2016) 32 Human Rights Council 1. This Article is written by a number of scholars in the institution of Human Rights Council in UN (Thirty-Second session, Agenda Item 4). This article is a theoretical and practical research regarding the ISIS crimes against Yazidi Kurdish. It attempts to answer the question of whether the crimes committed by ISIS in Sinjar fall within which type of international crimes?

Second: Abdulqadir Sabir Jaradah,¹**International Criminal Court** (1st edn, Egypt, Cairo, 2005). This book generally talks about International Criminal Court (ICC) which includes: Introducing and establishment of ICC, sources of ICC, Specialisation of ICC, elements of international crimes and the parties that have the right to instigate the claim to the ICC.

Third: Clara Sandoval² and Miriam Puttick³, ‘**Reparations for the Victims of Conflict in Iraq**’ 2017 Ceasefire Centre for Civilian Rights and Minority Rights Group International. This Article

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²**Clara Sandoval** is a qualified lawyer, Professor in the School of Law at Essex University, member of the Human Rights Centre and Co-Director of the Essex Transitional Justice Network.

³**Miriam Puttick** is currently Head of Middle East and North Africa Programmes at the Ceasefire Centre for Civilian Rights, an international initiative to develop civilian-led monitoring

analysis the way of compensating ISIS victims under International Law and the researchers used Iraq as a case study.

Fourth: International Criminal Court, **Understanding the International Criminal Court (The Netherlands, The Hague)**. This is a handbook written by the ICC as a guidance for readers and researchers to understand the composition, specialisation of ICC and how it works.

1.2. Importance of review article:

The significance of this review article explains international crimes and how to file a suite in such crimes to ICC. Moreover, it practically analysis ISIS crimes against Yazidi Kurdish and determining the legal framework of compensating of victims of international crimes (ISIS as an example).

1.3. Questions of review article:

This review article attempts to answer the following questions:

First: what are the international crimes according to ICC?

Second: How to file a lawsuit before ICC?

Third: what is the legal framework of compensating victims of international crimes?

1.4. Methodology of review article

The review article uses analytical approach to analyse and explain the ambiguity of legal provisions related to international criminal law. In addition, the critical method is also used in order to criticise the gaps which are found in the used researches.

1.5. Structure of the review article:

This review article is divided into three main chapters: in the first chapter, international crimes are clarified; in the second chapter analyses ISIS crimes in Sinjar according to the rules of International Criminal Law; the third chapter determines the parties who have the right to file a suite to the ICC and the last chapter explains the legal framework of compensating victims of international crimes (ISIS crimes as an example).

2. International crimes in International Criminal Law:

If we look at the researches and books that we are using in this review article, it can be seen that in the research conducted by **Human Rights Council** focuses on the international crimes that are committed by ISIS which are Genocide, Crimes against Humanity, War Crimes and Human Rights Abuses.⁴ This research does not define these crimes, but it directly goes to analysing ISIS crimes in Sinjar. Nevertheless, it would be better if this research defines international crimes in order to determine the concept of these crimes and differentiate them from other international crimes.

of violations of international humanitarian law or human rights; to secure accountability and reparation for those violations.

⁴ Human Rights Council, 'They Came to Destroy': ISIS Crimes Against the Yazidis' (2016) 32 Human Rights Council 1, 20-32

Moreover, **Professor Dr. Abdulqadir Sabir Jaradah** firstly defines international law crimes as “a law which includes the crimes that are stipulated in international treaties.” In addition, the author divides the sources of international criminal law to original sources which are Roman Statute, International Treaties and principles of international law and its rules and precaution sources which are decisions of ICC and international custom. It also divides international crimes into four crimes which are mass-killing, crimes against humanity, war crimes and aggression crimes. The author defines all four crimes and he also determine the elements of international crimes which are Legal element, Conduct (Actus reus), Mental state (Mens rea) and International element.⁵ However, we can say that the author has failed to use an accurate term for **genocide**, as he has used **mass-killing**, because mass-killing is only a form of genocide and the crime of genocide can be committed without killing any person. For example, forcible transfer can be considered genocide.

