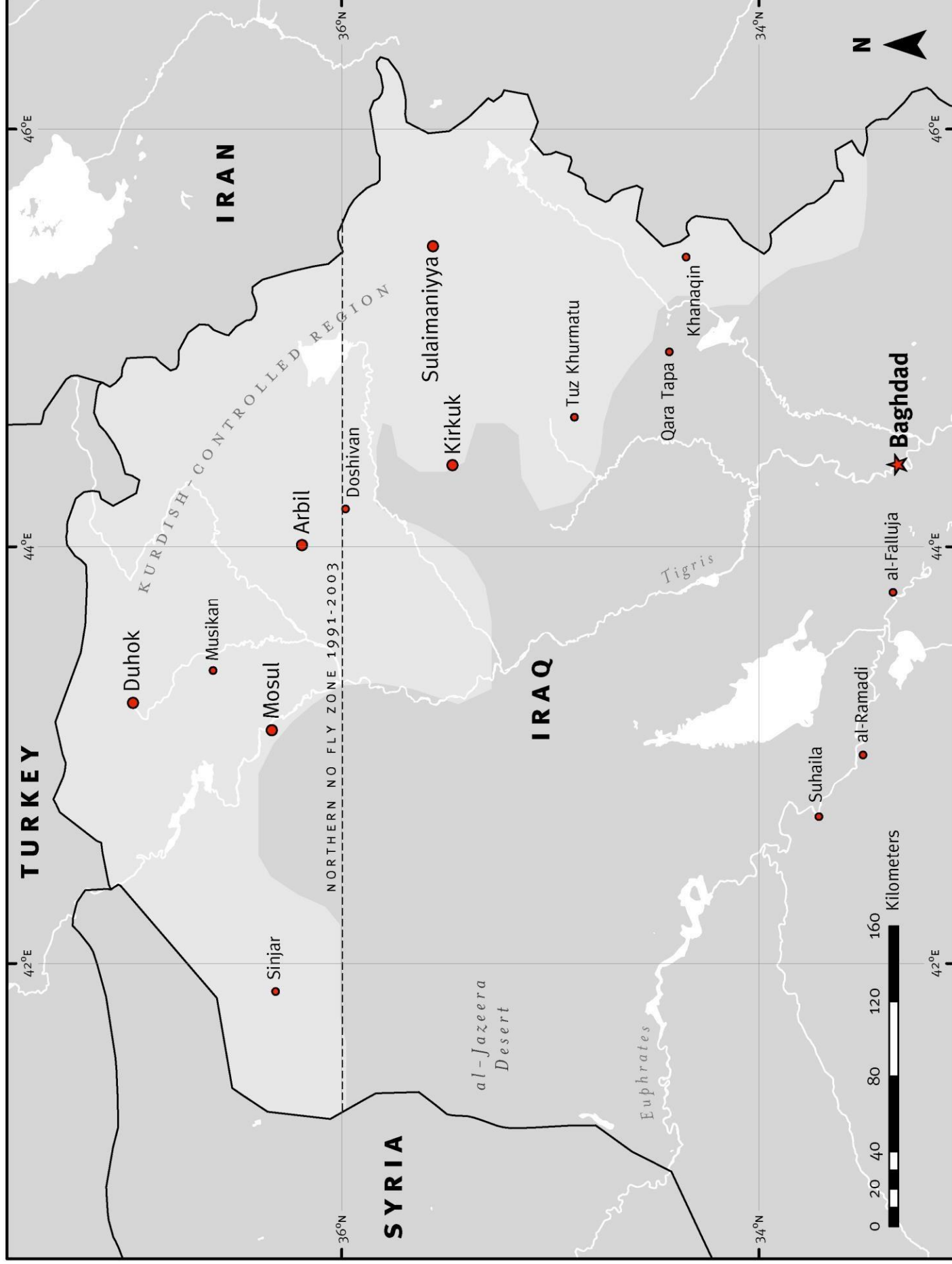


Claims in Conflict

Reversing Ethnic Cleansing in Northern Iraq

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Northern Iraq

I. Summary

A crisis of serious proportions is brewing in northern Iraq, and may soon explode into open violence. Since 1975, the former Iraqi government forcibly displaced hundreds of thousands of Kurds, Turkomans, and Assyrians from their homes, and brought in Arab settlers to replace them, under a policy known as “Arabization.” With the overthrow of that government in April 2003, the Kurds and other non-Arabs began returning to their former homes and farms. Ethnic tensions between returning Kurds and others and the Arab settlers escalated rapidly and have continued to do so, along with tensions between the different returning communities—particularly between Kurds and Turkomans—over control of the oil-rich city of Kirkuk. In the absence of a speedy implementation of plans to address the conflicting land and property claims and the needs of the different communities, ownership disputes may soon be settled through force.

In the context of negotiations over the political future of Iraq and the handover of sovereignty to the Iraqi Interim Government (IIG) by the U.S.-led Coalition Provisional Authority (CPA) on June 28, 2004, the Kurdish leadership pressed for a number of demands that would consolidate the gains they have made in areas under their control since 1991 as well as realize some of their other long-standing political aspirations. Some of these demands have direct bearing on the future of the hundreds of thousands of victims of Arabization, and are in line with what the Kurdish leadership sees as a historic opportunity to reverse the consequences of what was, in effect, an ethnic cleansing campaign conducted by successive Iraqi governments over several decades. They include a determination of the future status of the city of Kirkuk, which is linked to a return to pre-Arabization administrative boundaries in the relevant governorates; the right of all internally displaced persons to reclaim, and return to, their original homes; and the removal of all Arabs brought from other parts of the country for the purpose of altering the demographic makeup of the northern region. Some of these demands are shared by other ethnic communities that also suffered Arabization - the Turkomans and to a lesser extent the Assyrians – but are at variance on crucial points.

What does unite all the parties concerned is the wish to see past injustices redressed, particularly through a fair mechanism for the settlement of property disputes which lie at the heart of the problem. Resolving these disputes in a timely, fair, and effective manner involves a highly complex operation, which may take years to complete, but on which hinges the ability to diffuse ethnic tensions which are close to a breaking point. The Iraq Property Claims Commission, which was established by law in January 2004, more than eight months after the cessation of major hostilities, has yet to become operational. Moreover, the law fails to address the burning issue of what is to become of the so-

called Arabization Arabs, in particular whether they will have the right to choose their place of residence following the resolution of property disputes. They, in a real sense, have become the latest victims of internal displacement.

Since at least the 1930s, successive Iraqi administrations have attempted to change the ethnic make-up of northern Iraq by expelling Kurds, Turkomans, and Assyrians from their homes and repopulating the areas with Arabs moved from central and southern Iraq. Arabization first occurred on a massive scale in the second half of the 1970s, following the creation by the Iraqi government of an autonomous zone in parts of Iraqi Kurdistan. During that period, some 250,000 Kurds and other non-Arabs were expelled from a huge swath of northern Iraq, ranging from Khanaqin on the Iranian border all the way to Sinjar on the Syrian-Turkish border were forcibly displaced. These comprised entire families, including women and children. Simultaneously, the Iraqi government brought in landless Arabs and their families from the nearby al-Jazeera desert to farm the former Kurdish lands. The land titles of the Kurds and other non-Arabs were invalidated. The land was declared government land, but was leased on annual contracts only to the new Arab farmers. However, they did not receive freehold title to the lands.

In 1988, the Iraqi government launched the Anfal campaign against the Kurds, killing some 100,000 Kurds and destroying many of their villages, which left hundreds of thousands of Kurds homeless. Although the aims of the Anfal campaign was not Arabization—the aim was genocide—in its aftermath Kurds were not allowed to return to their destroyed villages. Their property rights, too, were invalidated, and Arabs were brought to settle and farm some of their lands.

The policy of Arabization continued right up to the fall of Saddam Hussein's government in April 2003. Kurds and other non-Arabs in Kirkuk faced constant harassment, and were forced to choose between immediate expulsion or joining the Ba`th Party, changing their ethnic identity (commonly referred to as “nationality correction”) to Arab, and “volunteering” for paramilitary forces such as the Jerusalem Army (*Jaysh al-Quds*). Families who refused to comply were issued expulsion orders requiring them to leave their homes and were then expelled to the Kurdish-controlled areas. The government of Iraq expelled approximately 120,000 persons from Kirkuk and other areas under Iraqi government control during the 1990s in furtherance of its Arabization policies. Arabs were encouraged to settle in the north through financial incentives and subsidized home prices.

The impact of three decades of forced displacement and Arabization has been immense. U.N.-Habitat counted a total of 805,505 displaced persons living in the Kurdish governorates of Arbil, Duhok, and Sulaimaniyya in 2001. Arabization, as a policy of forced transfer of populations, constituted a crime against humanity, and the victims of

that policy have a right to return to their homes or be compensated. However, the rights of the victims of Arabization must be implemented in a manner that does not cause additional human rights abuses against the ethnic Arab populations who settled in the north. Fair and impartial procedures are needed to determine the status of claims and the rights of individuals. Special efforts may be necessary in order to guarantee that returning women, including but not limited to heads of households, are able to exercise their property and inheritance rights. It will also be important to ensure that property restitution rights not be restricted to owners of housing or other property but also address the rights of tenants, cooperative residents, and other tenure groups.

The situation in northern Iraq changed drastically during the 2003 conflict. A large number of Arab settlers and their families left their homes well in advance of the arrival of Kurdish and U.S. forces, leaving many of the Arabized villages empty. For the Arab settler families, the war was a devastating blow, leaving them homeless often after living for decades in the Arabized villages. For the moment, many of these villages remain empty. The judicial mechanism to determine claims to properties has not yet become operational, and many Kurds displaced from their villages through Arabization are simply too poor to rebuild their homes or even pay for the trip to their villages without assistance.

In most cities like Kirkuk and Mosul, as well as towns such as Khanaqin and Sinjar, many Arab settlers chose to remain, explaining they had property deeds to their homes. Tensions in these urban areas run high, as returning Kurds and other non-Arabs attempt to reclaim their property. In some places, particularly in Kirkuk and Khanaqin, some Kurdish officials have attempted to expel Arab residents through threats and intimidation and seize their homes for redistribution among Kurdish *Peshmerga* fighters and the families of slain fighters.¹

In light of the tremendous pressures Kurdish leaders face from their displaced and victimized constituents who are demanding redress, the Kurdish leadership has shown a clear commitment to preventing mass retaliation. In contrast to similar conflicts where formerly victimized populations seize control—the situation of Kosovar Albanians following the NATO war is a close analogy—few acts of retaliation and no massacres were committed by Kurdish forces. At the same time, Kurdish leaders remain committed to their declared policy that Arabization must be reversed completely and that Arabs who came north during the Arabization period must leave, thereby setting themselves up for a major confrontation in the future.

¹ *Peshmerga*, literally “those who face death,” are the fighting forces of the Kurdish political parties.

The lack of widespread retaliation killings and other serious human rights abuses by Kurdish forces should not obscure the underlying reality of a dramatic change in power relations in northern Iraq. Arab families are almost completely powerless in the face of Kurdish forces, which were among the few militias in Iraq to have been allowed by U.S. and coalition forces to retain their arms. Serious intimidation of Arab families by Kurdish officials has taken place in areas where *Peshmerga* forces of both the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) began deploying following the fall of the former Iraqi government.

The U.S.-led Coalition Provisional Authority (CPA) failed to address the rising tensions in northern Iraq, and to implement a strategy to resolve the claims and needs of the different communities in northern Iraq. When the CPA was formally dissolved on June 28, 2004, more than a year after the fall of the government of Iraq, the mechanism to resolve competing property claims had yet to become operational. The necessary legislation was initially promulgated in January 2004, but only finalized on June 24, 2004, just days before the handover of formal governing authority to the IIG, and the humanitarian needs of displaced persons—Kurds as well as Arabs, women and children as well as men—meanwhile went largely unmet.

Equally dismal has been the failure of the Kurdish leadership to put in place a coordinated and unified policy for dealing with the expected influx of displaced Kurdish and other families into Kirkuk and other areas, particularly with regard to their humanitarian needs. There were reports of Kurds being compelled to return to the Kirkuk area against their will. Hundreds of thousands of others are waiting to return to their homes and farms, and their patience is quickly running out. A large number of Arab families were forced to flee their homes during the 2003 conflict. At present, these internally displaced Arabs have no recourse to determine their rights.

Significantly, many of the Arab settlers interviewed by Human Rights Watch in the months following the fall of the former government indicated that they recognized the Kurdish claims to their properties. Many told Human Rights Watch that they were willing to give up their homes in Arabized villages in return for humanitarian assistance in finding new homes and livelihoods for their families. The willingness of the Arab settlers to seek compromise perhaps offered great hope of peacefully resolving the crisis in northern Iraq.

Over time, with no tangible steps having been taken to resolve property disputes, and with mounting tensions and deteriorating security conditions in Kirkuk and its environs, attitudes on all sides have hardened considerably. More than one year on, it has become doubly difficult to find a just and peaceful resolution to the many competing claims. Both coalition and Kurdish officials alike must be held responsible for the lack of both

pre-war and immediate post-war planning. . As one CPA official told Human Rights Watch, “We missed an opportunity to put something in place that would inspire confidence.”

The crisis of displacement and conflicting property claims in northern Iraq is potentially one of massive proportions, and can only be resolved through resolute action by the international community. As of July 2004, it is far from clear that the Iraq Property Claims Commission will provide the resolution mechanism needed to adjudicate property disputes in a manner that is expedient, accessible, fair, and impartial. The success of any property resolution process will also require a massive humanitarian response to meet the housing and living needs of these newly displaced families as well as the equally needy Kurds and others in northern Iraq who are attempting to return to their homes.

II. Recommendations

To the Iraqi Interim Government

- Ensure that the Iraq Property Claims Commission (IPCC) takes up the adjudication of property claims at the earliest possible time, in a manner that is non-discriminatory, fair, and efficient, and in accordance with international due process standards.
- Ensure that all necessary resources are in place to deal promptly with the expected large number of claims.
- Ensure that law enforcement resources are sufficient to enforce property restitution judgments in a manner consistent with international human rights standards.
- Ensure that property records are freely accessible to displaced persons. • Conduct a campaign to disseminate as widely and as effectively as possible, in Iraq and in countries with sizeable Iraqi refugee populations, all necessary information about property restitution rights and procedures for submitting a property claim.
- Ensure that there is a durable and equitable resettlement solution for Arab families displaced or to be displaced as part of the property claims resolution process, a solution that does not render them homeless and recognizes their right to choose their place of residence without coercion.

- Ensure that property claims resolution mechanisms and resettlement programs fully address the rights of returnee women to full equality with regard to housing, property, and land restitution, in particular in terms of access, control, ownership, and inheritance rights.
- Ensure that the housing restitution rights of tenants and other tenure groups as well as owners are addressed.
- Ensure access to legal counsel for all persons affected by the property claims resolution mechanisms.
- Ensure that property restitution rights extend to heirs of original owners, and clarify that claims are not rendered void due to the passage of time.
- Ensure that compensation provided in resolving property claims is reasonable in relation to the damage suffered by the victim of displacement and/or illegal property confiscation.
- Review and where necessary amend existing legislation to ensure compliance with international standards regarding the rights of refugee and displaced persons to return to their homes and/or receive compensation for illegal confiscation or destruction of their property.
- Incorporate the principles of the Iraqi Property Claims Commission Statute into domestic legislation.

To the principal Kurdish, Turkoman, and Assyrian political parties: • Urge communities and constituencies to exercise restraint and refrain from exercising force or threats of force to repossess claimed property. • Discourage further returns of internally displaced persons (IDPs) to former places of residence until property claims are processed.

- Coordinate provision of humanitarian assistance to IDPs who have returned to places of origin but are living in dire or makeshift conditions.
- Ensure that there are no further forced expulsions of Arabs who benefited from the former government's Arabization campaign, in particular by the *Peshmerga* or other party militias.

To the member states of the U.S.-led coalition and the international donor community

- Provide humanitarian assistance for those returning or newly displaced persons currently living without adequate shelter, physical security, or access to basic needs.
- Provide assistance to the new government of Iraq to repair damaged housing and to construct or subsidize construction of adequate, affordable, and accessible housing for returning displaced persons and refugees whose homes have been destroyed or are no longer accessible, and for persons displaced by the property restitution process.
- Ensure adequate funding and resources for the effective operation of the Iraq Property Claims Commission, including the protection and re-establishment of housing and property records.

III. Background: Forced Displacement and Arabization of Northern Iraq

The Mass Displacement of the mid-1970s

Since the 1930s, but particularly from the 1970s onwards, successive Iraqi administrations have forcibly displaced hundreds of thousands of ethnic Kurds, Turkomans (a Turkish-speaking Iraqi minority), and Assyrians from northern Iraq, and repopulated the area with Arabs moved from central and southern Iraq.² This policy, known as “Arabization” (*ta’rib*) was conducted in order to consolidate government control over the valuable oil resources and arable lands located in northern Iraq. The massive forced displacement of Kurdish families from northern Iraq is not synonymous with Arabization, as armed conflict and the genocidal Anfal campaign of 1988 also accounted for large numbers of displaced Kurds. But even when Kurds were displaced by armed conflict or the Anfal campaign, the Iraqi government often ensured that their displacement became permanent and brought in Arab settlers to take over their homes. For the hundreds of thousands of Kurds displaced from their homes by Arabization, armed conflict, and genocide in Iraq, their continued displacement represents a crime that must be redressed.

The first massive wave of forced displacement in northern Iraq followed the 1974 unilateral declaration by the Iraqi government of a Kurdistan Autonomous Region covering the northern governorates of Arbil, Sulaimaniyya, and Dohuk. The area

² For a historic overview of Iraq’s Arabization policies, see Noori Talabany, *Iraq’s Policy of Ethnic Cleansing: Onslaught to Change National/Demographic Characteristics of the Kirkuk Region* (1999), available at <http://www.geocities.com/minohac/tareeb.htm>.

comprised some 14,000 square miles but included only half of the land area claimed by Iraq's Kurds, and excluded the oil-rich lands around the city of Kirkuk. In the wake of the 1974 autonomy decree, the Ba'th Party embarked on the Arabization of the oilproducing areas around Khanaqin, evicting Kurdish farmers and replacing them with Arab tribal families from southern Iraq. Tens of thousands of villagers from the Barzani tribe were also forcibly removed from their homes following the collapse in 1975 of the Kurdish revolt, led by Mulla Mustafa Barzani. The villagers were relocated to barren sites in the southern deserts, where they had to rebuild their lives from scratch. By the late 1970s, the Iraqi government had forcibly evacuated as least a quarter of a million Kurdish men, women, and children from areas bordering Iran and Turkey. Their villages were destroyed to create a *cordon sanitaire* along these sensitive frontiers, and the inhabitants relocated to settlements built for that purpose located on the main highways in army-controlled areas of Iraq Kurdistan.³

The scale of the displacement of Kurds in the north during the mid-1970s was immense, displacing the entire Kurdish population from an area reaching from the town of Khanaqin, close to the Iranian border, to the Syrian and Turkish border areas around Sinjar. Many Kurdish villages were bulldozed, and new Arab settlements were built nearby. The bureaucratic nature of the Iraqi state makes it possible to reconstruct the scale of the displacement, as many of the landownership records of the pre-Arabization period still exist. The decrees passed by the Ba'th government in implementation of its Arabization policy also exist, as do detailed records of the Arab families that were brought to inhabit the vacated areas. An official of the Agricultural Department in Shaikhan district, located in Mosul governorate (renamed Nineveh by the Iraqi government), listed forty-six originally Kurdish and Yazidi villages that had been Arabized in the 1970s.⁴

Tens of thousands of displaced men, women, and children fled into Iran. Most returned to Iraqi Kurdistan after the establishment of Kurdish self-rule in the aftermath of the 1991 Gulf War, but were unable to return to their original villages located outside Kurdish-controlled areas. The majority of the displaced Kurdish population were expelled or fled to the Kurdish Autonomous Region, or were resettled in the large-scale "complexes" or "collective villages" built by the Iraqi government. Others were forcibly settled far away in central and southern Iraq, often in majority Sunni towns that formed the backbone of support for Ba'th Party rule. When Human Rights Watch researchers visited the Sunni towns of al-Ramadi and al-Falluja in April and May 2003 respectively, they found entire neighborhoods of desperately poor Kurds who had been forcefully

³ Human Rights Watch, *Iraq's Crime of Genocide: The Anfal Campaign Against the Kurds*, New Haven and London, 1995.

⁴ Human Rights Watch interview with Haji Muhammad Ya'qub Hussain, assistant to the director of the Agriculture Department of Shaikhan, June 10, 2003.

displaced from their homes in the north since the mid-1970s, and had never been allowed to return home.

The 1988 Anfal Campaign

During the 1980-88 war between Iraq and Iran, the Kurdish *Peshmerga* reconstituted itself, with backing from Iran. Towards the end of the Iran-Iraq war, from February 23 until September 6, 1988, the Iraqi government launched its Anfal campaign against the Kurds, under the direction of ‘Ali Hassan al-Majid, a cousin of Saddam Hussein who earned the nickname “Chemical Ali” for his use of chemical weapons against Kurds in northern Iraq. The Anfal campaign reached genocidal proportions, resulting in the “disappearance” of some 100,000 Kurds, whose bodies are now being recovered in mass graves located across Iraq. During the Anfal campaign, the Iraqi government destroyed between 3,000 and 4,000 Kurdish villages and towns, displacing hundreds of thousands of Kurds. Some of the displaced Kurds were settled in army-guarded “collective settlements,” while others were deported to southern Iraq or fled to neighboring states, notably Iran. The Anfal operation devastated Iraqi Kurdistan, leaving the entire region in ruin and a large proportion of the population displaced.

The genocidal nature of the Anfal campaign made it drastically different from the earlier and later Arabization campaigns. However, for the displaced Kurds, the impact of the Anfal campaign was similar. After the 1991 Gulf War (see below), Kurdish villagers displaced during the Anfal campaign were able to return to many destroyed villages that were within the zone controlled by Kurdish forces. However, some villages destroyed during the Anfal fell outside that zone – for example parts of Makhmour district – and displaced Kurds were unable to return to those areas.

The Repopulation of the North with Arab Tribes

The methods used by the Iraqi government to effect the forced displacements of the 1970s and 1980s involved first and foremost military force and intimidation: entire Kurdish villages were completely depopulated and bulldozed by Iraqi forces. But the Iraqi government followed up the brutality with legal decrees aimed at consolidating the displacement. First, the property deeds of the displaced Kurds were invalidated by legal decree, most frequently without compensation or with nominal compensation. The Iraqi government nationalized the agricultural lands, making them the property of the Iraqi state.

