

# Iraq: Forcible Expulsion Of Ethnic Minorities

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Iraq's practice of expelling Kurds, Turkomans, and Assyrians in the oil-rich regions of Kirkuk and turning their property over to Arab families from the south continues, Human Rights Watch said today. In a new report documenting this ongoing practice, Human Rights Watch said there is an urgent need for Iraq, or in the event of war the occupying powers, to establish a mechanism that will permit the orderly return of more than 120,000 persons forced out of their homes since 1991. Human Rights Watch said this was essential to head off ethnic violence

Comments should displaced families attempt to return to the area. The report, based on interviews conducted in September 2002 with recently displaced families, details policies that include: ? forcing minorities to "correct" their ethnic identity, ? compelling them to join supposedly "volunteer" paramilitary forces such as the Popular Army and Saddam's Martyrs, and ? seizing the land of farming families without prior notice or compensation. Human Rights Watch said that the systematic forced and arbitrary transfer of populations is a crime against humanity under international law, and urged that those responsible be brought to justice.

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## I. SUMMARY

This report details the Iraqi government's ongoing campaign of forced expulsion of ethnic minorities from Kirkuk and other oil-rich regions in northern Iraq. Since the 1991 Gulf war, an estimated 120,000 Kurds, Turkomans, and Assyrians have been expelled to the Kurdish-controlled northern provinces, with a smaller number expelled to central and southern regions of the country. The government has resettled Arab families in their place, brought mainly from southern Iraq, enticing them with free housing and other economic incentives. This "Arabization" policy is aimed at bringing about demographic changes designed to reduce the political power and presence of ethnic minorities, thereby consolidating the government's control over this region.

In December 2002, Human Rights Watch published a policy paper, *Justice for Iraq*, detailing some of the serious crimes perpetrated by the Iraqi government since the 1980s.<sup>1</sup> It urged the establishment of an international tribunal to bring to justice the perpetrators of genocide, crimes against humanity, and war

crimes. In January 2003, Human Rights Watch published a briefing paper detailing crimes against humanity perpetrated against the Marsh Arabs of southern Iraq during the 1990s.<sup>2</sup> This report documents another crime against humanity that the Iraqi government continues to perpetrate to this day.

The "Arabization" of Kirkuk and other oil-rich regions is not a recent phenomenon. Successive governments have sought at various times to reduce the ethnic minority populations residing there since the discovery of significant oil deposits in the 1920s. By the mid-1970s, the Ba'th government that seized power in 1968 embarked on a concerted campaign to alter the demographic makeup of multi-ethnic Kirkuk. The campaign involved the massive relocation of tens of thousands of ethnic minority families from Kirkuk, Sinjar, Khaniqin, and other areas, transferring them to purpose-built resettlement camps. Little has changed today. For the past decade, the expulsions have continued unabated, with the victims joining many others as forcibly displaced persons in their own country. They were forced to abandon their homes, stripped of most of their possessions, and deprived of any means of livelihood. Scores of expelled Kurds and Turkomans interviewed by Human Rights Watch during a September 2002 mission to Iraqi Kurdistan described the relentless pressure by the state to drive them from their homes by making their daily lives intolerable.

Human Rights Watch believes that the Iraqi government's systematic and continuing forced transfer since 1991 of an estimated 120,000 Kurds, Turkomans, and Assyrians on the basis of their ethnic identity constitutes a crime against humanity. This forced transfer involved the multiple commission of repressive acts in furtherance of state policy, including systematic deprivation of fundamental rights such as: the right to buy and retain the title deeds to property; the right to have ethnic minority languages taught in schools; the right to retain or adopt names specific to ethnic groups; and the right not to be discriminated against in employment, educational or other opportunities.

Human Rights Watch urges the Iraqi government to stop immediately the continuing forced expulsion of ethnic minority populations from Kirkuk and other oil-rich regions and to take steps to allow for their return. In the event of war in Iraq, there is an urgent need for the intervening military forces to prepare for a crisis as internally displaced persons seek to return to the homes from which they were forcibly expelled by the Iraqi government. In the absence of an orderly mechanism for the gradual return of the internally displaced, the likelihood of inter-ethnic violence erupting as individual families seek to re-establish claims to property and assets is very high. It is equally crucial that the international community provide both financial assistance and expertise for the administration of a mechanism allowing for the orderly return of internally displaced persons. The international community should also take all measures possible to ensure that Iraqi officials implicated in the perpetration of the policy of forced transfer of ethnic minorities – defined as a crime against humanity under international law – be held accountable and brought to justice.