Furthermore, **Professor Dr. Clara Sandoval** and **Miriam Puttick** in their research they focused on Reparations for the Victims of Conflict in Iraq. They explained the right to reparation under international law such as international human rights law, international criminal law and international humanitarian law.⁶ Nevertheless, they do not explain that the compensation results from which type of international crime.

Finally, International Criminal Court in its handbook has clarified all four types of international crimes accurately which fall within the jurisdiction of ICC. In the beginning, it explains the definition of **Genocide** according to Article 6 of Rome Statute of the ICC “genocide” ‘means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such’: ⁷

- “(a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

After that, it defines **Crimes against Humanity** as follows: Crimes against humanity are those crimes that relate to human behaviour such as, attacking a human or a specific group due to a private and specific reason such as, religion, politics or ethnic.

Then, it defines “**War Crimes** as it includes grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts not of an international character listed in the Rome Statute, when they are committed as a part of a plan or policy or on a large scale”.

⁵ Abdulqadir Sabir Jaradah, *International Criminal Court* (1st edn, Egypt, Cairo, 2005) 526-657.

⁶ Clara Sandoval and Miriam Puttick, ‘Reparations for the Victims of Conflict in Iraq’ 2017 *Ceasefire Centre for Civilian Rights and Minority Rights Group International* 1, 7-8.

⁷ International Criminal Court, *Understanding the International Criminal Court* (The Netherlands, The Hague) 13-14.

“Four categories of war crimes are distinguished by the Rome Statute: firstly, grave breaches under the four 1949 Geneva Conventions. The Rome Statute considers grave breaches as prohibited acts, which are listed in the four Geneva Conventions, and contain conduct such as, torture, wilful killing, inhuman treatment, hostage taking or extensive destruction and appropriation of property. Moreover, such grave breaches have to be committed in the context of an international armed conflict, and against property or persons safeguarded by the Geneva Conventions. Grave breaches are specifically serious infringements of international humanitarian law”.

Secondly, war crimes include other serious violations of the laws and customs applicable in international armed conflicts. These crimes are derived from different sources such as:

- “-the 1907 Hague Convention relating the laws and customs of war and land,
- the 1977 Protocol I Additional to the Geneva Conventions,
- the 1899 Hague Declaration (IV, 3) concerning expanding Bullets and,
- the 1925 so called Geneva Gas Protocol.”

Thirdly, war crimes include serious violations of Article 3 common to the Geneva Conventions which is applicable to non-international armed conflicts. Common Article 3 contains prohibited acts such as, violence to life and persons in particular murder of all types, torture, mutilation and cruel treatment.

‘Finally, war crimes include other serious violations of the laws and customs applicable in armed conflicts not of an international character. These crimes are derived from different sources such as, the 1907 Hague Regulations and Additional protocol II to the Geneva Conventions. Many of these crimes reflect those crimes applied in international armed conflicts as other serious breaches’.⁸

Finally, it defines **Crimes of Aggression** as preparation, planning, initiating or executing of an act of using armed force by a country against the sovereignty, territorial integrity or political integrity of another country.

This book has explained the concept of all four international crimes very well as it is explained in the Rome Statute of ICC.

We can Introducing crimes of aggression is a controversial issue and there is no specific definition for it. However, it could be generally defined as aggressive acts by using armed forces out of States’ decision against another State. This crime has elements which are:

1). Conduct (Actus reus): it could be deduced from the definition of the crime that it is an order by the ruler of a State against another State and it can be done by military attacks, but it should not be self-defence because self-defence is exceptionally allowed in international law. However,

⁸ Knut Dormann, War Crimes under the Rome Statute of the International Criminal Court, with a Special Focus on the Negotiations on the Elements of Crimes, Max Planck Yearbook of United Nations Law, Volume 7, 2003, pp. 343-345

if the order of the attack is not issued by the president or the ruler of a State then it is not considered as crime of aggression.