The Iraqi government simultaneously embarked on a massive campaign to resettle the formerly Kurdish areas with Arab farmers and their families, thus completing the Arabization process. The Iraqi government did not have to look far for eager recruits for its Arabization campaign: located southwest of Mosul was the large al-Jazeera desert,

home to hundreds of thousands of loyalist nomadic Sunni Arab tribesmen. Enticed with free, irrigated land, and encouraged by their tribal shaikhs, the al-Jazeera tribesmen abandoned their hard lives in the desert and moved north en masse.

One elderly Arab tribesman from the al-Hadidi tribe recounted how his family and other tribesmen had moved north in late 1974 to be resettled in an emptied Kurdish village:

We went to Hin Djok at the end of 1974, October or November. Before this, we used to live like shepherds with our sheep, south of Mosul. We had no lands, and we used to take our sheep [grazing in the desert.] In 1974, the government came and asked if we wanted lands in the north. We were very grateful and voluntarily went to the north. ... We built our own houses, all of our families built new houses, and we also dug water wells. Each farmer got sixty dunums⁵ of irrigated land.⁶

Another elderly Arab tribesman from the al-Hadidi tribe explained how forty-seven families from his tribe went to the Kurdish village of Khani Siddiq in 1975:

We went to Khani Siddiq in 1975. Before, we were living from place to place in the al-Jazeera desert, in our tents. We owned no land. The government came to us and said they would take us to villages in the north. The government kicked out the Kurds and gave them compensation, and then brought us. The government didn't force us to go to the north. They came and asked us if we had lands and we said no. They said that if anyone wanted to the north, they would take us. We were very happy to go to the north because we had no irrigated lands in the south.

There were little houses in the village. We reconstructed those houses and built some new ones. They gave us sixty dunums each, but this was different in each village.⁷

The process by which Arabs came to the north was remarkably similar throughout the vast region the Iraqi government repopulated with Arabs, stretching from Khanaqin near

⁵ The dunum is a Middle Eastern unit used for measuring land areas, dating back to the Ottoman period. The actual size of a dunum varies among Middle Eastern countries. An Iraqi dunum is equivalent to 2,500 square meters.

⁶ Human Rights Watch interview with Sulaiman Muhammad Ibrahim al-Hadidi, June 6, 2003.

⁷ Human Rights Watch interview with Muhammad Hassan 'Alawi al-Hadidi, June 7, 2003.

the Iranian border to Sinjar near the Syrian border. ‘Alaiwi Sanur Hamid al-Sayeh, an elderly Arab farmer who moved with about thirty Arab families to the village of Suhaila near the Syrian border in 1974, described his move in nearly identical terms to the version given by the al-Hadidi tribesmen above, who settled in Shaikhhan district hundreds of miles away:

We came to Suhaila in 1974. We came from Salahuddin governorate, from the al-Jazeera desert. The government and the Ba`th moved us from al-Jazeera to this village. The government came to us, and announced that there were lands in these villages, and if we wanted to register [for land], we could. We registered, and one day they brought vehicles to transport us. Before this, we were living like bedouin in tents. They assigned each farmer 100 dunums.⁸

The shaikhs of the Arab tribes of the al-Jazeera desert—the area from which the largest number of Arab settlers came—confirmed this version of events in interviews with Human Rights Watch. According to Shaikh Nawwaf Hawwaz al-‘Atmi al-Shummari, a leader of the al-Shummar tribe in the north, Iraqi government representatives came to the al-Jazeera desert in 1974, asking them to move north: “The government came to us and told us to go live there [in the north], saying they would give us some land, just to protect the oil fields. We went to live in seven villages, each with 100 to 150 families.”⁹ Shaikh Mustafa Ahmad al-Warsan, the head of the large al-Hadidi tribe that settled dozens of Kurdish villages in the north, gave a similar explanation:

Prior to the 1970s, the Arabs of our tribes used to live in the al-Jazeera desert, and none of them used to own any land. Or they lived in villages that belonged to other people and worked their land [as sharecroppers]. The people who lived in the al-Jazeera desert lived in temporary settlements [i.e. tents] because there was no water there, so their life depended on the rain. The land in the al-Jazeera doesn’t belong to anyone [individually], so some people used 500 dunums, others 1,000 dunums. ...

The government announced [in the mid-1970s] to all the tribes in the al-Jazeera that there were irrigated lands in the north. Most of the people went north because of these lands. It was different from village to village—some farmers received twenty dunums, others thirty. This depended on the size of the village and the number of people who went to the village. ...

⁸ Human Rights Watch interview with ‘Alaiwi Sanur Hamid al-Sayeh, June 21, 2003.

⁹ Human Rights Watch interview with Shaikh Nawwaf Hawwaz al-‘Atmi al-Shummari, June 7, 2003.

The agreement they gave us was that we had rental contracts with the government. Each farmer had a contract and we used to pay a rent rate every year. This contract was renewed annually.¹⁰

Shaikh Mustafa made a point of crucial relevance to the resolution of the property disputes in the north, namely that the majority of Arabs who came to the north to resettle rural villages were not given title to the land they farmed, but rather worked under annual rental contracts. While the rights of these Arab farmers, who built their homes on the land and often lived there for decades, should not be minimized, at the same time it is of legal relevance that most Arabs were never made the actual owners of the land taken from the Kurds—a situation different from the urban Arabization of Kirkuk, where the Arabs who came to the area were given full title to the land.

Human Rights Watch interviewed dozens of Arab families and Arab tribal leaders who ventured to the north under the Arabization campaign, and the majority of those interviewed clearly stated that they had come to the north by choice, after being offered lucrative irrigated land by the government. Some stressed, however, that their desperate economic situation in the al-Jazeera desert gave them little choice. Shaikh Hamdi Idbis Hussain, head of the al-Luhaib tribe, explained why he decided to accept a government offer to settle formerly Kurdish villages in the Makhmour district in the mid-1990's: "We went there because the members of my tribe are very poor and had no land. Most of them used to live on just one meal a day."¹¹ An Arab farmer who had resettled from the al-Jazeera desert to the village of Shamarash in Shaikhan district stressed that he had little choice in the move: "We moved because there was an order from the government to move to this village. Whether I was happy or unhappy, I had to obey that order. During the last regime, if the government gave an order to the people to do something, they had to obey."¹²

While the majority of Sunni Arabs from the al-Jazeera desert appear to have moved to the north either voluntarily or with minimal coercion, a small number of Shi'a tribes who were moved to the north appear to have come under much greater pressure to do so. For example, the government in 1975 ordered some 150 families from the Shi'a al-Shuraifi tribe to leave their ancestral home in al-Nassiriyya and to resettle in Khanaqin. Their ancestral lands were then given away to other tribes, and they were registered as residents of Khanaqin. The al-Shuraifi leadership claims they were moved against their will and lost their ancestral lands because they refused to join the Ba'th Party and were

¹⁰ Human Rights Watch Shaikh Mustafa Ahmad al-Warsan, June 8, 2003.

¹¹ Human Rights Watch interview with Shaikh Hamdi Idbis Hussain, June 7, 2003.

¹² Human Rights Watch interview with 'Ali Dabas Ibrahim al-Hadidi, June 6, 2003.

suspected of being sympathetic to the outlawed Islamic Da'wa and Iraqi Communist parties.¹³

Another Shi'a tribe from the south, the Albu Mahmoud tribe from Kut, also claimed to have been similarly forced to resettle in Khanaqin in 1975: "We were displaced by the government in 1975 to Khanaqin, because they wanted to take us to the Kurdish areas. We were forced to go to the north: They displaced us to replace the Kurds."¹⁴ A third Shi'a tribe, the al-Fahd from Kut, also claimed to have been forced to go north, "because of the ethnic cleansing of the Kurds."¹⁵ Altogether, Human Rights Watch found about 450 Shi'a families who claimed to have been forcefully resettled by the Iraqi government to Khanaqin. Following the March 2003 war, they were evicted by the original Kurdish owners and were living in abandoned government buildings when Human Rights Watch met them.

The 1991 Gulf War and its Aftermath

The 1991 Gulf War between Iraq and the U.S.-led coalition that ousted Iraqi forces from Kuwait was followed by large-scale uprisings against the government of Saddam Hussein among the Shi'a in the south and the Kurds in the north. Kurdish guerillas, profiting from the disorder of the Iraqi army that was still reeling from a devastating defeat in Kuwait, briefly occupied nearly all of the areas they considered historically Kurdish, including Kirkuk. Some vengeance killings took place as the population acted out its anger against those associated with the Iraqi government, killing Ba`th Party officials, local bureaucrats, and intelligence agents, but such killings were more widespread in the south.¹⁶

The U.S. did not come to the support of the uprisings, and the Iraqi government was able to reorganize loyalists within the army. With the support of Ba`th Party cadre and supportive tribal allies the government soon mounted a counter-offensive and quickly crushed the uprisings, killing thousands of civilians using indiscriminate force, and rounding up tens of thousands more and executing them. In response to atrocities committed by the Iraqi troops, the U.S., Britain, and France unilaterally declared a "no-fly zone" over northern Iraq that would remain in place until the fall of the Iraqi government of Saddam Hussein. In October 1991, the Iraqi government withdrew its

¹³ Human Rights Watch interview with Shaikh 'Ali 'Aziz al-Shuraifi, May 11, 2003; Human Rights Watch interview with Muhsin Murshid Shulfat, May 9, 2003; Human Rights Watch interview with Karim Khudair Buwajid, May 9, 2003.

¹⁴ Human Rights Watch interview with Sayyid Bashir Saleh Taher, May 11, 2003.

¹⁵ Human Rights Watch interview with 'Ali Tajir, May 10, 2003.

¹⁶ Human Rights Watch, "Endless Torment: The 1991 Uprising in Iraq and Its Aftermath" (New York: Human Rights Watch, June 1992), p. 45-56.

military forces and civilian administrators from the northern governorates of Dohuk, Sulaimaniyya, and Erbil, granting de facto autonomy to the Kurds in the area. The Kurds established their own administration, an uneasy alliance between the two main Kurdish political parties, the Kurdistan Democratic Party (KDP) led by Mas'ud Barzani, and the Patriotic Union of Kurdistan (PUK) led by Jalal Talabani, as well as a number of other smaller political parties. The withdrawal of Iraqi troops from the northern governorates allowed a significant number of Kurds to return there, although many continued to be displaced from their original homes and lived in dismal IDP camps.

The establishment of Kurdish control over the three northern governorates also led to the expulsion of a significant number of Arabs who had settled some of the land during the Arabization campaign and which were now under Kurdish control. Many of the Arabs displaced from such areas remained landless for several years until the Iraqi government settled them on other lands seized from the Kurds later in the 1990s. For example, the al-Fahd tribe was originally resettled in 1975 from the southern town of Kut to agricultural land located near Qara Tapa in Sulaimaniyya governorate. They were displaced in 1991: "During the war in 1991, the Kurds came and took our land and houses and we were evicted from the area."¹⁷ The tribe then led a landless existence until they were again resettled near Khanaqin in 1997, only to be evicted again during the 2003 conflict.

Following the 1991 uprisings, the Iraqi government's crackdown led to further displacement of Kurds and other minorities in the north. During the crackdown, as many as between one and two million northerners, most of them Kurds, fled to Iran, Turkey, or the mountainous areas still under Kurdish control.¹⁸ Some Kurdish neighborhoods in Kirkuk were leveled during the crackdown, and the Iraqi government actively resisted the return of Kurds and other minorities to the city of Kirkuk, even refusing the United Nations permission to monitor returns of ethnic minorities to Kirkuk.¹⁹

The Arabization of the Kirkuk Region

Following the failed 1991 uprisings, the Iraqi government focused its Arabization efforts on the oil-rich city of Kirkuk and its surrounding area. Kurds, Turkomans, and Assyrians came under constant pressure to sign "ethnic identity correction" forms

¹⁷ Human Rights Watch interview with 'Ali Tajir, Ba'quba, May 10, 2003.

¹⁸ Chris Dammers, "Iraq" in Janie Hampton (ed.), *Internally Displaced People: A Global Survey* (London: Earthscan Publications, 1998), pp. 180-85. Dammers estimates that some 140,000 Kurds displaced by the 1991 uprising and government crackdown never returned home.

¹⁹ Sarah-Graham-Brown, *Sanctioning Saddam: The Politics of Intervention in Iraq* (London & New York: I.B. Taurus, 1999), p. 40.

relinquishing their ethnicity and registering officially as Arabs.²⁰ Non-Arabs were also required to become members of the Ba`th Party, and to serve in “volunteer” militias such as *Jaysh al-Quds* (Jerusalem Army) or the *Fida’iyyi Saddam* (Saddam’s Martyrs, often referred to in Western media as the Fedayeen). Families that refused to comply were issued formal expulsion orders requiring them to leave their homes and move to Kurdish-controlled areas. The government of Iraq displaced approximately 120,000 persons from Kirkuk and other areas under government control from 1991 to 2000 in furtherance of its Arabization campaign.²¹ Arab families were given financial incentives to move north, and the Iraqi government embarked on housing construction projects to bring more Arab families north in order to change the demographic make-up of the north.

The decades of state persecution of Kurds and the repeated forced displacement in the north have created a massive caseload of IDPs in the northern governorates, including many who have been displaced multiple times. A 1998 study conducted by the United Nations Center for Human Settlements (UN-Habitat) estimated that nearly one million of the three million people living in northern Iraq had been displaced at one time or another, a caseload that includes the estimated 100,000 persons displaced from factional Kurdish in-fighting in the mid-1990s.²²

In 2001, UN-Habitat released a more detailed study that showed just how permanent much of the forced displacement by the Iraqi government had been. The study counted a total of 805,505 displaced persons in the three northern governorates controlled by Kurdish forces. The majority, or 446,000 displaced, continued to live in the “collective towns” constructed by the Iraqi government during the forced displacement campaigns of the 1970s and the 1988 Anfal campaign.²³ An undetermined number of families are headed by women: the Habitat report notes that in some areas, notably in Duhok

²⁰ *Tashih al-qawmiyya* has frequently been referred to as “nationality correction” but “ethnic identity correction” is more accurate.

²¹ See Human Rights Watch, *Iraq: Forcible Expulsion of Ethnic Minorities* (New York: Human Rights Watch, March 2003). See also, The Iraq Foundation, “Ethnic Cleansing in Kirkuk,” January 26, 2001, (concluding that “the deportation of Kurds and Turkomans from areas under government control, and particularly from the Kirkuk governorate, has left over 100,000 people from northern areas homeless and destitute.”); UNHCR/ACCORD, 6th European Country of Origin Information Seminar, November 14, 2000, p. 57 (stating that “an estimated 100,000 people...were deported from government-controlled areas, especially from Kirkuk, Khanaqin, and Mosul. They were sent to Northern Iraq for several reasons, yet the majority of them were accused of having affiliations with the opposition parties in the north or abroad. Being a Kurd or Turkmen also sufficed as a reason.”).

²² U.S. Committee for Refugees, *World Refugee Survey 2000*, “Iraq Country Report,” (Washington, D.C.: USCR, 2000). The U.N. High Commissioner for Refugees estimates that between 100,000 and 110,000 persons were displaced by fighting between the PUK and KDP in the mid-90s. See UNHCR/ACCORD, 6th European Country of Origin Information Seminar, November 14, 2000.

²³ United Nations Centre for Human Settlements (UNCHS-Habitat), *Habitat IDP Survey, IDP Site and Family Survey, Final Report*, January 2001.

governorate, “the ‘widows’ factor is extremely high.”²⁴ If the number of persons displaced by inter-Kurdish fighting in the mid-90’s (estimated at 100,000 to 110,000) is excluded from the UN-Habitat estimate, it appears that some 700,000 persons continued to live in displacement in the north as a direct result of the Iraqi government’s forced displacement policies that continued for nearly three decades.

The Legal Framework of Arabization

While violence and coercion formed the basis of the Iraqi government’s Arabization campaign, the government also used legal means to dispossess non-Arabs in the north, and to give their lands and property to Arab settlers. Understanding this legal framework is crucial to resolving the property disputes that are occurring now in northern Iraq, following the overthrow of the former government.

Among the first steps taken by the Ba`th Party when it came to power in 1968 was a major land reform campaign aimed at further eroding the power of the landlords who had controlled much of the agricultural land in the country, often owning hundreds of thousands of dunums of land. Their economic base had already been broken ten years earlier as a result of agricultural reforms implemented by the government of ‘Abd alKarim Qassim upon the overthrow of the Iraqi monarchy in 1958. The Qassim government promulgated the Agrarian Reform Act (Law No. 30 of 1958), limiting the maximum amount of land any individual could own to 2,000 dunums²⁵ and expropriating all lands in excess of this limit. The financial compensation paid for expropriated land was nominal, and many landowners received none. When the Ba`th Party came to power, it cancelled all preceding laws, thus voiding the 1958 law and issued even more far-reaching reforms. The Ba`th’s Agrarian Reform Act (Law No. 117 of 1970) limited individual ownership to a maximum of 1,000 dunums of rainfall-dependent lands, and abolished compensation payments. While these laws were implemented without discrimination throughout Iraq, they also dispossessed many large landowners in the north, Iraq’s richest agricultural zone. Subsequently, individual ownership of the same type of land in the Kurdish north was further limited to 300 dunums.²⁶

When the government began mass expulsions of non-Arabs in the north during the mid-1970s, the vast majority of the expelled farmers had property rights to the land they lost, rights which had been confirmed through a process known as *taswiya* (literally,

²⁴ Ibid., p.7.

²⁵ This applied to rainfall-dependent agricultural land.

²⁶ The Ba`th government also promulgated other legislation which resulted in the expropriation of agricultural land as well as other kinds of landed property.

‘settlement’).²⁷ According to Najib Fa’iq Ahmad, who has headed the legal office and the expropriations department of the Kirkuk agriculture office for more than a decade: “All of the inhabitants of these districts had *taswiya* property deeds, dating back to the Ottoman period. Mr. Lyon, a British official, confirmed those deeds in 1936 [during the period of British rule]. Their rights were absolute under *taswiya*: they could sell the land, and after the landowner died, the land was split between his children.... The *taswiya* deeds were kept in the property registration department—and they are still there.”²⁸

Following the mass expulsions of minorities in the mid-1970s, the Revolutionary Command Council (RCC) issued a series of orders, expropriating the land left empty. For example, Order 369 of 1976 expropriated the land of hundreds of villages in sixty districts surrounding Kirkuk. The government supposedly paid nominal compensation for these lands, at the rate of six Iraqi dinars per dunum, but almost no displaced Kurds or Turkomans were able to claim even this compensation, as it required going to inaccessible government offices: “No one came to claim their compensation because either they didn’t know or they had been expelled.” Najib Fa’iq Ahmad explained, “so after fifteen years the money went back to the government.”²⁹ Similar laws and orders allowed the government to freely seize and convert land in the north to government-owned land.

Once the land was nationalized, the government then rented the land to newly arrived Arab farmers at nominal rates, under annual, renewable contracts issued by district agricultural departments. At most of the agricultural departments visited by Human Rights Watch, the agricultural contracts were still on file, making it possible to determine exactly the number and names of families living in each Arabized village in the north.

IV. Legal Standards

Forced Population Transfers as a Crime Against Humanity

The expulsions of ethnic Kurds, Turkomans, and Assyrians from northern Iraq amount to an Iraqi government policy of forced transfer of populations, aimed at changing the demographic nature of northern Iraq—a policy commonly referred to as “Arabization.”

²⁷ *Taswiya* was an administrative procedure dating back to the Iraqi monarchy, which established a Settlement Department (*Da’irat al-Taswiya*). Its purpose was to examine individual plots of land across Iraq in order to verify legal ownership and to delineate their boundaries. As a result of the process, landowners who possessed property deeds – many dating back to the Ottoman Empire – had their legal ownership reconfirmed. The process was near completion when the monarchy was overthrown in 1958.

²⁸ Human Rights Watch interview with Najib Fa’iq Ahmad, Kirkuk, September 10, 2003.

²⁹ *Ibid.*

Underlying this demographic change was the Iraqi government's desire to reduce the political power and presence of ethnic minorities in order to consolidate government control over this oil-rich region. The forcible and arbitrary transfer of populations--that is, without any grounds permissible under international law--has been defined in the International Criminal Court statute as a crime against humanity.³⁰ Although the crimes described here occurred prior to the ICC statute's coming into force, and Iraq in any case is not a party to the statute, the statute itself is considered to reflect customary international law.

Prior to the coming into force of the International Criminal Court (ICC) treaty, international criminal law sometimes did not distinguish between the crime of deportation, defined as "the forced removal of people from one country to another," and the crime of forced population transfer, defined as the "compulsory movement of people from one area to another within the same State."³¹ Deportation has been recognized as a crime against humanity in each of the major international criminal instruments prior to the ICC, including the Nuremberg Charter, the Tokyo Charter, the Allied Control Council Law No. 10, and the statutes of the international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR).³² The long-standing definition of "deportation" as a crime against humanity included the crime of forced population transfer within a state's borders.³³

The Statute of the ICC, which came into force on July 1, 2002,³⁴ includes among its definitions of crimes against humanity "deportation or forcible transfer of population." According to one commentator, forcible transfer was specifically included "to make it expressly clear that transfers of populations within a State's borders were also covered."³⁵ The crime of forcible transfer of populations includes "the full range of coercive pressures on people to flee their homes, including death threats, destruction of their homes, and other acts of persecution such as depriving members of a group of employment, denying them access to schools, and forcing them to wear a symbol of their religious identity."³⁶

In order to be recognized as a crime against humanity under the requirements put forth by the ICC, the forced transfer of population also must be committed as "part of a widespread or systematic attack directed against any civilian population, with knowledge

³⁰ Rome Statute of the International Criminal Court, opened for signature July 17, 1998, Arts. 7(1)(d), 7(2)(d), reprinted in 37 I.L.M. 999 (1998). The Rome Statute entered into force on April 11, 2002 and the ICC has the authority to prosecute the most serious international crimes from July 1, 2002.

³¹ M. Cherif Bassiouni, *Crimes Against Humanity in International Law* (The Hague: Kluwer Law International, 1999), p. 312.

³² See Roy Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Ardsey, NY: Transnational Publishers, 2001), p. 86; M. Cherif Bassiouni and Peter Manikas, *The*

of the attack.”³⁷ The “attack” does not necessarily need to be a military attack as defined under international humanitarian law, and “need not even involve military forces or

Law of the International Criminal Tribunal for the Former Yugoslavia (New York: Transnational Publishers, 1996), p. 627-38 (arguing that the crime of “deportation” under the Nuremberg Charter included “all unjustified transfers [including] internal displacement.”).

³³ See, e.g. *Draft Report of the International Law Commission on the Work of its 43rd Session*, U.N. Doc. A/CN.4/L.464/Add.4/1991 at 31 (stating that the prohibition of deportation as a crime against humanity also applies internally); *Prosecutor v. Radislav Krstic* (stating that “[d]eportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State. However, this distinction has no bearing on the condemnation of such practices in international humanitarian law”); *Prosecutor v. Nikolic*, ICTY Trial Chamber I, 1995 (finding that unlawful transfers of civilians within Bosnia “could be characterized as deportation and therefore crimes against humanity”); *Crimes Against Humanity Charges*, Serious Crimes Unit, February 25, 2003 (announcing the indictment by the Serious Crimes Unit of the UNMSET (established by Security Council Resolution 1272 of 1999) of eight Indonesian and East Timorese government and military officials for crimes against humanity for the “forcible transfer of civilians from districts across East Timor to West Timor.”).

³⁴ In 1998, 120 countries voted in favor of the Statute of the ICC at the UN Diplomatic Conference of Plenipotentiaries in Rome, and the statute came into force on July 1, 2002, two months after the sixtieth state ratified the treaty.

³⁵ R. Lee, *The International Criminal Court*, p. 86.

³⁶ Christopher K. Hall in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Baden-Baden: Nomos Verlagsgesellschaft, 1999), p. 162. ³⁷ ICC Statute, art. 7(1).

armed hostilities, or any violent force at all.”³³ In the landmark *Akayesu* judgment, the International Criminal Tribunal for Rwanda defined attack in a way that encompasses the forced transfer practices used by Iraq and described in this report, stating:

An attack may also be nonviolent in nature, like imposing a system of apartheid, which is declared a crime against humanity [by the] Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner.³⁴

The expulsions of ethnic Kurds, Turkomans, and Assyrians from northern Iraq meet the other elements of the “part of a widespread or systematic attack directed against any civilian population” test. Almost all of the expelled persons were civilians. In order to

³³ Rodney Dixon in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Baden-Baden: Nomos Verlagsgesellschaft, 1999), p. 124.

³⁴ *Prosecutor v. Akayesu*, Judgment, Case No. ICTR-96-4-T, September 2, 1998, para. 581.

be widespread, the attacks must include “massive, frequent, large-scale action, carried out collectively with considerable seriousness,”³⁵ a requirement met by the hundreds of thousands of victims of the expulsion policies. The use of standardized expulsion procedures—such as the expulsion orders and specialized detention facilities used in the 1990s in Kirkuk—as well as the clear involvement of Iraqi officials in all aspects of the expulsions including opposition to U.N.-facilitated returns,³⁶ also reflect the systematic character of the attacks, a requirement that is defined as requiring “a pattern or methodical plan” that is “thoroughly organized and following a regular pattern.”³⁷

The actions of the former Iraqi government meet all the requisite elements of the crime against humanity of forced transfer of civilian populations. First, Iraq has “forcibly transferred, without ground permitted under international law,” hundreds of thousands of Kurds, Turkomans, and Assyrians “to another ...location, by expulsion or other coercive acts.”³⁸ Second, the persons expelled or forcibly transferred from northern Iraq “were lawfully present in the area from which they were deported or transferred.”³⁹ Third, the Iraqi government knew that the expelled persons were lawfully present in northern Iraq.⁴⁰ Finally, the expulsions from northern Iraq were pursued as a matter of government policy.

Human Rights Provisions Relevant to Forced Transfer

Article 12 of the International Covenant on Civil and Political Rights (ICCPR), to which Iraq became a party in 1971, establishes that everyone shall have “the right to liberty of movement and freedom to choose his residence.”⁴¹ The freedom to choose one’s residence incorporates the right not to be forcibly moved.⁴² Restrictions on movement and choice of residence are permitted only when provided by law and for reason of “national security, public order (*ordre public*), public health or morals, or the rights and

³⁵ Rodney Dixon in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Baden-Baden: Nomos Verlagsgesellschaft, 1999), p. 126.

³⁶ In the immediate aftermath of the 1991 Gulf War, UNHCR and nongovernmental organizations sought to facilitate the safe return of Kurds and Turkomans who had fled in 1991 from Kirkuk. However, this focus on returning Kurds “ran directly counter to government plans.” Government opposition to the facilitation of returns was made even more apparent in August 1991 when the U.N. Executive Delegate’s request to the Iraqi authorities to open a sub-office in Kirkuk was denied. One month later, the Iraqi government refused to allow U.N. guards to accompany a convoy of 3,417 returning Kurds to Kirkuk. Sarah Graham-Brown, *Sanctioning Saddam: The Politics of Intervention in Iraq* (London & New York: I.B. Taurus, 1999), pp. 40-41.

³⁷ *Ibid.*

³⁸ R. Lee, *The International Criminal Court*, p. 86 (defining the relevant elements of the crime of deportation).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ International Covenant on Civil and Political Rights, Art. 12.

⁴² See, e.g., Patrick McFadden, “The Right to Stay,” *Vanderbilt Journal of Transnational Law*, vol. 29, p. 36 (1966).

freedoms of others,” and such restrictions must be consistent with other rights recognized in the ICCPR.

“Ethnic Cleansing”

Ethnic cleansing refers to the policy of “rendering an area ethnically homogeneous by using force or intimidation to remove targeted persons or a given group from the area.”⁴³ Ethnic cleansing is not defined in any international criminal convention or under customary international law, but it is a concept that is “culled from the Yugoslav conflict, where the term has been used by the Serb leadership in connection with their military campaigns to cleanse territories that are intended to be part of ‘Greater Serbia.’”⁴⁴ Ethnic cleansing is similar to forced population transfer, but involves an additional element of the use of “terror-inspiring violence.”⁴⁵ The United Nations has repeatedly characterized the practice of ethnic cleansing as a violation of international humanitarian law, and has demanded that perpetrators of ethnic cleansing be brought to justice.⁴⁶

The 1988 Anfal campaign, which caused the deaths of some 100,000 Kurds and the displacement of hundreds of thousands of others and the destruction of their villages, included the use of terror-inspiring violence. Iraqi policies shared with Balkan ethnic cleansing policies an intent to alter permanently the ethnic make-up of northern Iraq—hence the common characterization of the Iraqi government policy as “Arabization.” Such attempts to alter permanently the ethnic make-up of a region have been characterized as contrary to international law by the U.N. Committee on the Elimination of Racial Discrimination, in a 1995 opinion relating to Bosnia-Herzegovina: “any attempt to change or uphold a changed demographic composition of an area, against the will of the original inhabitants, by whichever means, is a violation of international law.”⁴⁷

The Right of Forcibly Displaced Persons to Return to their Home, or be Compensated for their Losses

International law not only specifies the forced and arbitrary transfer of populations as a crime against humanity, but also provides for a remedy for the persons victimized by

⁴³ Bassiouni and Makinas, *The Law of the International Criminal Tribunal*, p. 608.

⁴⁴ *Ibid.*, pp. 608-609.

⁴⁵ *Ibid.*, p. 609.

⁴⁶ See Security Council resolutions 771 (1992), 780 (1992), 808 (1993), and 941 (1994), and U.N. General Assembly resolutions 46/242 and 47/80.

⁴⁷ U.N. Committee on the Elimination of Racial Discrimination, Decision 2 (47) of August 17, 1995, on the situation in Bosnia and Herzegovina, U.N. Doc. A/50/18/1995, para. 26.

these forced transfers. Persons forcibly transferred from their homes in violation of international standards are entitled to return to their home areas and property, a right known as the “right to return.”⁴⁸

Most international human rights instruments recognize the right to return to one’s country.⁴⁹ Although there is no specific provision in international covenants affirming the right of internally displaced persons to return to their places of origin, this right, or at least the obligation of states not to impede the return of people to their places of origin, is implied. For example, article 12 of the ICCPR recognizes the right to enter one’s own country.⁵⁵ Article 12 also recognizes the right to choose freely one’s own place of residence, which incorporates the right to return to one’s home area. In some cases, the right to return to one’s former place of residence is also supported by the right to family reunification and to protection for the family. Moreover, as noted by the United Nations High Commissioner for Refugees, “the right to return to one’s own country is increasingly seen as linked with the right to adequate housing.”⁵⁰ Recognizing these various rights, the Sub-Commission on the Promotion and Protection of Human Rights has reaffirmed “the right of all refugees ...and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish.”⁵¹

The U.N. Security Council and other U.N. bodies have also repeatedly asserted the right of internally displaced persons to return to their former homes. The Security Council, in its resolution 820 (1993) dealing with Bosnia and Herzegovina, stated that “all displaced persons have the right to return in peace to their former homes and should be assisted to

⁴⁸ The right to return has been recognized by some experts as a norm of customary international law. See “Current Trends in the Right to Leave and Return,” U.N. Doc. E/CN.4/Sub.2/1985 (emphasizing that the right to return is part of the whole body of human rights, and stating that the “concordance of State practice and common opinion juris, [the right to return] created a legal obligation according to customary international law.”)

⁴⁹ The right to return to one’s former place of residence is related to the right to return to one’s home country. Article 13(2) of the 1948 Universal Declaration of Human Rights (UDHR) states that “Everyone has the right to leave any country, including his own, and to return to his country.” This language is reflected in Article 5 of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination (CERD) which guarantees “the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...” These include in Article 5 (d)(ii) the right to “leave any country, including one’s own, and to return to one’s country.” ⁵⁵ ICCPR, Art. 12.

⁵⁰ Global Consultations on International Protection, “Voluntary Repatriation” EC/GC/02/5 25 April 2002, See in particular paragraph 23 and Annex II which outlines Property-related Issues in the Context of Voluntary Repatriation. Also see Article 11 of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right to adequate food, clothing and housing.

⁵¹ See Sub-Commission on the Promotion and Protection of Human Rights, *Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons*, Resolution 1998/26.

do so.” Similar language by the Security Council affirming this right to return can be found in resolutions addressing the conflicts in Abkhazia and the Republic of Georgia, Azerbaijan, Bosnia and Herzegovina, Cambodia, Croatia, Cyprus, Kosovo, Kuwait, Namibia, and Tajikistan.⁵² The U.N. Committee on the Elimination of Racial Discrimination (CERD), in its General Recommendation XXII on Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination has stated:

All ... refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them.⁵³⁵⁴ Section V of the United Nations Guiding Principles on Internal Displacement (the Guiding Principles) contain the Principles Relating to Return, Resettlement and Reintegration of Internally Displaced Persons. Principle 28 provides that:

Competent authorities have 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. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.”⁵⁵

This principle further provides that special efforts should be made to ensure the full participation of all internally displaced persons in the

⁵² UNOHCI working paper, “Lessons Learned Regarding Post-Conflict Return of Property,” dated May 20, 2003.

⁵³ Committee on the Elimination of Racial Discrimination, General Recommendation XXII: Article 5 and refugees and displaced persons, adopted at the 49th session, August 24, 1996, U.N. Doc. A/51/18. With regard to Bosnia, see U.N. Security Council resolutions 947 (1994) and 859 (1993). With regard to Kosovo, see U.N. Security Council Resolutions 1199 (1998), 1203 (1998), 1239 (1999), and 1244 (1999). With regard to Israel, see U.N. General Assembly resolutions 3236 (1974), 3089(D)(1974). With regard to Cyprus, see U.N. General Assembly resolutions 253 (1983), 30 (1979), 3212 (1974), and U.N. Security Council resolutions 774 (1992),

⁵⁴ (1974). With regard to Cambodia, See Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (1991). With regard to Guatemala, see Agreement on Identity and Rights of Indigenous Peoples (1995) and Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (1994). With regard to Rwanda, see Arusha Peace Agreement (1993).

⁵⁵ Although not legally binding the United Nations Guiding Principles on Internal Displacement provide an authoritative normative framework for the protection of internally displaced persons. The Guiding Principles are a firm reinstatement of existing international human rights, refugee, and humanitarian law as it relates to the internally displaced. They draw heavily on existing standards and provide additional guidance and explanation when there are gaps. They are intended to provide practical guidance to governments, other competent authorities, the U.N. and other intergovernmental agencies and NGOs in their work with internally displaced persons.

planning and management of such processes. The participation of women, in particular, is essential.

The Commission on Human Rights has often recognized the need for property restitution as an effective remedy for forced displacement.⁵⁶ In 1996, the European Court of Human Rights recognized the right of a displaced Greek Cypriot to claim her property, despite the fact that she had not resided there for twenty-two years.⁵⁷ Finally the ICC Statute authorizes restitution as a remedy, stating that “[t]he Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.”⁶³

When displaced persons are unable to return to their homes because their property has been destroyed or claims against a current occupant are unsuccessful, they are entitled to compensation. The right to an effective remedy, contained in ICCPR article 2(3), suggests that there should be a right to financial compensation when a displaced person cannot repossess her property. In the Cyprus case mentioned above, the European Court of Human Rights recognized the plaintiff’s right to compensation for the years that she had been denied access to her property.⁵⁸

Principle 29(2) of the Guiding Principles provides that:

competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

⁵⁶ See, e.g. Commission on Human Rights resolutions 2000/41 and 1999/33 (recognizing the “right to [property] restitution ... for victims of grave violations of human rights.”). In addition, the Dayton Accord, the peace agreement ending the 1991 war in the former Yugoslavia, recognizes the right of all displaced persons to return to their former homes in Annex Four, which is now part of the Bosnian constitution.

⁵⁷ See *Loizidou v. Turkey*, 28 Eur. Ct. H.R. 2216 (1996). This decision was based on article 1 of protocol 1 of the European Court of Human Rights (ECHR), which provides that “every natural or legal person is entitled to the peaceful enjoyment of his possessions.” ⁶³ Rome Statute, art. 75, para. 1.

⁵⁸ See *Louizidou v. Turkey*, 81 Eur. Ct. H.R. 1807, 1817 (1998).

Compensation, when it is provided, must be given in a manner which is reasonable in relation to the damage suffered.⁵⁹ The European Court of Human Rights, in a ruling, clearly stated that compensation for deprivation of property “must be given in a prompt, appropriate and effective manner and in ‘an amount reasonably related to [the value of the property]’”⁶⁰

The Need for Fair and Impartial Procedures and the Rights of Secondary Occupants

While the ethnic Kurds, Turkomans, and Assyrians displaced by Iraq’s Arabization and other forced displacement policies have a right to return to their homes or receive compensation for their losses, it is important that this right is implemented in a manner that does not cause additional human rights abuses. The ethnic Arab populations brought in by the Iraqi government—some against their will, but most with financial or other incentives—also have accumulated rights that must be respected. Many Arabs paid the government for the homes or land they occupied, or built their own homes on the land. Because of the time that has elapsed since the original expropriations in some areas—nearly thirty years for the expropriations and expulsions of the mid-1970s—many properties have changed hands a number of times, and the current occupants are often far removed from the original beneficiary of the expropriation and Arabization policies.

First and foremost, any attempt to redress past abuses and to repossess private property should be free of violence, intimidation, and threats. In many prior conflicts, the collapse of an abusive administration is often followed by a security vacuum in which the former victims of abusive policies may wreak revenge on perceived government supporters and beneficiaries.⁶¹ Such revenge attacks constitute serious human rights abuses. Iraqi government forces, along with U.S.-led coalition forces have a duty to prevent such abuses, and the Iraqi government has the responsibility to bring the perpetrators to justice.

The right to repossess private property must be balanced against any rights these secondary occupiers may have under domestic or international law, using impartial and efficient procedural safeguards. The U.N. Sub-Commission on the Promotion and

⁵⁹ Excerpt from Expert Study: Housing and Property Issues for Refugees and Internally Displaced Persons in the Context of Return – Key Considerations for UNHCR Policy and Practice, by Scott Leckie. The full study can be found in *Refugee Survey Quarterly*, vol 19, no. 3, 2000, pp. 52 –63.

⁶⁰ *Lithgow and others* judgment of 8 July 1986, para. 121, cited in *ibid*.

⁶¹ See, for example, Human Rights Watch, “Abuses Against Serbs and Roma in the new Kosovo,” *A Human Rights Watch Short Report*, vol. 11, no. 10(D), August 1999. Similar abuses were committed by Kurdish and Shi’a forces in Iraq during the brief uprisings against the Iraqi government. See Human Rights Watch, *Endless Torment*.

Protection of Human Rights urged “all states to ensure the free and fair exercise of the right to return to one’s home and place of habitual residence by all refugees and internally displaced persons *and to develop effective and expeditious legal and administrative procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms to resolve outstanding housing and property problems.*”⁶² In the former Yugoslavia, the Dayton Accords created a Commission for Real Property Claims (CRPC) and the Office of the High Representative Ombudsperson to resolve property disputes.⁶³ All parties to the property disputes in Iraq, including the victims as well as the beneficiaries of the Arabization policies, have a right to fair and unbiased procedures to determine their conflicting claims.

One particular difficulty faced by many programs aimed at returning displaced persons and re-creating multi-ethnic communities in the Balkans after years of forced displacement and severe human rights abuses is continuing discrimination policies and violence between ethnic communities, which make it nearly impossible for minorities to live peacefully among hostile majorities, even when their legal claims have been recognized.⁶⁴ In order to prevent communal violence and retaliation, any program to implement the right to return of the displaced communities must ensure that persons who have their claims legally recognized can actually return to their homes in safety.

Finally, it must be recognized that adjudication of individual property claims and the recognition of the right to return will not be a sufficient response to address the consequences of nearly three decades of Arabization in northern Iraq. Programs will need to be developed to provide alternative housing, land, or compensation for the parties who will not have their rights to property recognized, in order to avoid making tens of thousands of families homeless and landless.

Moreover, care must be taken to ensure that even those who do not have lawful or other rights to dwell within housing or property registered to returnees do not become homeless or subject to other human rights violations. In this regard, account should be taken of the views of the U.N. Committee on Economic, Social and Cultural Rights. Paragraph 16 of the Committee’s General Comment 7 (1997) on Forced Evictions states

⁶² Sub-Commission on the Promotion and Protection of Human Rights, Resolution 1998/26, August 26, 1998 (emphasis added).

⁶³ Dayton Agreement, Annex 7 (1995).

⁶⁴ See, for example, Human Rights Watch, “Unfinished Business: Return of Displaced Persons and other Human Rights Issues in Bijeljina,” *A Human Rights Watch Short Report*, vol. 12, no. 7(D), May 2000; Human Rights Watch, “Second Class Citizens: The Serbs of Croatia,” *A Human Rights Watch Short Report*, vol. 11, no. 3(D), March 1999; Human Rights Watch, “Broken Promises: Impediments to Refugee Return in Croatia,” *A Human Rights Watch Short Report*, vol. 15, No. 6(D), September 2003. ⁷¹ <http://www.unhchr.ch/tbs/doc.nsf/>

Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive lands, as the case may be, is available.⁷¹

V. The 2003 Iraq War and its Aftermath

Voluntary Displacement of the Arab Settlers

On March 20, 2003, the United States and its allies went to war against Iraq, with the stated aim of overthrowing the government of Saddam Hussein. Although a large-scale northern offensive could not take place because of Turkey's refusal to allow U.S. troops transit and basing rights on its territory, the Kurdish areas did prove an important launching ground for a second front against the Iraqi forces. U.S. Special Forces based in Kurdish-controlled northern Iraq worked closely with the *Peshmerga* forces of the KDP and the PUK. As the intensive U.S. bombing campaign began to have its effect on Iraqi forces, the *Peshmerga* forces moved south with the U.S. Special Forces, ultimately seizing control of a large swath of land which they considered historically Kurdish, from Khanaqin on the Iranian border to Tuz Khurmatu in the center and Sinjar on the Syrian border—an area that included the main northern city of Kirkuk.

Much of the Arab population brought to rural areas in the north during the Arabization campaign fled during the war, leaving large swaths of territory unpopulated. Among the reasons cited by the Arabs for their flight were the intensity of the bombing campaign and the proximity of the front lines with its associated dangers, fears of revenge from returning Kurds, and in many cases the remarkable recognition that the land they lived on did not truly belong to them, but rather to the Kurds or other minorities who had been expelled. Equally remarkable, although sporadic violence and intimidation by *Peshmerga* forces did take place (see below), Human Rights Watch is not aware of a single massacre committed against Arab settlers by returning Kurds or other minorities. This is an experience vastly different from that of the Balkans, where bloodshed was routine during the various “ethnic cleansing” campaigns that characterized those conflicts.

The majority of the displaced Arab families interviewed by Human Rights Watch clearly stated that they fled their villages long before any Kurdish fighters ever reached them, in order to avoid bloodshed. For example, Badr ‘Arab al-Budair, one of about 150 alBudair tribal families moved from Diwaniyya to Khanaqin in 1975, explained how he had fled his home during the war:

When the war started, the [Iraqi] army pulled out of the area between us and [Kurdish-controlled] Kifri. The tribes remained alone, without any force [defense]. The bombardment of American aircraft came on our homes, and the shelling of the Kurds started falling on us. So we moved with some of our goods from our places in Kifri and came here [to Ba'quba]. We left behind all of our agricultural products and goods. I left a tractor and its instruments, two million dinars worth of agricultural products, and my house.⁶⁵

The majority of Arab families who fled their villages during the war sought safety in nearby urban centers, such as Kirkuk and Mosul. When they attempted to return to their villages after the war, most were prevented from doing so by the Kurdish civilians and fighters who had returned to the same villages from which they had been originally displaced.

'Abdullah 'Ali Mudhar al-Hadidi, a thirty-eight-year-old Arab farmer who settled in Musikan village in Shaikhan district in 1975 together with fifteen other families, described how he and the other villagers fled from Musikan after some fifteen armed villagers were killed during a U.S. coalition bombing raid. After the war ended, he and two others tried to go back to their village to retrieve some belongings, but were arrested and detained for two days by armed men loyal to Mas'ud Barzani's KDP:

I was part of a group of three men, unarmed. After the coalition forces took control of Mosul, we just went back to the village to retrieve some goods from our houses. The *Peshmerga* arrested us and detained us in their office for twenty-four hours. They then moved us to detention in Faruq town. The building had a yellow flag, they belonged to Mas'ud [Barzani's KDP]. They didn't do anything to us, they treated us normally, but they told us that the next time we came to the village, they would detain us longer because these villages belong to the Kurds, and we are not allowed to go back anymore.⁶⁶

Case Study: Kis Qal'a village, Shaikhan district

The village of Kis Qal'a, located in the Shaikhan district of Nineveh governorate just north of Mosul, provides a typical example of the sequence of events in most of the formerly Arabized areas of northern Iraq. According to Haji Muhammad Ya'qub

⁶⁵ Human Rights Watch interview with Badr 'Arab al-Budair, Ba'quba, May 10, 2003.