2). Mental state (Mens rea): it is the mental intention, or the defendant's state of mind at the time of the offense, sometimes called the guilty mind. Thus, the attacking party should have knowledge that their acts are illegal and they should wilfully commit them.

3). International element: for the existence of this element the acts must be done by a State or under the name of a State or according to the plan of another State.⁹

3. ISIS crimes in Sinjar according to the rules of International Criminal Law:

The newest case of international crimes around the world is the ISIS crimes in Iraq and Syria. In this review article, we found that it is important to explain the committed crimes by ISIS against Yazidi Kurdish in Sinjar. Moreover, to answer this question: Are ISIS Crimes fall within which type of international crimes?

3.1. ISIS Crimes as Genocide:

The research that conducted by **Human Rights Council** explained ISIS crimes theoretically and practically. It explained the element of genocide crime and it has attempted to establish that whether the acts committed by ISIS meet the elements of genocide. At the end, it successfully proved that the ISIS acts have met all the elements of genocide crime, therefore, such acts are considered to be genocide.¹⁰ However, **Professor Dr. Abdulqadir Sabir Jaradah** has only explained the general principles of international crimes and some old cases such as Yugoslavia, Nuremberg, Tokyo and Rwanda. It does not explain ISIS case, this book was written in 2005 before the occurrence of this case.¹¹

Moreover, **professor Dr. Clara Sandoval** and **Miriam Puttick** in their research has only focused on the reparation side without going through the types of crimes. In addition, International Criminal Court in its handbook only focuses on the general principles of international crimes without analysing any cases.

3.2. ISIS Crimes as Crimes against Humanity:

Human Rights Council in its research refers to the ISIS crimes which happened in 2014 in Sinjar. ISIS used all forms of Crimes against Humanity in their attack on Sinjar. Therefore, the research proves that such acts that committed by ISIS groups are considered Crimes against Humanity. In its murdering of Yazidi Women, men and children, ISIS committed the crime against humanity of killing and extermination. In its sexual enslavement, enslavement, and thrashing of Yazidi women and girls, ISIS has committed the crimes against humanity of sexual slavery, rape, sexual violence, enslavement, torture, other inhumane acts, and severe deprivation of liberty.¹² The research has successfully analysed and proved that the crimes committed against ISIS are also considered Crimes against Humanity.

⁹ Khalid Tahma Sahfik Shamri, *International Criminal Law*, 2nd ed, 2005.

¹⁰ Human Rights Council (n 4) 20-31.

¹¹ Abdulqadir Sabir Jaradah (n 5) 150-212.

¹² Human Rights Council (n 4) 31.

Moreover, **Abdulqadir Sabir Jaradah** has explained general principles of crimes against humanity in detail such as definition, elements and sanctions of this crime.¹³ However, it does not mention the case of ISIS.

Professor Dr. Clara Sandoval and **Miriam Puttick** in their research have only focused Reparations for the Victims of Conflict in Iraq without explaining the types of crimes that are committed by ISIS. Finally, International Criminal Court in its handbook has only introduced the crimes against humanity without referring to any case.

3.3. ISIS crimes as War Crimes:

If we take the review articles into consideration, it can be observed that **Human Rights Council** in its research entitled ‘They Came to Destroy’: ISIS Crimes Against the Yazidis, it established that ISIS acts are also considered war crimes because they intentionally attacked civilian populations and they also captured men, women and children and then they killed them during captivity.¹⁴

Moreover, **Abdulqadir Sabir Jaradah** in its book has only explained general principles of war crime in detail such as definition, forms, historical background and sanctions of this crime.¹⁵

In addition, **Professor Dr. Clara Sandoval** and **Miriam Puttick** in their research have only focused Reparations for the Victims of Conflict in Iraq without explaining war crimes. Finally, International Criminal Court in its handbook has only introduced the war crimes without referring to any case.