⁶⁶ Human Rights Watch interview with 'Abdullah 'Ali Mudhar al-Hadidi, Shaikhan district, June 5, 2003.

Hussain, an official in the agricultural department in Shaikhan district, the Revolutionary Command Council issued an order in March 1975 nationalizing all of the land in the district and other neighboring districts: "There were 188 villages in Shaikhan. The government cancelled all of the property certificates, of the Kurds and the other nationalities in the villages. Most of these lands, maybe ninety percent, were owned by the people [living in the villages]... The law of 1975 Arabized the whole area, and brought the Arabs to all of the Kurdish villages."⁶⁷

Prior to the expulsion of the Kurdish villagers, the 1,600 dunums of land that made up Kis Qal'a were owned by four Kurdish brothers who were leading members of the Zitki tribe. The brothers had title deeds to the property, and the other villagers of Kis Qal'a worked for them as tenant farmers.

Shaikh 'Abd al-Karim 'Abd Zitki, the Kurdish leader of Kis Qal'a village and a descendant of the original Kurdish owners, recalled how the Iraqi government had kicked him and the other villagers of Kis Qal'a out of their homes on April 15, 1975:

The eviction and expulsion happened in one day, and on the same day they brought the Arabs. I was born in 1957, so I was seventeen at the time. They came and ordered us to leave Kis Qal'a. We could choose where we wanted to go, but the only condition was that it had to be above the town of Atrush [located inside the then just-declared Kurdish autonomous zone]. The ones who came to expel us were the heads of Shaikhan district, with the police and Ba'thists. The expulsion was peaceful, but we were ordered to leave.

We were allowed to take only the household goods and furniture, but nothing else. We also took our animals. We were provided with transportation by the government, some trucks. We were settled in a remote area [near Musikan in Shaikhan district]. We arrived at the end of April, in a field of grass. We had to build our own houses from mud.⁶⁸

Most of the Kurdish villagers lived in Musikan village until the 1991 Gulf War, when they were forced to flee the fighting and seek refuge in Turkey. After they returned to Musikan, they found that their homes in the village were destroyed by the Iraqi army. The United Nations High Commissioner for Refugees (UNHCR) settled the families in an IDP camp near the town of Zakho, near the Turkish border. The families lived in the

⁶⁷ Human Rights Watch interview with Haji Muhammad Ya'qub Hussain, Shaikhan, June 10, 2003.

⁶⁸ Human Rights Watch interviews with Shaikh 'Abd al-Karim 'Abd Zitki, June 6, 2003, and September 8, 2003. ⁷³ Human Rights Watch interview with Shaikh Mustafa Ahmad al-Warsan, Mosul, June 4, 2003.

camp until their return to Kis Qal'a following the collapse of the Iraqi government in 2003.

The Arabs who came to the Kurdish village of Kis Qal'a mostly belonged to the al-Hadidi tribe. The Iraqi government expanded Kis Qal'a into a larger village, ultimately housing some 200 Arab families.

Shaikh Mustafa Ahmad al-Warsan, the head of the al-Hadidi tribe, explained to Human Rights Watch that prior to 1975 his tribesmen used to live landless in the al-Jazeera desert or work as sharecroppers. "The government announced at that time to all the tribes in al-Jazeera that there were irrigated lands available in the north, and most of the people went to the north for these lands," he explained. "The agreement the government gave us was that we had rental contracts with the government. Each farmer had a contract and used to pay rent each year, and the contract was renewed annually."⁷³ 'Aziz Hazza' Muhammad al-Hadidi, a fifty-year-old Arab farmer who was part of a group of several hundred families of the al-Hadidi tribe who settled in 1974-75 in Kis Qal'a, explained how they had come there:

We moved to Kis Qal'a in 1975-76. Before that, some of our tribe was living in al-Jazeera desert, others in Shaikhan district. The government didn't give us much, only 300 Iraqi dinars per family. ... They told us that some rebels had come from this village, and that they wanted Arabs to go there.

When we arrived, the village was completely empty. We don't know what happened to the Kurds; we only heard they were displaced and were given some money. They displaced the Kurds from the village peacefully, and gave them money for their lands. At that time, there were only fifteen houses in the village belonging to the Kurds, it was a very small village, divided into a Kurdish part and an Arab part. So we built new houses near the main road.⁶⁹

A second Arab villager from Kis Qal'a, Ibrahim Mudhar Saleh al-Hadidi, told a similar story:

⁶⁹ Human Rights Watch interview with 'Aziz Hazza' Muhammad al-Hadidi, June 5, 2003. ⁷⁵ Human Rights Watch interview with Ibrahim Mudhar Saleh al-Hadidi, June 4, 2003.

We went to Kis Qal'a in 1975. Before 1975, we were [landless] people, living from place to place with our sheep, we were shepherds. We used to live in tents before 1975.

In 1975, the government gave us land and resettled our tribe. When we arrived in Kis Qal'a, it was totally empty, an abandoned village—the government paid the families some money and they left. There were only ten houses belonging to the Kurds before 1975, it was a very small village. We built our own houses, with our own money. The government only gave us the land to farm and irrigate, each family received twenty-two dunums.⁷⁵

Most of the Arabs interviewed by Human Rights Watch said that the Kurds had been compensated at the time of their forced dislocation, an assertion that is vehemently denied by the displaced Kurds, including the villagers of Kis Qal'a. In all likelihood, Iraqi government propaganda asserted that all displaced families had been compensated, but such compensation did not actually take place.

The enlargement of the village of Kis Qal'a during the Arabization period meant that the lands of the neighboring villages were confiscated and re-assigned to the Arab farmers of Kis Qal'a. Among those who lost their land were inhabitants of the neighboring village of Shif Shirin, which had been Arab for hundreds of years. The Arabs of Shif Shirin, also members of the al-Hadidi tribe, bitterly complained about the “new” Arabs who arrived:

During the Arabization, they took all of our land, 800 dunums. They gave us back only seven pieces of land of thirty-two dunums each. They tried to evict and displace us to the north, accusing us of having stronger ties with the Kurds than the Arabs. The Arabs who had come tried to press the government to expel us.⁷⁰

During the 2003 conflict, the situation in Kis Qal'a changed quickly. After living there for nearly three decades, the Arabs abandoned the village and the former Kurdish residents returned. 'Aziz Hazza' Muhammad al-Hadidi described their flight:

During the war, heavy bombardment started. At the beginning, no one kicked us out [of the village], we only left for our safety. There were heavy bombardments on our village and on other villages. There were twenty

⁷⁰ Human Rights Watch interview with Salem Saleh 'Ali al-Hadidi, Shif Shirin, June 6, 2003.

villagers [reportedly] killed in a nearby village. So we left. When the war ended, the Kurds took control of the entire village, some were Kurdish civilians and others were *Peshmerga*.⁷¹

Afterwards, some of the Arabs tried to return to the village, but the Kurds refused to allow them: “Some of our people went to negotiate with the Kurds, but the Kurds told us not to come back to the village anymore. We went multiple times. ... They threatened us and destroyed some houses.”⁷² Ibrahim Mudhar Saleh al-Hadidi also tried to return to his home in Kis Qal’a, but was prevented from doing so by the Kurds who had returned: “They came out of the houses and told us we were not allowed to enter the village. They threatened us, saying that if we come again, they will use weapons and chop us to pieces. They will kill all of us, so it is better not to go back.”⁷³

Notably, the returning Kurds did not evict the Arabs who had lived in the neighboring village of Shif Shirin for centuries. In fact, at the time of Human Rights Watch’s visit, the elderly Arabs of Shif Shirin were hosting a banquet for the Kurdish neighbors they had grown up with, but had not seen since the mid-1970s.

Shaikh ‘Abd al-Karim ‘Abd Zitki, a member of the KDP military bureau and a descendant of the original landowners of Kis Qal’a, had returned home and was in charge of village affairs when Human Rights Watch visited Kis Qal’a. He was adamant that no Arabs would be allowed to come back to Kis Qal’a:

I will not allow them to come back to this village, because they don’t belong here. Their lands are south of Mosul, in the al-Jazeera. All of the ones who came to occupy our village were Ba’th Party members. This village will be all Kurdish. ... The decision that no Arab should be allowed to return was made by the Kurdish authorities. The Arabs don’t want to stay here anymore, they know they were brought here by Arabization.⁷⁴

At the time of Human Rights Watch’s second visit to Kis Qal’a in September 2003, about fifty Kurdish families had settled in the village, all of them members of the al-Zitki tribe. According to Shaikh ‘Abd al-Karim ‘Abd Zitki, not just the original inhabitants of the village but any member of his tribe was welcome to come settle in the village. As head of the tribe and one of the original landowners of the village, he claimed the

⁷¹ Human Rights Watch interview with ‘Aziz Hazza’ Muhammad al-Hadidi, June 5, 2003.

⁷² Ibid.

⁷³ Human Rights Watch interview with Ibrahim Mudhar Saleh al-Hadidi, June 4, 2003.

⁷⁴ Human Rights Watch interviews with Shaikh ‘Abd al-Karim ‘Abd Zitki, June 6, 2003, and September 8, 2003.

authority to assign plots of land to returning families. The returning Kurds were in need of a lot of assistance, according to the shaikh: “We don’t have a water treatment plant, we don’t have seeds to plant, no fertilizers, and we need irrigators for the summer season. We need cement and reconstruction materials. The road needs to be asphalted.”⁷⁵

The Kurds gave the Arabs from Kis Qal’a half of the harvest that the Arabs had planted prior to their displacement, but considered that to be the end of their interaction with the Arabs: “The Arabs have finished totally from here.”⁷⁶ Many of the Arab families displaced from Kis Qal’a were still living in the Shaikhan district, under dire, crowded conditions in public facilities such as nearby abandoned military barracks and an empty amusement park, called Shallalat (Waterfalls), or in their traditional tents.

Aside from the harvest agreement, which was brokered by U.S.-led coalition authorities for the entire north, no Iraqi or international authority had played any role in the return to Kis Qal’a of the original Kurdish owners. The Arab settlers displaced from the village did not have any forum to turn to for the adjudication of the dispute. The returning Kurds did not yet have their land rights re-established, as there was no legislation in place to allow for such a redress at the time of the Human Rights Watch visit in September 2003. In effect, the residency of the Kurds in the village, and the displacement of the Arabs, was based on the change in power balance in northern Iraq rather than on a legal determination of rights.

Most Arab families displaced from Kis Qal’a conceded in interviews with Human Rights Watch that it was unrealistic for them to expect to return to Kis Qal’a, and were willing to consider alternative accommodation. For most families, proper housing was a greater priority than farmlands, and some suggested that they would be satisfied with compensation for their lost homes or a new residence.

Forced displacement of Arab Settlers

While the majority of Arabs who had come north during the Arabization campaign fled their homes without facing direct threats or violence, a significant number who chose to remain in their homes did face direct threats and intimidation from returning Kurds, although Human Rights Watch is not aware of many cases in which such threats materialized into violence or killings. In almost all cases, returning Kurds left preArabization Arab populations alone and focused their threats and intimidation on the Arabs who had come north during the Arabization campaign. In most cases of intimidation documented by Human Rights Watch, fighters and sometimes civilian

⁷⁵ Ibid.

⁷⁶ Ibid.

politicians of the two main Kurdish political parties—the KDP and the PUK—took a direct role in the intimidation, suggesting that the two political parties either actively supported the forced displacement of Arabs who had come north through Arabization, or at the very least condoned such abuses. As discussed below, even though U.S. forces often reached trouble areas after forced displacement of the Arabs had already occurred, Human Rights Watch found that most U.S. troops took aggressive steps to end such abuses once they reached the scene.

Obtaining housing for the families of those killed by the former government and for *Peshmerga* families who spent decades fighting the government and now expect some rewards for their years of service and the loss of relatives, appears to be a central theme running through many of the cases of abuse documented by Human Rights Watch, including the cases of Khanaqin, Doshivan, Domiz, and Kirkuk documented in this report. Both the KDP and the PUK are under great pressure to provide benefits to these important constituencies, but these constituencies often do not have personal land or property claims.

Case Study: Khanaqin

The most widespread forced displacement documented by Human Rights Watch was that of hundreds of southern Shi'a families who had been resettled around the border town of Khanaqin in 1974-75.⁷⁷ Human Rights Watch spoke to representatives of all four of the Shi'a tribes who claimed they had been forced out of Khanaqin by PUK officials, and found their stories very consistent. According to Shaikh 'Ali 'Aziz, a leader of the al-Shuraifi tribe, PUK leader Jalal Talabani visited Khanaqin and neighboring Jalawla', staying for approximately two hours to meet with local and returning Kurdish officials. According to Shaikh 'Ali 'Aziz al-Shuraifi, PUK representatives came to his home almost immediately after the meeting and told him that all of his tribe's families had to leave the area immediately:

After the meeting with [Talabani's] officials, the leaders of his party came to us and said, "You can't stay here, you must leave immediately." I spoke to the leaders of the PUK, wanting to negotiate with them. I explained that we had household goods and needed time. They came to my house, and said they had an order from Jalal Talabani that every Arab who came after 1975 had to leave.

⁷⁷ Human Rights Watch located four of the Shi'a Arab tribes who had been forcibly displaced from Khanaqin.

Each of the tribes estimated they consisted of some 150 families, and many of the families were of a large size. Using these statistics, it is fair to assume that at least 600 families, amounting to some 4,000 individuals, were affected by the forced displacement.

So they took our agricultural instruments and animals from our families all over the tribe. We were pushed out of Khanaqin and went to nearby al-Sa'diyya. Then the Kurds came to al-Sa'diyya and evicted us from there also. We spent three or four days in al-Sa'diyya—every few hours the *Peshmerga* would come and tell some families we had to leave. They came in groups. After four days, none of us were left.⁷⁸

Murayya Jaber Faris al-Fahd, a fifty-year-old Arab who owned a home in Khanaqin, had just fled from the town when Human Rights Watch located him near the village of Khan Bani Sa'ad, just north of Baghdad, on May 12, 2003. He described how he had been subjected to a constant campaign of intimidation, threats, and force, until he finally decided to leave his home:

The Kurds, the *Peshmerga*, were shouting at me everyday, saying “Leave the house or we will kill your sons, because the land you are occupying belongs to the Kurds.” They came to my house everyday. They abused me. One beat me three days ago. He came to my house with many men carrying weapons. He said, “You must leave your house immediately.” I told him that I agreed, because I had nothing to defend myself with. He grabbed my head and slammed it against the window of his car, and then threw me into the car. Then they put me in prison for two days.⁷⁹

When Human Rights Watch visited Khanaqin on June 1-2, 2003, PUK officials were still threatening Arab families who remained in the town. Ikhlas 'Awad, a thirty-four-year-old Arab woman who claimed she was born in Khanaqin in 1970, before the onset of Arabization, remained in her home in al-Shu'la neighborhood of Khanaqin, living together with two other Arab families who had been evicted from their homes. At the time Human Rights Watch visited their home, it was being guarded by U.S. armored cars to prevent further intimidation.

Ikhlas 'Awad and her family had purchased a destroyed Kurdish home – probably a home belonging to a Kurdish family evicted under Arabization – in 1992, and had reconstructed the home. When Kurdish forces took control of Khanaqin, four armed Kurds who identified themselves as Kurdish security forces and were in camouflage uniforms came to her home, beat her and her husband, and stole most of their household goods. Two days after this first attack, armed Kurdish security forces again came to their home, confiscated their nationality cards (a crucial ID document in Iraq), and evicted three families from their homes, taking them in cars to the neighboring town

⁷⁸ Human Rights Watch interview with Shaikh 'Ali 'Aziz al-Shuraifi, Khan Bani Sa'ad, May 11, 2003.

⁷⁹ Human Rights Watch interview with Murayya Jaber Faris al-Fahd, Khan Bani Sa'ad, May 12, 2003.

of al-Sa'diyya, where the family stayed for twenty days in a tent until they were able to obtain permission from U.S. forces to return to their home around May 20, 2003.

The family of Ikhlas 'Awad continued to face intimidation and threats from Kurdish officials even after they returned with permission from U.S. coalition forces. Two days before the Human Rights Watch visit to the family, a Kurdish official had come to their home with two armed Kurds, asking the family: "Are you still here? You must leave the house immediately! Where is your husband? Do we need to arrest him again?" Ikhlas 'Awad's husband fled the town, fearing arrest. The next morning, the same Kurdish official came again to the house, kicking down the door and threatening the remaining women: "He said he would shoot me and all my children, that he would occupy the house and that it would be better if we leave peacefully." Ikhlas 'Awad then went to the local U.S. commanders, who immediately sent troops to guard the home.⁸⁰

Many other families in government-owned housing in Khanaqin faced similar eviction threats from PUK officials—including Kurdish and Turkoman families, in addition to Arab families.⁸¹ It appears that the main motivation behind many of these evictions was to free up housing for PUK *Peshmerga* families, and the families of PUK members who had been killed ("martyred") by the government of Saddam Hussein, rather than to allow those displaced by Arabization to return. In many cases, the PUK families who wanted to lay claim to the housing had already written their names on the homes.

The Turkoman family of Khalid Rustum Ridha who had lived in Khanaqin for generations, faced such threats to leave their home. Soon after the Kurds took control of Khanaqin, a Kurdish man came to their home and wrote the name of his brother, Muhammad Kaidar, a PUK supporter who had been killed decades before, on the home's exterior wall, and told the family to leave. The family went to the U.S. forces based just a few hundred meters away, who put up a sign at the home saying that no one was allowed to evict the family by force.⁸² A few days later, the brother of Muhammad Kaidar came back and tried to rip down the sign. When one of the sons of the family tried to stop him by telling him that U.S. forces had put up the sign, the brother responded, "What coalition forces? We [Kurds] control Khanaqin," and hit the boy with

⁸⁰ Human Rights Watch interview with Ikhlas 'Awad, al-Shu'la neighborhood of Khanaqin, June 1, 2003.

⁸¹ According to many residents of Khanaqin and the PUK officials in the town, the occupants of government-owned housing were mostly Ba'th members and others who benefited from the regime of Saddam Hussein. The rents paid for the government-owned housing were very low, sometimes as little as 2,000 Iraqi dinars per month, the equivalent of about U.S.\$2.

⁸² The poster, in English and Arabic, is signed by Lt. Gen. David McKiernan, and states in relevant part:

The Coalition, and the Coalition alone, retains absolute authority within Iraq. The Coalition will remain in control until it transfers its authority to a new firmly established and

a brick. Despite the protection provided by the U.S. troops, the family continued to be regularly intimidated and was considering leaving Khanaqin.⁹²

Two of their immediate neighbors faced similar problems. Maysun Muhammad Shihab, a Kurd whose husband was a low-ranking Ba`th Party member,⁹³ explained that one week after the PUK arrived in Khanaqin, she was ordered to go to the PUK office and told that they had to evacuate their home within twenty-four hours, as it now belonged to the family of a slain PUK *Peshmerga* named Majid Karim Ghaydi: “I told them that we are very poor and couldn’t afford rent, and they said that was our problem.” The family credited the U.S. forces with preventing their eviction by guarding the home: “If the Americans were not here, we would have been kicked out on the first day.”⁹⁴

Muhammad ‘Ali Mandan, an Arab, lived in the same housing complex: “When I came here, there were no Arabs or Kurds in the area, because of the heavy bombardment during the Iran-Iraq war.” He said that after the 2003 war, his house was claimed by the mother of Hassan Mahmoud Sakha, a Kurd killed in 1963:

After the fall of the government, Kurdish *Peshmerga* came to my house with weapons. They wrote on the main gate of my house that this house belongs to a Kurdish martyr. ... Then they informed me that the head of the *Asayish* [Kurdish security forces] wanted to see us, his name is ‘Awad ‘Abd al-Ghafur. I went to see him and he told me, “If you don’t leave your house, I will hit you and then kick you out—it is better to leave voluntarily.”⁹⁵

internationally recognized Iraqi Government. Individuals and organizations may not claim control of property, civil institutions or represent themselves as civil or military authorities without the explicit endorsement of the Coalition.

⁹² Human Rights Watch interview with Wurgi Khayib Sidullah ‘Abdullah and Walid Khalid Rustum Ridha, Khanaqin, June 2, 2003.

⁹³ Many professionals such as teachers, doctors, and civil servants were forced to be Ba`th Party members to retain their employment and advance in their career. Although the Ba`th Party played a prominent role in repression in Iraq, Ba`th Party membership alone does not indicate direct involvement of the individual in abuses.

⁹⁴ Human Rights Watch interview with Maysun Muhammad Shihab, Khanaqin, June 2, 2003. ⁹⁵ Human Rights Watch interview with Muhammad ‘Ali Mandan, Khanaqin, June 2, 2003.

Following the threats, Muhammad ‘Ali Mandan contacted U.S. forces who came to provide security to the homes in the area. A few days afterwards, Kurdish officials threatened his wife, saying, “If you go to the coalition forces again, you will see what will

happen to you.”⁸³ A member of the Kurdish family claiming the home came to rip down the sign U.S. troops had put up.

In al-‘Askariyya neighborhood of Khanaqin, which was built by the Iraqi government on land that previously belonged to expelled Kurdish families, the Arab inhabitants faced similar problems. The family of Samer Nizar Jassem al-Tay, a Turkoman who had changed his ethnic identity to Arab in order to be allowed to stay in Khanaqin, bought their home in the al-‘Askariyya neighborhood in 1998 from an Arab. Almost as soon as the PUK took control of Khanaqin, the family faced violent threats:

The day after, at sunrise, the [Kurdish] family next door came with the *Peshmerga*, kicked down our door, and came inside. It was 8 a.m. They told us that we had to leave by 11 a.m. or they would kill all of us in the house. They pushed down my mother. They said that if we didn’t leave within three hours, they would throw grenades at us and the house would be our grave. They were wearing military uniforms.⁸⁴

They were threatened multiple times over the next few days, until they approached U.S. troops. After they received U.S. protection, one of the Kurds who had threatened them visited the house again, telling the family that “the coalition troops cannot protect you forever, because they will leave one day.”⁸⁵

Some residents from Khanaqin had already been kicked out of their homes by returning Kurds who claimed to be the original owners. Shihab Salim ‘Abdullah, the son of a Turkoman father and a Kurdish mother, changed his ethnic identity to Arab in order to remain in Khanaqin and joined the Ba’th Party in order to keep his job at the post office. He purchased a home in the al-‘Askariyya neighborhood in 1997, and later found out he was the third owner of a house originally seized from an expelled Kurd. After the war, a Kurd who had been expelled in the 1970s came to the house with his armed sons, and ordered Shihab to leave immediately. U.S. forces allowed the returning Kurd to stay in the home, telling Shihab that he could refer his dispute to the courts once they started functioning again. A second home that Shihab was building for his sons was also seized by *Peshmerga*, who used the unfinished building as a local base.⁸⁶

⁸³ Ibid.