4. How to file a suit to the ICC:

International Criminal Court was established on 17 July 1998 and came into force on 1st July 2002. Its office is located in the Hague city in the Netherlands. According to Article 5 the court has jurisdiction over those who commit the four international crimes (genocide, crimes against humanity, war crimes and crimes of aggression). This chapter will briefly explain the ways of initiating the case of Sinjar to International Criminal Court.

Human Rights Council in its research entitled ‘They Came to Destroy’: ISIS Crimes Against the Yazidis’ it presents a number of mechanisms for filing a suit to ICC which are the following mechanisms:

The International Criminal Court (ICC) is, at present time, the only international criminal tribunal that can have jurisdiction over ISIS crimes against the Yazidis. Neither Syria nor Iraq are parties to the Rome Statute.

“Consequently, for the ICC to be seized of the matter requires a referral of the situations in Syria and/or Iraq by the UN Security Council, the members of which are all contracting parties to the Genocide Convention. On 22 May 2014, a draft Resolution that that would have referred the situation in Syria to the ICC failed after the Governments of Russia and China exercised their veto. There have been no subsequent attempts to refer. Therefore, it recommends that currently national prosecutions provide the only path for accountability for victims of crimes

¹³ Abdulqadir Sabir Jaradah (n 5) 559-593.

¹⁴ Human Rights Council (n 4) 32.

¹⁵ Abdulqadir Sabir Jaradah (n 5) 592-630.

committed in Syria. It is integral, therefore, that States enact domestic laws against genocide, crimes against humanity and war crime”.¹⁶

Moreover, **professor Dr. Abdulqadir Sabir Jaradah** in his book he explained the ways of filing a suit to ICC and he also determines the parties who can instigate criminal claim to ICC. These parties are Member States, Security Council and International Public Prosecutor.¹⁷ However, the author does not mention non-State actors such as Regions and Nations when they face international crimes.

Furthermore, **Professor Dr. Clara Sandoval** and **Miriam Puttick** in their research has only explained reparation right to victims without mentioning international procedures to get the right of compensation.

Finally, **International Criminal Court** in its handbook explained the procedures of bringing cases before ICC. It also determines the parties who can bring the case of ISIS before ISIS which states that any State Party to the Rome Statute can request the office of the prosecutor to carry out an investigation. A State not party to the Statute can also accept the jurisdiction of the ICC with respect to crimes committed in its territory or by one of its nationals, and request the Office of the Prosecutor to conduct an investigation. The United Nations Security Council may also refer a situation to the court.¹⁸ Nonetheless, it does not refer to any case.

5. The legal framework of compensating victims of international crimes (ISIS crimes as an example).

One of the most important subjects in international crimes is compensating the victims of such crimes. Therefore, when an international crime is committed and then a claim is brought before ICC, except sanctions the subject of reparation becomes one of the most important of the process. In this chapter, the mechanisms of compensation are explained in international crimes.

Human Rights Council in its research has only briefly explained the accountability of ISIS crimes without mention the implications of such accountability which is compensation. However, professor Dr. Abdulqadir Sabir Jaradah in his book clarifies the mechanisms of compensation. According to his view, at the time of any violation against human rights whether the violation is against an individual in national law or against a group in international law, the incurred damage shall be compensated. However, the process of restitution which requires the re-establishment of the situation that had existed before the commission of an internationally wrongful act or the status quo ante is very difficult. Therefore, we can say that the subject of compensation and determining applicable was become a controversial issue in Rome Conference.¹⁹

Moreover, Professor Dr. Clara Sandoval and Miriam Puttick in their research they explained the subject of compensating victims in detail and one of the good points of this research is that they explain the compensation of ISIS victims under Iraqi Law No. 20 on Compensating Victims of Military Operations, Military Mistakes and Terrorist Actions, first passed in 2009 amended in

¹⁶Human Rights Council (n 4) 36.