⁸⁴ Human Rights Watch interview with Samer Nizar Jassem al-Tay, Khanaqin, June 2, 2003.

⁸⁵ Ibid.

⁸⁶ Human Rights Watch interview with Shihab Salim ‘Abdullah, Khanaqin, June 2, 2003.

The Civil Affairs (CA) unit of the U.S. forces in Khanaqin took steps to stop evictions inside the town of Khanaqin, regularly dispatching guards and even armor to homes under threat. Most of the CA team had served before in the Balkans, and realized the importance of responding immediately to revenge attacks and home evictions. However, by the time U.S. troops arrived in the Khanaqin area, the majority of Arabs had already fled the area, either during the war or because of threats from Kurdish forces. The PUK officials in Khanaqin also continued to defy U.S. orders not to engage in house evictions, despite repeated and direct requests.

In an interview with Human Rights Watch, the PUK representative in Khanaqin, Mala Bakhtiar, denied that his officials had committed forced evictions. Mala Bakhtiar, himself a victim of the Arabization policies, explained that the Iraqi government had evicted more than 90 percent of the area's Kurdish residents since the mid-1970s, a population he estimated at 75,000. Mala Bakhtiar gave a version of events radically different from that of the victims of forced evictions: "Many Arabs had left before we arrived. We went to the Arabs who stayed, and told them peacefully that these lands didn't belong to them, and that they had to leave the land for the Kurds. They told us they were waiting for us and would leave. We didn't brutalize anybody."⁸⁷ Mala Bakhtiar also claimed that PUK leader Jalal Talabani had urged the reversal of Arabization, but had cautioned against violence during his visit to Khanaqin: "[Talabani] said that Arabization was a wrong and brutal operation that had to be eliminated, but that there should be no brutality."⁸⁸ The walls of the PUK headquarters in Khanaqin were lined with the pictures of hundreds of PUK fighters and local Kurds who had been killed by Saddam Hussein's government. Outside, a large sign read in bad English (spelling corrected): "We call upon the allies to help us in getting back our humanity and realize real freedom through the removal of Arabization, evacuation, and driving away."⁸⁹

Case Study: Doshivan Village

In some villages in northern Iraq, the strong balance of power in favor of Kurdish forces—because of their close alliance to U.S. forces—and the absence of legal mechanisms to enforce rights has meant that Arabs with legitimate, pre-Arabization claims to homes were sometimes evicted by force. Sorting out land rights requires

⁸⁷ Human Rights Watch interview with Mala Bakhtiar, PUK representative for Khanaqin, June 1, 2003.

⁸⁸ Ibid.

⁸⁹ The original English text read: "We call upon the Allies to help us in getting baek our humanities and realize the real freedom through the removal of arabize evacuation and driving away." Human Rights Watch retranslated the accompanying Arabic text for a more correct version.

detailed searches of historical property records and balancing conflicting claims, but in some of the villages researched by Human Rights Watch, Arabs appeared to have at least *prima facie* claims on some homes.

The conflicting claims between Kurds and Arabs over the village of Doshivan, a village of some thirty-five houses with well-irrigated farm lands and orchards located in Shaikhan district, illustrates the need for fair and impartial procedures to sort out land claims. According to the former Arab residents, they were living in Doshivan since the 1940s, at the invitation of the Arab landlord from Mosul who owned all of the land of the village. During the fighting between the Iraqi government and the Kurdish *Peshmerga* of Mullah Mustafa Barzani in the 1970s, the Arab residents fled from Doshivan for several years, until the Iraqi government defeated Barzani's movement in 1974.

According to the Arabs from Doshivan, when they left the village in the 1970s, an influential member of the Barzani clan, Khalid Shire, came to the village and farmed the land with other *Peshmerga* families. When the Iraqi government re-established control over the village, Shire fled with his fighters. In 2003, the same Shire returned to the village and refused to allow the Arabs to return. Hussain 'Ali Hassan al-Hadidi, who was born in Doshivan in 1953 according to his identity documents, explained:

After this war, the same guy [Khalid Shire] came back to our village. After we built our big houses and lived there all these years, he came back and took everything. ...We haven't been able to return because of this KDP guy, he is sitting in the village by force.⁹⁰

When Human Rights Watch went to visit Doshivan, they found only armed KDP *Peshmerga* in the village, unlike the mostly civilian Kurdish returnees found in most other villages in the region. The men were headed by Khalid Shire and his brother Hassan Muhammad Ibrahim, who wore the distinctive red head-dress of the Barzani clan, as did several other men in the group. Hassan Muhammad Ibrahim admitted that he and his followers had only lived in the village from 1971 to 1974, but claimed that they had come at the invitation of the landlord of the village. He also claimed that the village had lain in ruins between 1960 and 1971. Thirty-five Kurdish families would be housed in the village, including twenty families headed by widows of Kurdish men killed by the former Iraqi government.

Human Rights Watch located Haji Ridha 'Abbas Ridha, the Turkoman property agent who had represented Doshivan's landlord for decades, in order to clarify the resident

⁹⁰ Human Rights Watch interview with Hussain 'Ali Hassan al-Hadidi, June 7, 2003.

history of the village. Haji Ridha ‘Abbas Ridha provided clear support for the Arab position:

The [Arab] Hadidis were farmers in Doshivan from a very long time ago, from 1945 or so. They were farming the land for [the landowner’s] family. They have the papers to show they were farming the land.

The Kurds came and took control of the land and kicked out the Arabs by force. It was in the time of Mulla Mustafa Barzani. They stayed for two or three years in this village, until the government supported the Arab tribe and kicked out Mulla Mustafa’s people and brought back the Arabs. The Kurds came by force and kicked out the Arabs. The landowner didn’t invite [the Kurds] onto his land, and they did not pay rent to the landlord. ... The Hadidi people used to farm for the landlord and give him twenty-five percent of the harvest. The landlord was happy and grateful, their relationship was good. ... There are villages that belong to the Kurds and where they brought Arabs in 1975 [under Arabization.] This village is an exception, it was an Arab village from the beginning.⁹¹

Providing a final determination of the ownership rights of Doshivan will require a more detailed analysis of the ownership records of the village and the establishment of fair and equitable procedures. But the current fate of the Arab residents of Doshivan clearly illustrates that in the absence of property dispute mechanisms, the balance of force in favor of the Kurds has meant that even legitimate Arab claims were not being enforced.

The Situation of the Assyrians

Not all of the victims of Arabization had the force, or the willingness, to expel Arab settlers by force. The small Assyrian Christian community of northern Iraq was also targeted for Arabization, being expelled from their homes in Kirkuk and losing much of their farmlands in Nineveh governorate. Many Assyrians ultimately emigrated out of Iraq, forming substantial communities in the United States and Europe.

According to Assyrian officials, most of the Arabs who were brought by the Iraqi government to Arabize their villages remain in their homes, and the Assyrians do not have the force or political power to settle the disputes. Assyrian community leaders are concerned that the Arabs living in their communities continue to construct houses at an accelerated pace in order to strengthen their claims on the land. Only a fair and

⁹¹ Human Rights Watch interview with Haji Ridha ‘Abbas Ridha, June 7, 2003.

comprehensive property dispute mechanism can resolve the disputes, according to Assyrian Democratic Movement (ADM) representative William Warda:

The Assyrians need a property commission to determine the rights of our people. We stopped revenge attacks against the Ba’thists, stating they should be judged by the law. We don’t think it is logical to deport the Arabs without finding a solution for them—they need to be taken to their origins, and have houses built, but not expelled through aggression. The best solution is to have a commission to study the Arabization policy of the regime and how to solve this problem.⁹²

U.S. and Coalition Efforts to Prevent Abuses

U.S. troops, particularly their civil affairs (CA) components, took aggressive steps to combat forced evictions of Arabs and other vulnerable groups, although many of the forced evictions had already taken place. When U.S. troops established themselves in a particular area, they would normally institute a policy of no tolerance for “house jackings” and announce that whomever occupied a certain home at the time of the arrival of U.S. troops could remain in that home until property dispute mechanisms were established. U.S. troops rarely attempted to reverse expulsions of Arab settlers that had taken place prior to their arrival (with the notable exception of the Domiz case, discussed below), telling evicted Arabs as well as Kurds who had returned but not taken possession of their homes that they would have to wait until legal procedures were in place.

Col. J. Bunche, commander of U.S. troops in the region of Rabi’a, very close to the Syrian border, explained that his orders were that “whoever is on the land can stay for now. We have explained that to the folks around here. They understand that an international organization or an arm of the future government of Iraq will come and look at all the evidence and adjudicate [their claims].”⁹³ Col. Arnold, in charge of the neighboring Sinjar area, was enforcing the same rule: “I have had a few Kurds come and ask us what would happen if they took back their houses [from Arab families]. I told them they would be arrested.”⁹⁴

U.S. forces also played a crucial role in trying to implement and enforce a harvestsharing agreement between the displaced Arab farmers, who had planted and fertilized the fields, and the returning Kurdish and other non-Arab farmers. U.S. troops drew up a harvestsharing agreement signed by the major Kurdish and Arab representatives for the

⁹² Human Rights Watch interview with William Warda, Arbil, September 6, 2003.

⁹³ Human Rights Watch interview with Col. J. Bunche, Rabi’a, June 21, 2003.

⁹⁴ Human Rights Watch interview with Col. Arnold, Sinjar, June 20, 2003.

entire north, requiring the harvest to be shared 50-50 between the two parties. In Makhmour district, U.S. troops required farmers to seek permission from the local agricultural department and U.S. authorities before proceeding with the harvest. Troops patrolled local farmland to prevent unauthorized harvests, confiscating harvesting equipment until the proper permission was obtained.⁹⁵

In reality, the simplistic 50-50 arrangement was almost impossible to implement. In many cases, Kurdish returnees harvested the crops and refused to share with the displaced Arabs who had planted the lands. On much of the land previously occupied by Arab settlers, third-party Arab laborers were hired by the Arab settlers to work the land, and the 50-50 arrangements imposed by the U.S. frequently failed to account for the rightful share of the laborers. The complexity of the harvest-sharing formulas, and widespread attempts to violate the agreements, quickly overwhelmed the capacity of the U.S. forces and led to frequent breakdowns of the process.

In addition, the U.S. military intervention into the harvesting disputes unleashed a flood of complaints of all types and additional work for already over-stretched troops: “Once people realized that we resolved the harvest disputes, we got everyone showing up with all kinds of complaints.”⁹⁶ In Makhmour district, the coalition troops tried to hand over as many of the complaints as possible to the local mayor’s office in order to relieve their work load and increase local capacity. At the time of the Human Rights Watch visit in mid-June 2003, the mayor and almost the entire Kurdish administration of Makhmour were KDP members, a deficiency recognized by the local U.S. troops: “The mayor's team came in, and they are all KDP, which is OK to begin with. But sooner or later, we will start pushing that he needs to have non-KDP. ...If he wants to stay around as mayor, he needs to do right for all the people of Makhmour, not just the [KDP] party.”¹⁰³ U.S. coalition troops in Makhmour significantly diminished the power of the Kurdish political parties by demilitarizing their area of control, banning the wearing of uniforms except for U.S.-approved police forces and banning the carrying of weapons outside the home.⁹⁷

Domiz, Duhok Governorate

On at least one occasion, U.S. coalition troops acted to reverse the expulsion of Arabs by Kurdish forces, expelling the Kurds and returning the expelled Arabs. The Domiz housing complex, located in Duhok governorate, was originally constructed in 1986 by

⁹⁵ Human Rights Watch interview with Major Reeves, Makhmour, June 10, 2003.

⁹⁶ *Ibid.* ¹⁰³

Ibid.

⁹⁷ *Ibid.*

the Iraqi government to house military officials from a nearby base. In 1987, the Iraqi government allowed for some public buildings to be sold to private owners, including the homes in the Domiz complex. According to one of the long-term residents of the complex, Kurds were not allowed to own property in the area: “One of the restrictions [for buyers] was that you had to be Arab, not Kurdish. If someone Kurdish wanted to buy a house here, they had to change their ethnic identity to Arab.”⁹⁸ The housing complex ultimately came to house military officials, engineers from the nearby Saddam Dam (now renamed Mosul Dam), mid-level Ba`th Party officials, and private citizens.

During the 2003 war, Iraqi forces based themselves very close to the Domiz housing settlement—a military base was just next to the complex, and the housing was originally built for military personnel from this base. When the Iraqi troops came under heavy bombardment, they fled into the Domiz settlement, which then also began to be bombed. During one bombing raid, seven homes in Domiz were destroyed, and a number of civilians were killed. Nassar Ramadan Khadr al-‘Ubaidi, one of the residents of Domiz, explained that almost all the civilians then fled the area: “The people were afraid of the bombing and everyone ran away from the complex. We left everything behind. After a few days we came back, took some household goods and went to Mosul, where we stayed for one month.”⁹⁹

Only eight elders from Domiz stayed in the complex during the war to attempt to protect the houses from looters. During the war, a force of KDP *Peshmerga* arrived in Domiz, unaccompanied by U.S. forces, and told the elders to leave, saying that the area was now a restricted military zone and that the homes in Domiz would be distributed to the families of KDP “martyrs.”¹⁰⁰ In Mosul, the displaced homeowners from Domiz held regular protests in front of the U.S. military base, demanding to be allowed to return to their homes. After meeting with U.S. commanders, a decision was made to allow the families from Domiz to return.

First Lt. Keith Jennings explained that by the time his troops arrived in Domiz, chaos ruled, and looters had been stripping the homes bare: “Looters had stripped everything, even the wires from the walls.” The U.S. troops emptied the compound, and then allowed only families with title deeds and known to the head of the Domiz village administration to return to the homes: “After that, we froze everything. No one is allowed to be kicked out of their homes. [Property issues] will be judged by Iraqi courts, not by coalition troops.”¹⁰¹ An uneasy peace ruled in Domiz, with U.S. military checkpoints at the entrance to the village, and most residents of Domiz convinced that

⁹⁸ Human Rights Watch interview with Saleh ‘Abd al-‘Aziz Hussain al-Luwaizi, Domiz, June 9, 2003.

⁹⁹ Human Rights Watch interview with Nassar Ramadan Khadr al-‘Ubaidi, Domiz, June 9, 2003.

¹⁰⁰ Human Rights Watch interview with Saleh ‘Abd al-‘Aziz Hussain al-Luwaizi, Domiz, June 9, 2003.

¹⁰¹ Human Rights Watch interview with First Lt. Keith Jennings, Domiz, June 9, 2003.

the KDP would return to press their claims to the village as soon as U.S. troops left. Saleh 'Abd al-'Aziz Hussain al-Luwaizi, a member of the Domiz council, explained: "If the Americans leave, the Kurds will come and kick us out of our houses by force. There is no confidence in what will happen in the future, when the Americans leave."¹⁰² Many residents of Domiz—more than 170 families by the time of the Human Rights Watch visit in June 2003—had decided to sell their houses cheaply to Kurds or Yazidis, rather than risk being evicted by force in the future.¹¹⁷

VI. Reversing Arabization of Kirkuk

Arabization of Kirkuk

The city of Kirkuk, located some 168 miles (280 kms) north of Iraq's capital Baghdad at the foot of the Zagros mountains, is one of the major centers of Iraq's oil industry, with an estimated ten billion barrels of remaining proven oil reserves. Since the failed uprisings of 1991, the Iraqi government forcibly expelled over 120,000 Kurds, Turkomans, and Assyrians from government-controlled areas of northern Iraq, most of them from Kirkuk and the surrounding villages. Most of these expulsions took place through an escalated process of harassment by Iraqi government officials, documented in an earlier Human Rights Watch study:

Typically, families targeted for expulsion would receive several threatening visits from security personnel or Ba`th Party officials. During those visits, the families are pressured to take one or more of the following steps: officially alter their ethnic identity by registering as Arabs instead of Kurds, Turkoman, or Assyrian, a process known as "nationality correction;" [sic] become members of the ruling Ba`th Party; and/or join one of the various militias formed by Saddam Hussein, including the so-called Army of Jerusalem (*Jaysh al-Quds*). Families with young men are particularly harassed.

As a result of these pressures, some families decide to depart for the Kurdish-controlled areas, knowing that they risk forced expulsion, imprisonment, and other abuse if they continue to refuse to comply with official demands. Those families who remain in Kirkuk are soon presented with a formal expulsion order. Oftentimes, a male relative is arrested at

¹⁰² Human Rights Watch interview with Saleh 'Abd al-'Aziz Hussain al-Luwaizi, Domiz, June 9, 2003 ¹¹⁷

Human Rights Watch interview with Sa'id 'Abd al-Khaliq Mustafa al-Surin, Domiz, June 9, 2003.

this point and held hostage by the security services until the family has arranged for departure to the Kurdish-controlled areas.¹⁰³

As in other Arabized areas, the Iraqi government replaced the expelled Kurdish, Turkoman, and Assyrian population of Kirkuk with Arabs, most of them Shi'a families brought from the south. Arabs took over the homes of expelled Kurdish, Turkoman, and Assyrian families, but the Iraqi government also constructed entire new Arab neighborhoods such as al-Nasr, al-Hurriya, and al-Qadisiyya neighborhoods to drastically alter the ethnic demographics of Kirkuk—the very aim of Arabization. The Arabs who came to Kirkuk tended to be more urbanized, middle-class professionals than the Arab farmers who settled rural Kurdish villages. Naji Hassan Ashur al-Shummari, a Shi'a Arab resident of the al-Qadisiyya II neighborhood is a typical case of an Arab who came to Kirkuk through Arabization. A sports teacher from al-Hilla, south of Baghdad, he came to Kirkuk in 1989 after the government offered him a free plot of land and 10,000 dinars (then approximately \$30,000 U.S.) as an incentive: “There were many poor people in the south, without homes and living in poverty, and that is why we came here,” he explained to Human Rights Watch.¹⁰⁴

Abuses Committed During the Fall of Kirkuk

Because of its oil resources and its strategic importance, the fight for control of Kirkuk proved to be one of the focal points of the conflict in northern Iraq. The two main Kurdish parties, the KDP and the PUK, have long considered Kirkuk to be an integral part of a future Kurdish federal region. Turkey has repeatedly expressed its concern about Kurdish aspirations over Kirkuk, stating that Kurdish control over Kirkuk could fuel Kurdish nationalism in the region and undermine the rights of Turkoman residents of Kirkuk. Kirkuk itself has become almost synonymous with the abusive Arabization campaign, and thus Kurdish determination to reverse the process of Arabization in Kirkuk was particularly fierce.

The city of Kirkuk fell to Kurdish forces on April 10. For almost a week Kirkuk was in the control of PUK forces, which entered the city in defiance of a prior agreement with U.S. forces that *Peshmerga* forces would remain outside the city. The *Peshmerga* made significant efforts to reduce the widespread looting by civilians and others, arresting looters and confiscating their goods, but the task was overwhelming. They did, however, succeed in protecting some of the non-Ba'th Party buildings, including the city's hospitals. U.S. pressure caused the PUK forces to withdraw from Kirkuk three days

¹⁰³ Human Rights Watch, *Forcible Expulsion of Ethnic Minorities* (New York: Human Rights Watch, March 2003), p. 12.

¹⁰⁴ Human Rights Watch interview with Naji Hassan Ashur al-Shummari, Kirkuk, June 18, 2003.

afterwards, and U.S. forces entered and consolidated control over the city. The PUK then brought in civilian defense units, traffic police, and medical staff for the hospitals in order to fill the vacuum left behind when Iraq government forces and officials fled Kirkuk. Several dozen persons were killed by unknown assailants in the first days after the fall of Kirkuk, including some former Ba`th officials who were executed and at least one person who was apparently hanged, with his hands tied.

During the same period, Arab residents in some neighborhoods of Kirkuk reported pressure from Kurdish armed gangs to leave their homes, although it was difficult to determine whether the armed gangs responsible for acts of intimidation were official *Peshmerga* forces belonging to the KDP or PUK, or armed elements outside the formal control of the political parties. In some Arab neighborhoods, anti-Arab slogans appeared on Arab homes, calling on Arab residents to leave immediately. Dalil al-Fahd, a Shi'a Arab who had lived in Kirkuk since 1960 and moved to the newly built al-Nasr II neighborhood in 1992, blamed the PUK for what happened in his neighborhood:

Frankly, their behavior was very bad. I was against the regime of Saddam Hussein, but no one acted towards us like this. This was done exclusively by the people of Jalal Talabani, the PUK. They started to abuse many people in the neighborhood. They came to our houses and wrote "Kurdistan" or "The family must leave this house within twentyfour hours or will be kicked out." Between each fifteen or twenty houses, they would occupy a house and put up a green (PUK) or yellow (KDP) flag. ... No one was killed in our area, but four people were killed in al-Hurriyya neighborhood. Some tried to prevent the Kurds from entering their homes, trying to defend [the honor of] their women, and they were killed. The Kurds looted all the houses in the neighborhood, there was nothing left.¹⁰⁵

Human Rights Watch researchers who were present in northern Iraq at the time of the fall of Kirkuk found looting and expulsions taking place in rural villages built for Arab settlers just south of Kirkuk. In early April 2003, about 2,000 members of the alShummar tribe had been evicted by force from the villages of al-Muntasir, Khalid, alWahda, Umar Ibn al-Khattab, and Sa'ad, where they had been resettled in 1973 on agricultural land seized from Kurds. The Arab families told Human Rights Watch that they had been forced to abandon their homes at gunpoint by armed Kurds, and ordered to leave possessions such as cars, tractors, and household goods behind. "They would have killed us if we hadn't left," one elderly Arab woman explained. When Human Rights Watch visited the area again later that month, it found the village of al-Muntasir

¹⁰⁵ Human Rights Watch interview with Dalil al-Fahd, Kirkuk, June 18, 2003.

abandoned and ransacked, and some of the homes had been spray-painted with the names of Kurds to whom the Kurdish authorities had apparently given permission to return. A PUK official in the nearby town of Daquq explained that his party had adopted the policy that all persons resettled by the government in the north should return to their original homes.¹⁰⁶ Senior PUK leaders denied that they were implementing a forced expulsions policy and said they would take measures to prevent further abuses.¹⁰⁷

Serious abuses of this type committed by Kurdish forces and armed Kurdish civilians diminished significantly as U.S. forces consolidated control over Kirkuk and began acting against Kurdish abuses. It is also likely that the Kurdish leadership itself acted against the abuses, fearing an international outcry.¹⁰⁸ When Human Rights Watch revisited Arab neighborhoods in Kirkuk in mid-June 2003, the Arab residents claimed that the situation had stabilized and that they were no longer receiving threats to abandon their homes. Many were, however, considering selling their homes, as explained by one resident: "Now, the situation is good but we are cautious. So many families are selling their homes and moving to their original areas. For the past months, our situation has been very unstable—there is no transitional government formed, there is no law, and we don't know what will happen to us."¹²⁴

The abuses committed by armed Kurdish elements, while inexcusable, were of a limited nature and it is unclear whether they were formally sanctioned by Kurdish leaders. The fact that only a limited number of killings and other abuses were reported strongly

¹⁰⁶ Human Rights Watch press release, "Iraq: Killings, Expulsions on the Rise in Kirkuk; U.S. Not Fulfilling Duties of 'Occupying Power,'" April 15, 2003. See also, James Rupert, "U.S. Fears Ethnic Wars: Kurds Want to Reclaim Lands," *Newsday*, April 29, 2003; Mary Beth Sheridan, "Kurds Return to Northern Iraqi City, Evicting Arabs; Hundreds being Ousted as Displaced Group Reclaims Land Taken Over 30 Years," *Washington Post*, April 21, 2003.