¹⁷ Abdulqadir Sabir Jaradah (n 5) 250-264.

¹⁸ International Criminal Court, Understanding the International Criminal Court (The Netherlands, The Hague) 17.

¹⁹Abdulqadir Sabir Jaradah (n 5)888-889.

2015, provides redress to victims who have suffered violations since 2003. Between 2011 and 2016, more than IQD 420 billion (USD \$355 million) was distributed to victims under this framework. They stated that the ISIS victims cannot take the benefit of this law, because it was created for something else for bombings here and there, or a military strike. Law 20 is good but the implementation mechanism does not have the capacity to deal with the challenges that we now face: thousands killed, thousands kidnapped, the scale of property destruction – nearly every bridge in Mosul has been destroyed.²⁰ However, they do not mention the 2020 amendment of this law which has solved the issue that they have criticized, because according to the last amendment the victims of all international crimes and terror can get the benefit of this law.²¹

Finally, International Criminal Court in its handbook has briefly mentioned that any victim of international crimes has the right to be compensated without mentioning the mechanisms of getting such compensation.²²

6. Conclusion:

At the end of the review article, we reached a number of results and recommendations:

6.1. Results

First: Human Rights Council in its research as a theoretical and practical research regarding the ISIS crimes against Yazidi Kurdish. This research proved that ISIS Crimes in Sinjar are considered: Genocide, Crimes against Humanity, War Crimes and Human Rights Abuses. This research is one of the most comprehensive research about ISIS crimes in Sinjar which has academically proved that the committed crimes in Sinjar are genocide, crimes against humanity and war crimes. The importance of this research can be noticed as an international institution in the UN special to human rights has conducted this research.

Second: Professor Dr. Abdulqadir Sabir Jaradah in his book generally talks about International Criminal Court (ICC) which includes: Introducing and establishment of ICC, sources of ICC, Specialisation of ICC, elements of international crimes and the parties that have the right to instigate the claim to the ICC. However, it does not mention any new case particularly regarding the procedures and mechanisms of compensating victims. However, he was not successful in using the proper term for genocide as he used mass-killing instead of genocide, but mass-killing is only a form of genocide.

Third: Professor Dr. Clara Sandoval and Miriam Puttick in their research they analyse the way of compensating ISIS victims under International Law and Iraqi Law. However, they do not mention the 2020 amendment of this law which has solved the issue that they have criticized, because according to the last amendment the victims of all international crimes and terror can get the benefit of this law.

Fourth: International Criminal Court in its handbook has just provided readers with a general guidance without mentioning any case as an example.

²⁰ Clara Sandoval and Miriam Puttick (n 6) 17-22.

²¹ Law No. 20 on Compensating Victims of Military Operations, Military Mistakes and Terrorist Actions, first passed in 2009 second amendment by the Law No 2 of 2020.

²² International Criminal Court, Understanding the International Criminal Court (The Netherlands, The Hague) 32.

6.2. Recommendations (legal gaps)

The case of recognising ISIS crimes against Yazidi Kurish would have an impact on the declaration of the Kurdistan Independence, similar to other nations who took the advantage of such case such as Arminia.

Moreover, it is necessary for KRG Parliament to implement Iraqi Law No. 20 on Compensating Victims of Military Operations, Military Mistakes and Terrorist Actions, first passed in 2009 amended in 2020, because in the case of having any similar case there is no law in Kurdistan to be relied upon in order to compensate the victims of such actions.

At the end of this review article, we recommend that an academic research shall be conducted about the ISIS crimes in Sinjar which will explain the procedures of bringing the case to ICC and mechanisms of compensating victims of ISIS crimes, because there is a gap in the researches being conducted in this field.

References:

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6. Khalid Tahoma Sahfik Shamri, International Criminal Law, 2nd ed, 2005.
7. Law No. 20 on Compensating Victims of Military Operations, Military Mistakes and Terrorist Actions, first passed in 2009 second amendment by the Law No 2 of 2020.