¹⁰⁷ During subsequent visits to the area, Human Rights Watch found that the Arab residents of four of the villages were still living there, and for a short period in the early summer of 2003 they were protected by a battalion of U.S. forces that had set up camp in the abandoned village of al-Muntasir. The Arab inhabitants of that village had dispersed at the time of the original expulsions and never returned. Human Rights Watch met two brothers who were former residents of al-Muntasir in Kirkuk in January 2004. They said they and several other families were currently living in the village of al-Suwaida, located between Tuz Khurmatu and Tikrit in the Hamrin mountains. They described their living conditions as difficult, dependent as they were on the hospitality of the people of al-Suwaida for shelter and food, and had come to Kirkuk to seek help from governorate officials. They expressed concern about their uncertain future, not knowing from one day to the next when they would be asked to move on. When asked what had happened to other families from al-Muntasir (ninety-two families in all, comprising some 547 individuals), they said contact with them had long since been lost (Human Rights Watch interviews with Jassem Muhammad Maz'al and Salem Muhammad Maz'al, Kirkuk, January 10, 2004).

¹⁰⁸ PUK leader Jalal Talabani declared in late April that it was the PUK's policy to halt all expulsions. See James Rupert, "U.S. Fears Ethnic Wars: Kurds Want to Reclaim Lands," *Newsday*, April 29, 2003 ¹²⁴ Human Rights Watch interview with Naji Hassan Ashur al-Shummari, Kirkuk, June 18, 2003.

suggests that the Kurdish leadership—probably under pressure from their American allies—took strong steps to prevent wider abuses by their forces. However, it is clear that Kurdish leaders are under tremendous pressure to rectify the historic injustices faced by their supporters, and may not be able to control indefinitely the demands for redress by their supporters.

The Difficulty of Resolving Kirkuk's Property Disputes

The Kurdish leadership has declared its intention to reverse the Arabization of Kirkuk, but an orderly reversal of Arabization in Kirkuk may be more difficult than in the rural areas. Unlike the rural farmers who were expelled en masse from villages all through the north, the urban expulsions of Kirkuk took place on an individual basis. A large percentage of the expelled urban Kurds, Turkoman, and Assyrians also do not have property claims of the same legal strength as their rural counterparts. With the exception of the tens of thousands of non-Arabs who fled en masse during the 1991 uprising or who were expelled soon after the crushing of the uprising when the Iraqi government leveled some Kurdish areas of Kirkuk, most of the expelled urbanites from Kirkuk either were renting the property from which they were expelled (as the government made it increasingly difficult for non-Arabs to own property in Kirkuk), or were allowed to sell their homes prior to or after their expulsion, albeit at often extortionately low prices. Thus, while rural expellees have real property deeds to back up their claims to rural land, many of those expelled from Kirkuk only have their forced expulsion papers, and no property deeds, to back up their claim to return to Kirkuk.

Although much of the international community and the U.S. coalition feared a mass return to Kirkuk in the immediate aftermath of the fall of the city, such a mass return has not materialized. The Kurdish families who have returned to Kirkuk and who do not have homes to reclaim have found it nearly impossible to find housing, and often end up in settlements just as wretched as those they left in the Kurdish-controlled north. Some seven hundred returning Kurds lived for months in harsh conditions at the alShorja sports stadium, located near the largely ruined neighborhood from which they were expelled in 1991.¹⁰⁹ The U.S. and the humanitarian community, concerned that a mass return to Kirkuk would spark a humanitarian crisis, devised a public information campaign to discourage expelled non-Arabs from returning to the Kirkuk until property dispute mechanisms were in place, and on several occasions U.S. officials stated that it was their policy only to meet the most basic needs of the returnees, in order to discourage further returnees.

¹⁰⁹ Sharon Waxman, "Land of No Return: For Iraqi Kurds Displaced by Arabs—and Vice Versa—Home is a Place in the Distant Past," *Washington Post*, June 24, 2003.

Human Rights Watch met in June 2003 with displaced Kurds from Kirkuk living in the Benislawa IDP camp near Arbil in order to better understand their difficulties in returning to their original homes. Almost all of the internally displaced explained to Human Rights Watch that they could not return to Kirkuk until they were assured of housing and jobs to support themselves, and also that they were often too poor to afford to return.

Sherko Muhammad Hamid fled Kirkuk with his family during the 1991 uprising, and was able to sell his family home for a below-market rate in 1993 through an Arab agent. He explained that he lacked the resources to return home: “I can’t afford to hire a car to go to Kirkuk. All of the people in Benislawa are the same, no one has money to return to Kirkuk.”¹¹⁰

Muhammad Hamid Fattah, a father of seven children, was a shopkeeper in Kirkuk’s alShorja neighborhood. In 2001, the police arrested his son and kept him in custody for twenty-one days. Muhammad was forced to sign a paper saying that he was “voluntarily” leaving Kirkuk, and on the day his son was released, Iraqi officials brought a truck to his home and deported his family together with thirteen other families. Muhammad does not have a home to return to in Kirkuk, as the home he used to live in actually belongs to his brother. His meager savings have been used up during the years of living in Benislawa IDP camp without income. He explained his predicament: “I can’t afford to go back. Two years ago, I used to have some money. But living here, I have spent it all. Even if I found a way to go back to Kirkuk, the problem is that I have no house and no land.”¹¹⁷

The families of Dara Dawud Rasul and his two brothers were expelled from the Rahim Awa neighborhood of Kirkuk in June 1996, after they repeatedly refused to change their ethnic identity to Arab and to join the Ba`th Party. They owned their own homes in Kirkuk, but the government bulldozed the entire neighborhood of Kurdish homes around al-Tayaran Square soon after they were expelled. Like many families, they lacked the resources to return to Kirkuk: “We just hope someone will give us some aid. We can’t afford to go back and rebuild our houses. We just hope someone will give us some compensation.”¹¹¹

For the Kurds who did own homes in Kirkuk and had them seized by the government, the situation was often intolerable. Like the other displaced, they found themselves living in mud homes without running water in camps like Benislawa, in the knowledge

¹¹⁰ Human Rights Watch interview with Sherko Muhammad Hamid, Benislawa, June 4, 2003. ¹¹⁷ Human Rights Watch interview with Muhammad Hamid Fattah, Benislawa, June 4, 2003.

¹¹¹ Human Rights Watch interview with Dara Dawud Rasul, Benislawa, June 4, 2003.

that an Arab was living in much more comfortable surroundings in their former home in Kirkuk. Huner Nasser Fattah was expelled from Kirkuk on July 28, 2002, after he refused to change his ethnic identity, join the Ba`th Party, or become a member of the paramilitary Army of Jerusalem, and his home was seized and sold at a public auction to an Arab. He explained that his patience was running out:

We heard that no one is allowed to go back to Kirkuk and kick Arabs out of their houses, and that the coalition forces will get the Arabs out of the houses, not us civilians. I will just wait for another month, because I have already waited for a year and no one has done anything for us. Then I will go back to Kirkuk and find a job, because here there is nothing. I will go to the Arab and kick him out of my house. The government kicked me out of this house, and the Arab bought the house from the government, knowing that it belonged to someone else.¹¹²

These anecdotal cases are supported by a May 2003 survey conducted by the U.N. Office for Project Services (UNOPS), interviewing 466 heads of households living in public buildings and transit camps in the north.¹¹³ The survey found that 69 percent of the families surveyed planned to return to their places of origin, and that the percentage of those wishing to return was particularly high among the victims of Arabization.¹¹⁴ Twothirds of the families who wished to return regarded shelter as a precondition for returning. Only 8 percent of the families surveyed stated that they had property claims, 3.4 percent for lost agricultural land, and 4.7 percent for lost homes. The survey concluded:

Looking at the general IDP population living in public buildings and transit camps it seems that these IDPs were vulnerable and destitute before displacement and therefore had never been the owner of extensive agricultural land or housing. On the contrary, many of these IDPs had been living in simple shelters in villages which [were] destroyed when they were displaced.¹¹⁵

Despite these difficulties, the Kurdish political leadership remains adamant that Arabization must be completely reversed and that the Arabs who came under the

¹¹² Human Rights Watch interview with Huner Nasser Fattah, Benislawa, June 4, 2003.

¹¹³ UNOPS, "Trends and Movements: Survey on Internally Displaced People Residing in Public Buildings," May 2003.

¹¹⁴ In Sulaimaniyya governorate, where the majority of displaced were expelled from Kirkuk, 89 percent of families wanted to return to their places of origin. In Duhok governorate, where a large number of families were displaced due to fighting between Iraq-based PKK fighters and Turkish forces, only 58 percent wanted to return. Ibid.

¹¹⁵ Ibid.

Arabization program have to leave. In a September 2003 interview, KDP leader Mas'ud Barzani stated: "All of the areas that had Kurdish majorities before the deliberate policies of resettling Arab families began, which was in 1961, are Kurdish. This is why Kirkuk is not just a part of Kurdistan but its heart... These Arabs should leave, because they were brought here to "Arabize" Kurdistan. It is impossible for the Kurds to say that the Arabs can remain."¹¹⁶

Inter-ethnic Tensions in Kirkuk

Kirkuk has been the scene of some of the most severe inter-ethnic tensions in all of Iraq, and on occasion these tensions have escalated into violence. Underlying the ethnic tensions in Kirkuk are disputes over representation and control of the city between Kurds, Turkomans, and Arabs. Kurds claim Kirkuk as their historic capital. Turkomans claim that Kirkuk historically had a Turkoman majority, pointing to the 1947 census conducted in Iraq (the last reliable census was that of 1957), which registered Kurds as comprising only twenty-five percent of the population of the city of Kirkuk, although their population was greater in the countryside.¹¹⁷ However, the demographic nature of Kirkuk has changed not only because of Arabization, but also because of its substantial expansion as the oil capital of the north. Arabs feel marginalized in the new Kirkuk administration, and two Arab council members were boycotting the meetings of the Kirkuk city council in protest of what they considered its biased make-up in favor of the Kurds.

On occasion, the inter-ethnic tensions over control of the city have escalated into violence. On May 17 2003, gunfights between Arabs and Kurds erupted after armed Arab men from Hawija, a majority Arab district just southwest of Kirkuk, entered Kirkuk shouting pro-Saddam Hussein slogans. Five people were killed, and more than forty were wounded. The Arabs were apparently responding to a rise in threats, beatings, and intimidation by Kurds against Arab residents of Kirkuk.¹¹⁸

In August 2003, tensions between Turkomans and Kurds exploded into deadly violence. After Turkomans held a procession to inaugurate a rebuilt shrine to the Shi'a Imam 'Ali

¹¹⁶ Andrea Nusse, "Die Araber Sollten Kurdistan Wieder Verlassen," *Frankfurter Rundschau*, September 16, 2003.

¹¹⁷ David McDowall, *A Modern History of the Kurds* (London and New York: I.B. Tauris, 1996), p. 314.

¹¹⁸ Sabrina Tavernise, "Arabs and Kurds Clash in Kirkuk, And at Least Five Are Killed," *New York Times*, May 18, 2003. According to the *New York Times*: "The violence began three days ago, when Kurds harassed Arabs in an outdoor market and a bridge called Asho-Hada. Rouad Aziz, a resident of Qadesiyah, said he had been beaten and threatened by Kurds on Friday. The Kurdish police said Arabs had cut the throats of four Kurds in another neighborhood the day before. The body of a man who had been decapitated was in the city morgue yesterday."

Zain al-‘Abidin in the town of Tuz Khurmatu, they apparently exchanged insults with Kurdish residents of the town. The shrine was destroyed by rocket-propelled grenade fire. Angry Turkomans rioted, reportedly burning Kurdish flags and a police station. The protests soon spread from Tuz Khurmatu to Kirkuk, leaving eight people dead in Tuz Khurmatu on August 22 and another three in Kirkuk the following day. At the heart of the tensions were disputes over political control of Tuz Khurmatu, according to a local Turkoman leader. He told the *Washington Post*: “We don’t feel in Tuz that we are properly represented. The Americans appointed a Kurdish mayor. The police chief is Kurd. Property from the previous regime has been given to the Kurds. Yet we are the majority.”¹¹⁹ Further violence erupted in Kirkuk on December 31, when several thousand Arabs and Turkomans demonstrated outside the PUK office in the city, shouting “No to federalism, Kirkuk is Iraqi.”¹²⁰ Shooting broke out, killing five people and wounding some twenty others. Both PUK and Turkoman officials blamed each other for having ignited the violence. The demonstration was apparently held in response to an earlier one which took place on December 22, when thousands of Kurds marched through Kirkuk shouting pro-federalism slogans. Outbreaks of violence in the city continued into 2004, involving individual killings and attacks on political party offices and police stations.¹²¹

VII. The Role of the International Community

The Security Crisis in Iraq and Its Impact on the Property Reform Process

Humanitarian agencies throughout Iraq have become targets of deadly attacks from unidentified guerilla forces, causing a significant loss of life among local and international humanitarian workers. The most shocking of these attacks occurred on August 19, 2003, when a suicide bomber detonated a large truck bomb at the U.N. headquarters in Baghdad, killing twenty-two humanitarian workers, including the Special Representative of the Secretary General in Iraq, Sergio Vieira de Mello. Targeted attacks against humanitarian workers, like any targeted attack against civilian targets, are war

¹¹⁹ Daniel Williams, “11 Killed in Ethnic Violence in Northern Iraq; U.S. troops Intervene in Riots, Slaying Six,” *Washington Post*, August 24, 2003.

¹²⁰ Adnan Hadi, “Five die as tensions erupt in Iraqi city,” *Reuters*, December 31, 2003.

¹²¹ Peter Spiegel, “Ethnic violence breaks out in Kurdish region,” *Financial Times*, January 2, 2004; Jeffrey Gettleman, “Bombing Leaves a Northern Iraqi City Feeling Vulnerable,” *New York Times*, February 24, 2004; “Iraqi civilian killed in attack on Kurdish Party offices,” *Agence France-Presse*, February 26, 2004; “Ethnic tension divides Kirkuk city council,” *Reuters*, March 28, 2004.

crimes.¹²² The attack led the U.N. to reduce its international staff in Iraq from an estimated 600 to eighty-six. On September 22, 2003, a second suicide bomber again targeted the U.N. headquarters in Baghdad, killing a guard and wounding nineteen others. The U.N. announced further staff reductions in the aftermath of that attack.¹²³ The attack on the U.N. headquarters in Baghdad was only the most well-publicized of many direct attacks on humanitarian agencies and workers. On a disturbingly regular basis, humanitarian agencies and staff have come under direct attack in Iraq. The offices of the World Food Programme (WFP) and International Organization of Migration (IOM) in Mosul have come under repeated attack by rocket-propelled grenade fire. On August 28, 2003, the International Committee of the Red Cross (ICRC) announced it was reducing its staff and operations in Iraq, stating: "We deplore the fact that present circumstances oblige us to reduce our activities at a time when many Iraqis need our help. However, we were left with little choice bearing in mind the deterioration of the situation."¹²⁴ On September 5, 2003, fifty-three-year-old Ian Rimell, a bomb disposal expert working with the Mines Advisory Group (MAG), one of the foremost nongovernmental demining agencies, was ambushed and killed while driving just south of Mosul in a vehicle with the distinctive MAG emblem. A local MAG employee was critically wounded in the same attack.¹²⁵

The dire security situation in Iraq has led to the evacuation of the majority of humanitarian personnel and the suspension of the majority of humanitarian programs, with the exception of those programs being implemented by local staff and local partners. Some humanitarian organizations ended their programs in Iraq, considering the security risks too great to envision a return to Iraq. The IOM also suspended most of its programs, including its work on the Iraqi Property Reconciliation Facility (now replaced by the Iraq Property Reconciliation Commission).

In particular, almost all activity carried out by the humanitarian community around the property reform process was halted, including the development of a property commission, monitoring of returns and protection issues, and much of the provision of humanitarian assistance to returnees and recently displaced persons. As of early June 2004, property commission offices had been opened in a number of governorates and had begun to receive claims (see below), but other aspects of this work had not resumed. The loss of much of the international humanitarian capacity working on property reform issues has been a debilitating blow to the process.

¹²² Human Rights Watch, "Iraq: Attack on U.N. Headquarters Condemned," August 19, 2003.

¹²³ Robert H. Reid, "Eight Killed in Mortar Attack on Iraq Market," Associated Press, September 26, 2003.

¹²⁴ International Committee of the Red Cross, "Iraq: Insecurity forces ICRC to Cut Back Operations," August 27, 2003.

¹²⁵ Mine Advisory Group, Press Statement, September 5, 2003.

U.S. troops and the Coalition Provisional Authority (CPA) did see a similar staff reduction, but were forced to take additional security precautions to protect themselves from attack, thus also limiting their ability to develop a property reform process. Despite the challenging security environment and until its dissolution on June 28, 2004, the CPA continued to work towards the development of a workable property reform strategy, focusing its efforts on the development of an Iraqi-led process endorsed by the then Governing Council in Baghdad. Human Rights Watch participated in a meeting with CPA authorities in Kirkuk in September 2003 to discuss the development of such a process.

The Iraqi Property Reconciliation Facility

Almost as soon as the Iraqi government collapsed, the U.S. administration announced ambitious plans to set up a property dispute mechanism to resolve the claims resulting from Arabization in northern Iraq. On May 23, 2003, then-U.S. administrator for Iraq Jay Garner promised to create a Bosnia-style property commission for Iraq to “arbitrate what is just and fair,” and to help reverse Arabization, stating that “it is vital that we do not accept the results of ethnic cleansing.”¹²⁶ He estimated that the Iraqi body would be set up “within weeks or months,” an estimate that proved to be wildly off the mark.¹²⁷

On June 26, 2003, U.S. administrator Paul Bremer, Garner’s successor, established the Iraqi Property Reconciliation Facility (IPRF), recognizing that “large numbers of people from different ethnic and religious backgrounds in Iraq have been uprooted and forced to move from their properties,” and that “many individuals have conflicting claims to the same real property, resulting in instability and occasional violence.” The IPRF aimed to collect “real property claims and promptly resolve such claims on a voluntary basis in a fair and judicious manner.”¹²⁸ From its inception, the IPRF was envisioned as an interim measure, stating in its preamble that it was created “pending the establishment of a means of finally resolving property-related claims by the future Iraqi government.”¹²⁹

Lacking the capacity to establish and run the IPRF itself, the CPA (through its subsidiary, the Office for Transition Initiatives, or OTI), signed a four-month contract with the IOM to implement four aspects of the IPRF. During the four months starting on July 1 2003, IOM was supposed to conduct a fact-finding and information campaign, develop a standardized claim form, establish seven claim registration offices, and offer facilities

¹²⁶ Michael Howard, “US Advances Bosnian Solution to Ethnic Cleansing in Iraq,” *Guardian*, May 24, 2003.

¹²⁷ *Ibid.*

¹²⁸ Coalition Provisional Authority Regulation 4, “Establishment of the Iraqi Property Reconciliation Facility,” signed June 26, 2003.

¹²⁹ *Ibid.*

where property disputes could be settled through voluntary mediation. IOM was also tasked with developing a more broad-ranging, long-term strategy to address the massive amount of property disputes in Iraq.

Security problems and a lack of staffing prevented IOM from implementing many of the agreed tasks. IOM became a target of attacks in Iraq, after pamphlets were circulated in mosques in Mosul calling for attacks on IOM as a Zionist organization. The IOM office in Mosul was attacked with a rocket-propelled grenade on July 6, 2003, causing no fatalities.¹³⁰ On July 20, 2003, an Iraqi driver was killed and an international IOM staff member seriously wounded when attackers fired on an IOM vehicle driving south of Baghdad.¹³¹ The attacks caused IOM to withdraw its staff from Mosul, Kirkuk, and Basra, and staff were prohibited from overland travel. The U.N. security coordinator (UNSECOORD) refused to clear the entry of IOM staff dedicated to implementation of the IPRF project following the attack. Two IOM staff dedicated to the IPRF project remained stationed in Iraq initially but were reportedly subsequently withdrawn.

Many observers in Iraq felt that the security conditions were not the only reason for the failure of IOM to implement its IPRF contract. Humanitarian workers from other organizations felt that IOM lacked the experience and expertise to develop such an ambitious project, and that the staff commitment made by IOM was insufficient. Protection-oriented humanitarian workers in northern Iraq also questioned IOM's commitment to the development of a rights-driven property commission. IOM's focus (as required by its contract with the CPA) on the development of a claims form and the establishment of claims offices in the absence of a framework for resolving property disputes also seemed premature.¹³²

U.S. Mediation Efforts

In the absence of any legal framework or practical mechanism for resolving property disputes, U.S. forces in some places began conducting their own mediations to resolve property disputes. There appeared to be no coordinated approach to these mediations, and the approach of different U.S. commanders varied widely. Some commanders told Human Rights Watch that they refused to engage in resolving property disputes. Col. Arnold, in charge of the Sinjar region, told Human Rights Watch: "I refuse to do any

¹³⁰ "RPG Fired at IOM Office in Northern Iraqi City, Guard Slightly Injured," Agence France Presse, July 6, 2003.

¹³¹ Cynthia Johnston, "Driver Killed in Attack on UN Vehicles in Iraq," Reuters, July 20, 2003.

¹³² Human Rights Watch has criticized IOM regarding its efforts to persuade Iraqi refugees whose asylum applications in third countries had been rejected to sign "voluntary" return forms on the grounds that they have no other options and in spite of serious security concerns. See Human Rights Watch, "The International Organization for Migration (IOM) and Human Rights Protection in the Field: Current Concerns," submitted to the IOM Governing Council Meeting, 86th session, November 18-21, 2003, Geneva, pp.5 and 9.

sort of land dispute resolution. I tell them they will have to wait, I am not going to adjudicate and make a decision.”¹³³ Col. Buche, located in the adjacent area of Rabi’a, told Human Rights Watch: “I am not allowed, nor are military forces allowed, to adjudicate land disputes per se. I can’t decide who owns the land long-term. We have made no attempt, nor are we authorized, to adjudicate land disputes or to move people in or out.”¹³⁴

Other U.S. troops, however, decided to play a limited mediation role, to resolve the least controversial of property disputes and to prevent inter-ethnic violence. The U.S. efforts presented a host of problems. While well-intentioned, the ad hoc mediations were often conducted by U.S. military personnel with limited knowledge of the complex property issues involved, and without the guidance of a standardized framework to ensure fairness. No clear guidelines were developed to structure the ad hoc mediations, so the weight given to different claims was determined by the mediators, rather than by standardized policies. Neither was it clear that all affected parties, including the displaced Arabs, were fully represented at the negotiations. At the same time, the mediations did provide important lessons that should be fed into the development of a more comprehensive, and fairer, property resolution process.

Case Study: Dogurtkan

Among the first efforts by U.S. authorities to resolve property disputes was the June 2003 effort in Dogurtkan village, located in the Makhmour district. Dogurtkan village was historically Kurdish with a few Arab inhabitants, consisting of two neighboring settlements, called Haji Mustafa and Haji Hussain. In 1988, the Iraqi government expelled the Kurdish population, and destroyed the two settlements. The government then constructed a new Arab village called al-Nasr, located on the main Makhmour road on farmlands belonging to Dogurtkan village. The U.S. mediation effort dealt only with the Haji Hussain neighborhood of Dogurtkan.

Muhsin Sa’id Isma’il, one of the Kurdish villagers of Dogurtkan, recounted the destruction of their homes in 1988:

It was on the 9th of August 1988, the day after the ceasefire in the IraqIran war. That day, they came and destroyed our village. Military intelligence, other military, and loyal Kurds (called Jash, or little donkeys),

¹³³ Human Rights Watch interview with Col. Arnold, Sinjar, June 20, 2003.

¹³⁴ Human Rights Watch interview with Col. Buche, Rabi’a, June 21, 2003.

came to the village. They just gave us a verbal order to leave or die in the houses. They burned our houses in front of us, and dynamited some.¹³⁵

The Iraqi government leveled both settlements, including the Arab homes. The Kurds were resettled at a compound near Mosul, where each family received a tent, some construction materials, 4,000 dinars in compensation, and a small plot of land.¹³⁶ The Arabs were allowed to return to the area, and moved to the newly built al-Nasr village, where the government also housed Arabs brought under Arabization.¹³⁷

U.S. forces in nearby Makhmour facilitated mediation in the village in June 2003. At the initial meeting, the battalion commander, Lt Col. DeOliveira, explained that U.S. forces would not be involved in decision-making, and would limit their role to bringing the disputing parties together. The parties then agreed on a panel of Iraqis made up of the Kurdish mayor of Makhmour, the Kurdish *mukhtar* [local community representative] of Makhmour, and an Arab imam from al-Qayarra [a predominately Arab area west of Makhmour] to resolve the disputes. A map of the village, drawn up in 1941 by British officials, assisted the process. The U.S. observers and the Iraqi panel also limited the dispute resolution process to the ownership of the houses in the Haji Hussain neighborhood of Dogurtkan, leaving disputes over farmland ownership undecided. Perhaps more controversial, the panel excluded any claims by the Arab residents of alNasr village from consideration, according to the U.S. record of the meeting: "It was agreed by all parties, even the Arab observers at this meeting, that no Arab has a legitimate claim to the Arabization village of al-Nasr."¹³⁸

The mediation took place in an open, Bedouin-style tent at the ruins of the former Haji Hussain settlement of Dogurtkan village, and lasted just over one hour. The mediation was led by the three-member panel, assisted by Kurdish officials from the Housing and Agriculture departments of Makhmour. The panel listened to claims of different villagers, consulting with other Dogurtkan villagers, the property records, and the historic maps to determine who could legitimately return to the village. Several other Arab leaders, including the mayor and police chief of al-Qayyara, also came to observe. Several Arab residents came to press claims to their homes in al-Nasr, but were told by the U.S. observers that this fell outside the work of the panel. The panel granted thirtytwo families the right to return to the village, including four Arab families.¹⁴⁶

¹³⁵ Human Rights Watch interview with Muhsin Sa'id Isma'il, Dogurtkan, September 9, 2003.

¹³⁶ Ibid.

¹³⁷ Human Rights Watch interview with Ibrahim Hamed Hamid al-Lubaidi, June 11, 2003

¹³⁸ Major R.E. Nell, Judge Advocate, Memorandum for Record: Land Dispute Arbitration, Dogurtkan, June 7, 2003.

¹⁴⁶ Human Rights Watch interview with Major Reeves, Makhmour, June 10, 2003.

The Dogurtkan mediation had a number of shortcomings. First, the limiting of the panel's power to exclude the disputes over al-Nasr village avoided settling some of the most difficult disputes. Most of the Arab residents of al-Nasr had long fled from the area, and so were not present to press their claims. When Human Rights Watch revisited Dogurtkan in September 2003, the rebuilding of the houses had begun, with the assistance of Qandil, a Swedish humanitarian organization. However, none of the four Arab families who had their claims affirmed by the panel had returned to the village, apparently fearing hostility from their Kurdish neighbors—a typical problem faced also in the Balkans, where community hostility is one of the major impediments to effective returns.

The major policy issue of how to balance the rights of Arabs who had lived in al-Nasr for more than fifteen years with the claims of the Kurds who were expelled was not resolved: the panel merely re-affirmed the rights of those who were living in Dogurtkan prior to Arabization, and did not consider the rights or humanitarian needs of the Arabs who came under Arabization. Even if a policy decision is made to re-affirm the rights of the displaced Kurds at the expense of the secondary Arab occupants, a comprehensive property resolution process will also need to consider alternatives for the displaced Arab residents. The very short period of time allotted to the mediation—little more than an hour—also suggests that some of the more difficult property issues were side stepped by the panel. Without nationwide standards for resolving property disputes, the decision making process will be inevitably ad hoc, and determination of rights will depend unduly on the whims of the panel.

Despite these shortcomings, the mediation in Dogurtkan provided important insights into the feasibility of a nationwide, Iraqi-led property restitution process. The existence of a wide variety of Iraqi documentation, including property deeds, detailed maps, and the records of agricultural and housing departments, provided a solid basis of documentation for the resolution of both rural and urban disputes. Human Rights Watch found that such records existed throughout the north, and only a small part appears to have been destroyed. Succession records and home registration tend to be less common in rural areas, but in Dogurtkan the villagers themselves helped recall who used to live in the village. The Kurdish and Arab officials were willing to work together in Dogurtkan to resolve their disputes, and both parties demonstrated a willingness to compromise and to agree on common standards of proof. After the dispute was resolved, humanitarian assistance to rebuild the village was obtained quickly. The ability of the Iraqi parties to reach an agreement, even if flawed, is an encouraging sign, particularly in light of the security situation that makes a prominent international role in property dispute resolution unlikely.

Case Study: Al-Bashir village

U.S. forces in Kirkuk also conducted a mediation involving the formerly Turkoman agricultural area of al-Bashir, located south of the city of Kirkuk. According to one of the Turkoman leaders, Imam Qanbar Mahmud Ridha al-Musawi, al-Bashir was a thriving Turkoman area of some 700 families, who owned some 48,000 dunums of farmlands. Al-Bashir was home to seven mosques, five schools, and a large hospital. The outlawed Islamic Da'wa Party was active in the area, according to the imam, and in the early 1980s, Iraqi security forces began arresting young men from the village, many of who were later executed. In 1986, the entire community was expelled and moved to communal compounds:

In 1986, security officials started to arrive to the village, informing us that we should prepare to leave the district. Days after this, they came and brought us a bunch of keys with numbered medals attached. They said there were compounds on the road to Tikrit and that we had to move to these compounds. There were six compounds: al-Qadisiyya, Dhi Qar, Shahid, Nahrawan, Yarmuk, and Saddam.¹³⁹

Most of the Turkoman families of al-Bashir were never compensated, although a small minority received some money for their lost houses. About one year after their initial displacement, almost all of the Turkoman families were dispersed to cities throughout Iraq, including Kut, Basra, Arbil, and Diyala, without being provided with housing.

After the displacement of the Turkomans, the Iraqi government embarked on a major irrigation project in the al-Bashir area, greatly increasing the productivity of the land. In the mid-1990s, the government began resettling Arab tribesmen in the area, offering them twenty-five dunums of irrigated farmland on annual leases. More than 200 Arab families moved to the area, including some who had lost their original lands when they were developed as oil fields in the 'Umar Ibn Khattab area.

During the 2003 war, the Arabs did not flee the al-Bashir area. According to the imam of the village, this was due to the fact that Kurdish *Peshmerga* did not take control of the area: "When the coalition forces approached Kirkuk with the Kurdish *Peshmerga*, the Arabs fled spontaneously, and those who remained were attacked. Our area was different, because the coalition forces didn't take control of our district, so the Arabs just stayed in our places."¹⁴⁰

¹³⁹ Human Rights Watch interview with Imam Qanbar Mahmud Ridha al-Musawi, Kirkuk, September 8, 2003.

¹⁴⁰ Ibid.

Tensions quickly grew as Turkomans started returning to the area and demanding their lands. The Turkomans began to threaten the Arabs, who insisted that they would only leave after a decision on the property dispute was made by a new Iraqi government, arguing that they came to the village lawfully, and would only leave under the law. According to Col. George, who initiated the mediation, the situation came to a head one day when the Turkomans came to inform him that all of the displaced Turkomans from al-Bashir intended to march on the village, and that they would kill every Arab who remained. In order to avoid violence, the U.S. troops in Kirkuk initiated a mediation of the dispute in early September 2003.

The mediation was not voluntary, according to the Arab leaders, who told Human Rights Watch that Col. George had given them a choice: either negotiate or “they would bring a judge who would cancel all of our agricultural contracts within one hour and we would be kicked out within a week,” a threat Col. George confirmed to Human Rights Watch that he made.¹⁴¹

The mediation in al-Bashir was led and controlled by U.S. authorities, and did not involve a panel of Iraqis, although Iraqi officials from the agricultural department of Kirkuk were involved in an advisory role with the U.S. mediators. Unlike the Dogurtkan mediation, where an Iraqi panel actually settled property disputes, the al-Bashir mediation was an explicit short-term agreement, leaving the long-term issues of property-ownership unresolved. Among other things, the agreement provided for the allocation of thirteen dunums of land for the winter agricultural season, on a nonrenewable basis, to each landless Arab family living in al-Bashir, and that Arab farmers be granted the winter harvest. Decisions on land allocation would be made by a committee composed of representatives of the local agricultural directorate and coalition forces. Complaints relating to compensation claims must be submitted within sixty days of the signing of the agreement to a commission set up for this purpose, composed of representatives of Taza district agricultural department, Kirkuk directorate and coalition forces. Arab families originally from outlying areas and who did not own a place of residence in the village would be required to leave the village within a year of the signing of the agreement. Returning Turkoman families would not be allowed to enter the village, except by invitation, during the period in which Arabs remain on disputed land.

The Iraq Property Claims Commission

In January 2004, the Iraqi Interim Governing Council (IGC), appointed by the U.S.-led coalition, approved the establishment of a new body – the Iraq Property Claims

¹⁴¹ Human Rights Watch interview with Shaikh Mahmud Khadr Rumayyid, September 7, 2003. Col. George volunteered that he had made the threat to bring the Arabs to the negotiation table during a September 8, 2003, meeting with CPA officials that was attended by Human Rights Watch.

Commission (IPCC) – as a successor to the IPRF.¹⁴² The Legal Committee of the Iraqi Governing Council (IGC) played a crucial role in the development of the IPCC Statute, having substantially revised an original draft prepared by the CPA’s Office of Human Rights and Transitional Justice. The Statute establishing the IPCC entered into force on January 15, 2004, but a final version, along with guidelines and instructions for implementation, were not issued until June 24, 2004, just days before the handover of governing authority to the Iraqi Interim Government headed by Prime Minister Ayad ‘Allawi.¹⁴³ CPA Regulation Number 12 included an “amended and restated” IPCC statute, specified to become effective on July 1, 2004.¹⁵²

i. Article One of the Statute states that the IPCC “shall resolve real property claims in a fair and judicious manner. The IPCC shall encourage the voluntary resolution of claims.” The Statute provides for the nationwide settlement of property claims arising between July 17, 1968 (when the Ba`th Party seized power in Iraq) and April 9, 2003 (when Baghdad fell to U.S.-led coalition forces).¹⁴⁴ The claims in question, as set out in Article Nine of the Statute, cover property confiscated or seized or acquired for less than appropriate value by the former governments of Iraq for reasons other than land reform or lawfully used eminent domain, or as a result of opposition to the former governments of Iraq, or as a result of ethnicity, religion, sect of the owners, or for purposes of ethnic cleansing;

Article Nine also covers claims arising between March 18, 2003, and June 30, 2003, covering real property confiscated or seized or forcibly taken for less than full value for reasons of the owner’s or possessor’s ethnicity, religion or sect, or by individuals previously dispossessed by the former governments.

The Statute provides for the appointment of five judges to the Appellate Division, one of them to be nominated by the judicial authority of the Kurdistan Regional Government, experienced in the adjudication of property disputes,¹⁴⁵ and for the establishment of a Regional Commission in each of the country’s eighteen governorates

¹⁴² Pursuant to Coalition Provisional Authority Regulation Number 8: Delegation of Authority Regarding An Iraq Property Claims Commission, January 14, 2004.

¹⁴³ Coalition Provisional Authority Regulation Number 12 was signed by CPA Administrator Paul Bremer on June 24, 2004 (CPA/REG/23 June 2004/12). ¹⁵² Ibid., Annex A, Article 16.

¹⁴⁴ Ibid, Article Nine.

¹⁴⁵ The Appellate Division of the IPCC is considered a separate chamber of the Court of Cassation and the five retired or serving judges are appointed by Iraq’s Council of Judges (IPCC Statute, Article 3a).

with responsibility for adjudicating claims in the first instance.¹⁴⁶ Each Regional Commission is chaired by a judge and also comprises the directors of the governorate's Office of Real Estate Registry and Office of State Property, or their representatives.¹⁶⁶

Decisions of the Regional Commissions are subject to appeal within sixty days of their issuance to the IPCC's Appellate Division, whose judgment is final.¹⁴⁷ The revised Statute adds that if the non-prevailing party occupies the property in question and has no other property they would be "granted a prescribed period of time to surrender possession of the premises."¹⁴⁸ The Statute provides that all claims be submitted by June 30, 2005; any other claims subsequent to that date "can be referred to the Iraqi Court system, which shall apply the principles included in this Statute."¹⁴⁹ The revised Statute states that "the Iraqi Interim Government shall ensure that the IPCC has the necessary funds to discharge its administrative duties and that the Regional Commissions and Regional Secretariat are provided with appropriate premises."¹⁵⁰ The matter of funding for purposes of compensation or resettlement is not addressed by the Statute.

A CPA official in Kirkuk told Human Rights Watch in January 2004, that the mechanisms provided for in the Statute were expected to be in place within two months, but, as noted, they were issued only in late June 2004. Paul Harvey, CPA Coordinator at Kirkuk Governorate, said that the CPA had "deliberately stayed in the background" on this issue, seeing its role as limited to working with the property commission and assisting in establishing the legal mechanism for the return of seized property and finding durable solutions for the forcibly displaced. "The aim is to have a caseworker working towards finding a mediated solution at first," Harvey said,

with a compensation package available as incentive to use the mediation route. Otherwise, the case would go before a formal claims commission, in other words a tribunal, where there would be little or no compensation. It's the more confrontational route, with only a winner and a loser.¹⁵¹

¹⁴⁶ Where large numbers of property claims are expected, such as in Kirkuk, more than one Regional Commission may be established within each governorate (IPCC Statute, Article 2(2)). The members of the Regional Commissions include a judge appointed by the Council of Judges as well as officials representing the Office of Property Registration and the Office of State Property in each governorate (Article 3(b)). ¹⁶⁶ IPCC Statute, Article 3 (B).

¹⁴⁷ IPCC Statute, Article 7.

¹⁴⁸ IPCC Statute, Article 7.

¹⁴⁹ IPCC Statute, Article 11.

¹⁵⁰ IPCC Statute, Article 4.

¹⁵¹ Human Rights Watch interview with Paul Harvey, CPA Governorate Coordinator, Kirkuk, January 21, 2004.

Both the CPA and Iraqi officials expected the bulk of the claims to be lodged in Kirkuk, where decades of forced population transfers and their replacement with other populations in implementation of state policy had given rise to numerous property disputes, and this is reflected in the fact that seven offices have been opened there, including two mobile units. Representatives of Kurdish and Turkoman political parties told Human Rights Watch that they welcomed the IPCC Statute issued in January and expressed optimism that it would result in significantly reducing tensions arising out of property disputes in Kirkuk especially.

In its last weekly report, dated June 19-28, 2004, the CPA said that more than 6,000 claims had been received at twenty-two IPCC offices in ten governorates, and that judicial nominees had been identified in seventeen governorates.¹⁵²¹⁵³ The report did not provide numbers for the claims filed in the separate governorates or indicate which, if any, had been reviewed and filed, thus starting the sixty-day appeal period. Iraq's Judicial Council put forward the names of three judges as nominees for the IPCC Appellate Division, according to one council member, but as of mid-July 2004, their appointments remained subject to confirmation.

Two of the original Statute's key provisions had been problematic, straining relations between CPA and Iraqi officials on the one hand and between different ethnic communities on the other. Article 5 stated that "The Parties shall submit the claim to the Regional Commission where the property is located," as opposed to where the claimants are currently residing. CPA officials expressed concern that this requirement, introduced by the Iraqi Governing Council, would only encourage internally displaced persons to return to Kirkuk to lodge their claims and effectively remain there before the city was able to cope with such an influx. They said this might lead to further instability and increase the likelihood of outbreaks of violence, given that "it makes more sense to move paper around as opposed to people."¹⁵⁴ The insistence that claims be submitted in locations where disputed property is located was seen as having a clearly political motive, since it would result in a marked increase in the number of Kurds living in and around Kirkuk at a time when crucial discussions about the nature and scope of federalism in the Kurdish region and the future of the oil-rich region of Kirkuk were taking place. In the revised Statute, claims can be filed at any IPCC office, "including any properly designated IPCC office outside Iraq."¹⁶⁴

¹⁵² *Administrator's Weekly Report: Governance* (June 19-28, 2004, accessed from the CPA website on July 8,

¹⁵³ . The *Weekly Report* of May 29-June 4, 2004, stated that IPCC offices were operating in Duhok, Mosul, Arbil, Sulaimaniyya, Tuz, Tikrit, Khanaqin, Baquba, al-Hilla, and Basra, in addition to three offices in Baghdad and eight (a main office, five satellite offices, and two mobile offices) in Kirkuk.

¹⁵⁴ Human Rights Watch interview with Stacy Gilbert, Advisor for Displaced Persons, CPA-North, Arbil, January 24, 2004.

The question of finding durable solutions for the Arab families brought by the former Iraqi government to northern Iraq under its Arabization policy, particularly in Kirkuk, where the majority of such families remained following the 2003 war, has apparently not been resolved. The IPCC Statute states that “Newly introduced inhabitants of residential property in areas that were subject to ethnic cleansing by the former governments of Iraq (i) may be resettled; (ii) may receive compensation from the state; (iii) may receive new land from the state near their residence in the governorate or area from which they came; or (iv) may receive compensation for the cost of moving to such area.”¹⁶⁵ The question of where these Arab families are to be resettled has not been defined in the revised Statute, the wording of which appears to exclude Kirkuk and its environs. The task of resolving and implementing these particular provisions of Article 10 of the IPCC Statute is assigned to the Ministry of Displacement and Migration.¹⁶⁶ Among other things, this ministry is also charged with developing “a national plan to resolve the full range of IDP and refugee issues, to include property restitution or compensation, citizenship, and access to government services.”¹⁶⁷

The CPA told Human Rights Watch that they recognize that Arabs will need to give up property, but that in such a potentially volatile situation the process has to be controlled and carried out in a legal and orderly manner. The CPA said that those Arabs who wish to resettle in places other than Kirkuk will be helped in the process of leaving through financial assistance, help in finding jobs and other practical measures, but, as noted, the revised Statute and the accompanying operating instructions fail to specify such features or how they will be implemented. CPA officials told Human Rights Watch that its

¹⁶⁴ IPCC Statute, Article 5(B).

¹⁶⁵ IPCC Statute, Article 10(A).

¹⁶⁶ IPCC Statute, Article 10 (B).

¹⁶⁷ Taken from a fact sheet on the Ministry of Displacement and Migration given to Human Rights Watch by a CPA official in January 2004. The Minister, Muhammad Jassim Khudhayir al-Otbee was appointed in September 2003 but the ministry did not become officially operational until January 2004. On June 1, 2004, Pascale Isho Warda, described by the CPA as “Assyrian-Chaldean, originally from Duhok,” was confirmed as the new Minister of Displacement and Migration (MODM) (*Administrator's Weekly Report: Governance*, May 29/June 4, 2004, p.5. According to the CPA fact sheet of January 2004, the ministry's work will also focus on facilitating “organized, voluntary refugee returns to Iraq, as well as develop and implement strategies to assist non-Iraqi refugees inside Iraq,” and advocating for “legislation that provides protection and assistance to refugees and displaced persons, in line with international humanitarian law.” The fact sheet cites estimates of 800,000 internally displaced persons throughout northern Iraq and some 100,000-300,000 others in the center and south of the country. Additionally, it states that “An estimated 900,000 Iraqis were compelled to cross international borders and are considered to be refugees, or in a ‘refugee-like,’ situation in the countries in the immediate region and beyond. An estimated 50-100,000 Iraqi refugees have returned since May 2003, either spontaneously or through the assistance of international organizations and the MODM.”

approach will be to emphasize that all resettlement by Arabs be voluntary. “We will not insist that people should go, we are seeking the middle ground,” one said. “Past

injustices have taken place and will be addressed, but you do not address one injustice by creating another. The rights of the Arabs have to be respected and we want to establish a mechanism for all parties involved”.¹⁵⁵ This position was echoed by others within the CPA with whom Human Rights Watch met: “I don’t think it is right for us to say where someone should live,” Stacy Gilbert told Human Rights Watch:

There is a new generation of Arabs that has grown up in Kirkuk and has never lived anywhere else. We would like to enshrine respect for the right of residence, with the caveat that you cannot live in someone else’s property. Otherwise, if you pay rent for a property or purchase it within the law, you should have the right to live in the place of your choice.¹⁵⁶

Representatives of Kurdish political parties in Kirkuk told Human Rights Watch that they support the orderly and fair resettlement of Arab families brought by the previous government under the Arabization policy once they vacate disputed property, and that their respective political parties were prepared to assist in this effort. They stressed, however, that every effort should be made to resettle such persons outside the Kirkuk region, preferably in their governorate or region of origin. Rizgar Ali, a PUK official told Human Rights Watch:

We have repeatedly talked to the Americans about the need to find a solution to the problem of the displaced, and that it requires financial assistance. The Arabs brought to Kirkuk from the south have done us an injustice and they have come here as a result of an unjust policy. Their continued presence here will only contribute to instability. We are prepared to help. For example, if an Arab had held a job as a state functionary, then we would do our best to get him transferred to the same post but in his governorate of origin.¹⁵⁷

Najad Hassan, a KDP official, expressed similar views:

We too are asking for a peaceful solution to the problem of the Arabs brought here by the previous regime, and it is essential that they return to their regions of origin while taking into consideration the practical problems involved in such a process. But to delay such returns will only create major difficulties

¹⁵⁵ Human Rights Watch interview with Paul Harvey, January 21, 2004.

¹⁵⁶ Human Rights Watch interview with Stacy Gilbert, January 24, 2004.

¹⁵⁷ Human Rights Watch interview with Rizgar ‘Ali, PUK official in charge of organizational affairs, Kirkuk, January 19, 2004.

later on because the Kurds cannot put up with much more ... We regret that the occupation authorities have not helped us in implementing this policy, and we are afraid of one thing, that our citizens will come to the conclusion that the only way these Arab families will leave is through force, something we all want to avoid. We ask the coalition authorities to put in place a speedy program of resettlement for the Arabs, but they tell us that they cannot put themselves in a position of deciding who should stay and who should go.¹⁵⁸

Saadettin Ergec, of the Iraqi Turkoman Front, expressed different concerns:

“In the beginning the coalition authorities showed a marked bias in favor of the Kurds, but we told them if this continues it would lead to a deterioration in relations between the Kurds and the Turkomans ... There has been a significant number of Kurds converging towards Kirkuk, who are now living in former security forces buildings, garrisons and the football stadium. Why has the coalition between the Turkomans and the Arabs from the south come about? It was the Kurds who made it happen ... We are afraid of their intentions.¹⁵⁹

Senior KDP and PUK officials told Human Rights Watch that one of their principal concerns about allowing the large number of Arabs who were resettled under Arabization to remain in Kirkuk even after the settlement of property disputes is that this would significantly increase the Arab population in the city. In the event of a referendum being held to decide the future status of Kirkuk-- namely, whether it should be included within a federal structure for the northern Kurdish region, the number of Arab votes would be significant. They said the Kurdish leadership might be prepared to discuss allowing such Arabs to remain provided that there was a watertight guarantee that they would not be granted voting rights in such a future referendum.¹⁶⁰

As noted above, as of the end of June 2004, twenty-two IPCC offices were reported to be operating and receiving claims. But other key steps had not been taken to implement the provisions of the IPCC Statute. Judge Dara Nouredin, a member of the former

¹⁵⁸ Human Rights Watch interview with Najad Hassan, head of the KDP's Third Branch, Kirkuk, January 20, 2004.

¹⁵⁹ Human Rights Watch interview with Saadettin Ergec, member of the Iraqi Turkoman Front Command, Kirkuk, January 22, 2004.

¹⁶⁰ Human Rights Watch interviews with Kosrat Rasul 'Ali, PUK Political Bureau member, Sulaimaniyya, January 23, 2004, and with Shafiq Qazzaz, Minister for Humanitarian Aid and Cooperation, Kurdistan Regional Government, Erbil, January 24, 2004.

IGC and head of its Legal Committee, expressed his frustration to Human Rights Watch about the slow pace of developments in this regard, saying that by March 2004 the CPA had not approved the implementing regulations.¹⁶¹ This belied the optimism expressed by CPA officials at the start of 2004 that mechanisms for the receipt and assessment of property claims could begin as early as mid to late February in some areas. One senior CPA official, who did not wish to be identified for this report, told Human Rights Watch in early February that it was “a question of balancing the realities between getting things started and getting it right,” and that “Iraqi confidence in the system is crucial to making it work.”

Among those realities was the issue of insufficient funding. According to the CPA, the Iraq Supplemental bill approved by the U.S. Congress for the Iraq post-war reconstruction program provided for \$35 million for property-related compensation claims, of which \$5 million was earmarked for administration costs.¹⁶² “This is not enough even for Kirkuk,” the CPA official told Human Rights Watch, adding that other ways would have to be found to make up for the expected shortfall, such as linking up with other international assistance programs addressing housing and similar needs.

The question of whether Arab families brought to Kirkuk as part of Arabization should have the right to continued residence in or near the city following the settlement of property claims remains unsettled, although the CPA had insisted it must be addressed. Just as the issue was not dealt with under the original or revised IPCC Statutes, it was similarly deferred in the Transitional Administrative Law (TAL), signed by the IGC on March 8, 2004.¹⁶³ The TAL, which effectively laid down key constitutional principles for the new Iraqi state during the period of transition, simply referred back to Article 10 of the IPCC Statute and reiterated the general principles contained therein. Article 58(2) of the TAL reads: “With regard to the individuals newly introduced to specific regions and territories, it [the Iraqi Transitional Government] shall act in accordance with Article 10 of the Iraq Property Claims Commission statute to ensure that such individuals may be resettled, may receive compensation from the state, may receive new land from the state near their residence in the governorate from which they came, or may receive compensation for the cost of moving to such areas.” Neither did the TAL affirm the principle of the right of Iraqi nationals to reside in the areas of their choice. What the TAL did provide for, however, was the basis for a mechanism whereby the future government could address the redrawing of administrative boundaries of key governorates by the government of Saddam Hussein

¹⁶¹ Human Rights Watch interview with Judge Dara Nouredin, Paris, March 6, 2004.

¹⁶² On November 6, 2003, President George W. Bush signed into law H.R. 3289, the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004. Totalling \$87 billion, the amount earmarked for Iraq's reconstruction was set at \$20.3 billion, of which \$300 million was requested for assistance to refugees and internally displaced persons, development of local governance, funding of a property claims tribunal, and other human rights and civil society programs.

¹⁶³ Formally known as the Law of Administration for the State of Iraq for the Transitional Period.

for the purposes of effecting demographic changes as part of its Arabization policy.¹⁶⁴ As part of the concessions made by the Kurdish leadership during the TAL negotiations, in return for other political gains, the question of the future of Kirkuk was deferred “until after these measures are completed, a fair and transparent census has been conducted and the permanent constitution has been ratified.”¹⁸⁸

The importance of moving ahead speedily on the issue of property claims settlement was highlighted during Human Rights Watch’s visits to Kirkuk and neighboring areas in January and February 2004. With no visible movement towards the establishment of mechanisms, many more internally displaced persons expelled from the city by the former Iraqi government had lost patience and were returning with their families to Kirkuk, with little or no assistance with respect to housing and other basic amenities. Some told Human Rights Watch that Kurdish political parties had encouraged them to return, though this was denied by Kurdish officials (see below). Many returnees were living in makeshift accommodation, principally abandoned government buildings such as former security or Ba`th Party premises, former ministry buildings, warehouses, factories, and military garrisons, many of which were heavily damaged during the war in March and April 2003. The more “fortunate” ones were living in tents provided by the PUK or Turkoman officials (see below). They added to the number of internally displaced already there since the fall of the former government, who were living in dire conditions without adequate shelter, electricity, running water, or food supplies, and with little physical security. Winter conditions further compounded these problems. At the Kirkuk governorate building, Human Rights Watch found several Kurds who had come to seek assistance on behalf of their families living in such conditions, seeking (for the most part unsuccessfully) to have electricity or running water supplied to their makeshift communities. The subsequent deterioration of the security situation in Kirkuk, indeed an increase in the number of attacks against civilians and officials alike as well as rising tension between the diverse ethnic communities, has also affected vulnerable groups including IDP communities.

One returning displaced person Human Rights Watch interviewed, a Kurd who had been forcibly expelled with his family from Kirkuk to al-Ramadi (west of Baghdad) in 1993,

¹⁶⁴ Article 58(B) of the TAL reads: “The previous regime also manipulated and changed administrative boundaries for political ends. The Presidency Council of the Iraqi Transitional Government shall make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution. In the event the Presidency Council is unable to agree unanimously on a set of recommendations, it shall unanimously appoint a neutral arbitrator to examine the issue and make recommendations. In the event the Presidency Council is unable to agree on an arbitrator, it shall request the Secretary General of the United Nations to appoint a distinguished international person to be the arbitrator.” The examination of this issue was a key demand of both Kurdish and Turkoman political leaders during the TAL negotiations, although their respective positions on what the scope of such an examination should be differed markedly. ¹⁸⁸ TAL, Article 58(C).

was living in an abandoned military garrison on the outskirts of Kirkuk. Amir 'Ali Ahmad told Human Rights Watch:

There are about forty-five families, including three Turkoman families, expelled from Kirkuk Governorate and living in a scouts' camp. They do not have any shelter and cannot afford to rent a home. We keep going to the local officials to ask for help, but they tell us that they have no authority to expel the people occupying our homes. They tell us we should wait until a legitimate government is in place, and after that they will find solutions to our problems, either by giving us financial compensation or municipal land. We now have a big problem concerning our security. We need continuous protection because almost every day there are attacks against us with machine guns in order to frighten us and to force us to leave the area. We do not know who these people are who attack us. We live in the center of an Arab and Turkoman area and it is not safe at all.¹⁶⁵

Another Kurdish man who had come to Kirkuk Governorate to seek help told Human Rights Watch that he represented the interests of 107 families previously expelled from Kirkuk and now living in similar conditions in Rahim Awa Garrison on the Kirkuk-Arbil road.¹⁶⁶ Yet another told Human Rights Watch he had come to Kirkuk Governorate on behalf of forty-one displaced Kurdish families who were now living in the former General Security Directorate of Kirkuk:

Even here we are under constant threat from the governor of Kirkuk because he tells us that such places are not fit for our families to live in. But these families have no other shelter. All of them were expelled from Kirkuk and have returned from various parts of Kurdistan, and there are many others. There are at least fifty-five sites in Kirkuk where families who returned are living in former government and military buildings, and they are waiting for a political decision from the new Iraqi government to resolve their residence problems. Most of the families who returned to Kirkuk had been living in rented homes when they were expelled, so they have no proof or any property to claim. Their original homes had been confiscated and sold several times over to Arabs.¹⁶⁷

¹⁶⁵ Human Rights Watch interview with Amir 'Ali Ahmad, Kirkuk, January 21, 2004.

¹⁶⁶ Human Rights Watch interview with Rafi' Muhammad 'Ali, Kirkuk, January 21, 2004.

¹⁶⁷ Human Rights Watch interview with Ra'uf Majid Shaswar, Kirkuk, January 21, 2004.

The Deputy Governor of Kirkuk in charge of IDP issues, Hasib Rojbayani, told Human Rights Watch that he estimated there were some 15,000 persons who had returned to Kirkuk and its vicinity living in similar conditions.¹⁶⁸ He expressed dissatisfaction with what he described as the CPA's "passive" policy, saying that they showed "no cooperation" on this issue.

We do what we can for these returnees, but our means are limited. We have asked the Kurdistan Regional Government to build housing to provide shelter for them, and have obtained their agreement in principle ... Five days ago I commissioned a survey to find out the needs of these communities in Kirkuk city, while at the same time working with the CPA to have a contingency plan in place in case of an emergency in the city.¹⁶⁹

Rojbayani also acknowledged security concerns with regard to some IDP communities: "Some of them have come under threat," Rojbayani said. "They are shot at by saboteurs and remnants of the former regime. We try to help them by offering them protection, but the police patrols we can provide are few. We need to find them alternative accommodation."¹⁷⁰

U.S. military personnel in Kirkuk also admitted that there were security concerns: "The U.S. army cannot go round protecting people in Kirkuk," said Staff Sergeant Heufelder. "We do not have enough resources. We are fortunate enough that we rebuilt the local police force, and it is their job to protect the civilians."¹⁷¹ They also confirmed the existence of an emergency plan to cope with a new influx of returning IDPs. "Major steps have been taken," said Staff Sergeant Heufelder.

¹⁶⁸ Human Rights Watch interview with Hasib Rojbayani, Deputy Governor of Kirkuk, Kirkuk Governorate, January 21, 2004. There was no reliable information available to verify the figure of 15,000, particularly in the wake of the pullout from the region of international aid agencies that had been working with IDP communities in the northern governorates until late 2003. Rojbayani told a reporter in early June that approximately 6,000 Kurds had returned to Kirkuk and 2,300 Arabs had left since the fall of the former government. Garteh Smyth, "Kurds fear for their rights as troubles fester in Kirkuk city," *Financial Times* (June 9, 2004), p. 7. According to the IOM's implementing partner in northern Iraq, Counterpart International, a needs assessment carried out by them in the Kirkuk region showed that there were over 3,000 IDP families living in Kirkuk city and a further 10,000 IDP families living on the outskirts of the city and outlying villages. Burhan `Ali, director of Counterpart International's Kirkuk Project, told Human Rights Watch that most of these IDPs were living in dire conditions, and that agreement had just been reached with the IOM to distribute non-food items (principally blankets, hygiene kits, jerry cans and plastic sheeting) to 3,050 families in the first phase, and to 7,000 families in the second phase (Human Rights Watch interview with Burhan `Ali, Counterpart International, `Ainkawa, Arbil Governorate, January 24, 2004).

¹⁶⁹ Human Rights Watch interview with Hasib Rojbayani, January 21, 2004.

¹⁷⁰ Ibid.

¹⁷¹ Human Rights Watch interview with Staff Sergeant Michael Heufelder, 404 Civil Affairs, 173rd Airborne Division, Civil and Military Operations Center (CMOC), Kirkuk, January 21, 2004.

We have secured a warehouse in Kirkuk where we are stockpiling tents, blankets, heaters, foodstuffs. Our current distribution plan cannot cope with a large influx and the food, energy and water needs of yet more IDPs, who had been returning at a rapid rate. Right now it's a slow trickle, but spring will herald mass returns in my opinion. We have been trying to keep returns to as few as possible but there are many pull factors. There is a dire need for more help and monitoring by aid agencies.¹⁷²

Some within the CPA opposed the idea of stockpiling emergency supplies in Kirkuk, on the basis that once this became known to IDP communities it would only encourage further premature returns to the city. "The idea of setting up a warehouse in Kirkuk would cause more problems than it resolves," Stacy Gilbert said.

The main warehouse should be in Arbil, which is only one hour away from Kirkuk. It would be a good idea for CMOC to focus on securing contracts with trucking companies who would transport aid from Arbil to Kirkuk in the event of an emergency. We have been talking to CMOC about this in the past few days.¹⁷³

Lack of agreement between the CPA on the one hand and Kurdish political parties on the other over how to deal with IDPs wishing to return to Kirkuk and its environs also undermined the implementation of effective policies aimed at assisting IDPs in the short-term. In late January 2004, Human Rights Watch found that there was still no cooperation between the KDP and the PUK, neither a unified policy being implemented over how to manage IDP returns nor a common understanding of CPA policy, and as of mid-July 2004 that situation appeared to be unchanged. There was suspicion on the CPA side as to the motivation behind the assistance extended by both KDP and PUK to displaced families wishing to return to their original place of residence, particularly Kirkuk. Given that over half of the IDP population expelled to Sulaimaniyya governorate was originally from Kirkuk and its environs, most of the returns to the city have been from PUK-controlled areas. The PUK's Minister of Human Rights, IDPs and the Anfal, Salah Rashid, told Human Rights Watch that the PUK had run only a limited assistance program for IDPs wishing to return to Kirkuk.

About 300 families have returned to Kirkuk recently and the PUK provided them with tents. We offered them no other assistance. They have no basic services such as running water or electricity. We told them

¹⁷² Ibid.

¹⁷³ Human Rights Watch interview with Stacy Gilbert, January 24, 2004.

this but we do not try to convince them not to return. It is their right. We are trying to transfer their ration cards to Kirkuk so that they can get help that way.¹⁷⁴

The PUK provided another 200 tents to Turkoman families returning to the village of al-Bashir, located in the district of Taza in Kirkuk Governorate.¹⁷⁵ Rashid told Human Rights Watch that the distribution of tents was suspended some two weeks earlier “for security reasons.” However, Human Rights Watch understood that the change of policy had come about as a result of pressure being placed on the PUK from CPA officials. The CPA would not comment when asked by Human Rights Watch.

The KDP, on the other hand, said that it was pressing ahead with its assistance program for IDPs returning to their original homes. Serwan Mohamed, an official the Ministry of Humanitarian Assistance and Cooperation in Arbil, told Human Rights Watch that an IDP liaison office was in the process of being established within the ministry to deal with such matters.¹⁷⁶ He said that since the fall of the former government and up to January 2004, over 4,000 families had returned to Kirkuk from KDP-controlled areas. “We want to help those who wish to return to Kirkuk and elsewhere. We do not encourage returns, but if they wish to return we must help them by providing them with assistance ... I expect the situation to become even more tense in the coming period.

We have told the PUK that they should not encourage returns for political purposes.”¹⁷⁷ During a visit in January 2004 to the village of Qara Hanjir, located north east of Kirkuk city, Human Rights Watch found that some fifty families had returned there in recent weeks from the nearby town of Chamchamal. Qara Hanjir was one of the many villages destroyed by the former Iraqi government during the 1988 Anfal campaign, and its inhabitants forced to live in a resettlement camp in Chamchamal. The village later

¹⁷⁴ Human Rights Watch interview with Salah Rashid, PUK Minister of Human Rights, IDPs and the Anfal, Sulaimaniyya, January 22, 2004.

¹⁷⁵ This was confirmed to Human Rights Watch by one of the former inhabitants of al-Bashir, who said 200 Turkoman families had returned to the village at the end of 2003 on that basis. Najm ‘Abd al-Wahed Mardan said he himself had returned to his village in October 2003, when some 150 tents were distributed through the Turkish Red Crescent. At the time of the interview, some sixty Arab families settled there by the former Iraqi government had left the village after having destroyed their homes, rendering them inhabitable by the returning Turkomans. Mardan said some fifty Arab families remained in al-Bashir and had refused to leave. In the expectation of outbreaks of violence between the two communities, only young men from the Turkoman families had returned to claim the tents that were being distributed, leaving their families behind in IDP camps and elsewhere until a peaceful settlement was reached (Human Rights Watch interview with Najm ‘Abd al-Wahed Mardan, Kirkuk, January 21, 2004).

¹⁷⁶ Human Rights Watch interview with Serwan Mohamed, General Director for Relations, Ministry of Humanitarian Assistance and Cooperation, Arbil, January 25, 2004. The Kurdistan Regional Government had provided a grant of US \$25,000 for the purpose of setting up the IDP liaison office, and the trainee staff were to be provided by Kirkuk Governorate officials.

¹⁷⁷ Ibid.

became a base for Ba`th Party and military officials, but the homes built for this purpose were deliberately destroyed by these Iraqi officials as they fled following the fall of the government in April 2003. Human Rights Watch found that the returning families were living in extremely harsh conditions, many of them with children who had little protection against winter conditions, no running water or electricity, inadequate food supplies, and no visible means for families to generate income. According to Pashkhan Qader Faraj, a Kurdish woman who had returned to Qara Hanjir with her husband and several young children: "We were afraid that if we didn't come back to our village we would lose the right to return altogether. At least this is what we heard from PUK officials in Chamchamal, who told us that it is possible for you to return but it would be best if you returned within ten days or so."¹⁷⁸ There were some reports in early July 2004 of Kurdish authorities in Arbil and Sulaimaniyya compelling resettled Kurds originally from Kirkuk to return to that city.¹⁷⁹

"The policy of the KDP is neither to push nor tempt any family to return to Kirkuk, but we do not object either," Serwan Mohamed told Human Rights Watch.¹⁸⁰ To the extent that there was agreement on this with the CPA, Mohamed said that previously the CPA had objected to the ministry's providing assistance to IDPs wishing to return to areas below the so-called "green line."¹⁸¹ An agreement had been reached in December 2003, for an assistance program to those IDPs who had already returned to such areas, given that their living conditions were dire, but that no new returns would be encouraged. In that context, according to the ministry's records, some 2,700 families that had returned to Makhmour, Dibs, Altun Kopri, and Sinjar had received help from the Kurdistan Regional Government (KRG) in Arbil with the assistance of several non-Iraqi NGOs, some acting through local relief organizations.¹⁸² The assistance program was being carried out with the cooperation of local officials in the destination areas. Most of the returning IDPs had been living in and around the cities of Arbil and Mosul, and a smaller number in the town of Kalak south of Arbil. On the question of the settlement of property disputes in the foreseeable future, Serwan Mohamed told Human Rights Watch: "There should be cooperation between us and Baghdad over this."

¹⁷⁸ Human Rights Watch interview with Pashkhan Qader Faraj, Qara Hanjir, January 23, 2004.

¹⁷⁹ See the report by National Public Radio correspondent Ivan Watson on July 5, 2004, transcript accessed on July 7, 2004.

¹⁸⁰ Human Rights Watch interview with Serwan Mohamed, January 25, 2004.

¹⁸¹ The "green line" refers to the internal frontline that divided the Kurdish controlled northern governorate from other governorates under Iraqi government control between 1991 and April 2003.

¹⁸² These groups included European Perspective, a Greek NGO that provided hygiene kits, blankets, and food items; and Save the Children UK, which had distributed blankets, carpets jerry cans, hurricane lamps, and other non-food items. A small number of tents had also been distributed by the KRG, with the help of Peacewinds Japan, from supplies left behind by UNOPS-IDP, as well as kerosene stoves, blankets, and kitchen sets.

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<http://www.hrw.org/reports/2004/iraq0804/index.htm>