## II. INTRODUCTION

Following the 1991 mass uprising in Iraq, the government forcibly expelled over 120,000 Kurds, Turkomans, and Assyrians from their homes in the oil-rich region of Kirkuk and neighboring towns and villages.<sup>3</sup> Over the past twelve years, entire families belonging to these ethnic minorities have been obliged to relocate, leaving behind virtually all their possessions, properties, and means of livelihood. Most of the internally displaced people are in the provinces of Arbil and Sulaimaniya controlled by the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) respectively. A smaller number were relocated to government-controlled areas in central and southern Iraq. The systematic forcible transfer of these ethnic minorities – a process commonly referred to as "Arabization" – has been accompanied by a government program of resettling Arab families brought from southern Iraq to replace those evicted. The properties and most other assets seized from the victims were distributed among these new arrivals as part of a package of economic incentives.

During a three-week mission to Iraqi Kurdistan in September 2002, Human Rights Watch researchers interviewed scores of internally displaced persons who had been expelled from Kirkuk and other areas. They included Kurds and Turkomans who were being housed in shelters in several camps or other makeshift housing, including Parda Qaraman camps and al-Salam garrison in Sulaimaniya province, and Benislawa and

Daratu camps in Arbil province. In all of the camps, private interviews were conducted with families who had recently been expelled from or had fled Kirkuk, inquiring into the circumstances of their expulsion. Others were interviewed in homes in the cities of Arbil and Sulaimaniya and in villages or towns nearby, such as Bakrajo and Mala Omer.<sup>4</sup> While some had been expelled in the early 1990s, others were recent arrivals. In a number of cases Human Rights Watch was able to speak to individuals or families within two or three days of their expulsion.

Human Rights Watch also met with a number of officials representing the KDP and PUK administrations, notably: ministers and staff at the KDP Ministry of Reconstruction and Development and the PUK Ministry of Human Rights, Internally Displaced Persons and the Anfal; local officials responsible for running the camps; representatives of the committees established by the Kurdish authorities concerned with the welfare of those expelled from government-controlled areas; and representatives of Turkoman political parties.

Precise data on the number of ethnic minority families or individuals expelled by the Iraqi government since the 1991 Gulf war is not available. What is available are credible estimates based on data compiled by the KDP and PUK and political parties representing the Turkomans and the Assyrians. Record-keeping has improved since the mid-1990s and systematic data collection is carried out by KDP and PUK officials who receive those expelled as they cross the no-man's-land between government and Kurdish checkpoints. However, there is no centralized database containing the data gathered, nor is it systematically shared between the two administrations, which compile information separately based on the number of expelled persons entering those areas under their respective controls.<sup>5</sup> Additionally, the data does not apparently distinguish between those individuals or families who were formally expelled by the Iraqi government (the majority) and those who fled to the Kurdish region because they risked imminent expulsion or other punitive measures in implementation of the policy of "Arabization."

The best available estimates from these sources place the numbers of individuals who were expelled or fled "Arabized" areas between 1991 and up to May 2002 at some 120,000, although other estimates place the figure closer to 140,000.<sup>6</sup> Of these, the vast majority was expelled to PUK-controlled areas, largely due to the proximity of the oil-rich areas to Sulaimaniya. Figures provided by the PUK to Human Rights Watch in March 2001 estimated the number of persons displaced to PUK-held areas between 1991-2000 at 93,888 (comprising 15,839 families).<sup>7</sup> In September 2002, a more detailed breakdown was provided to Human Rights Watch for the years 1995 and up to May 2002, which gave a total of 15,304 persons expelled (comprising 2,550 families).<sup>8</sup> The equivalent figures for those who were displaced to Arbil province between 1991 and mid-2002, according to the KDP Ministry of Reconstruction and Development, totaled 16,772 persons (comprising 3,516 families).<sup>9</sup> No data was made available for those displaced to Duhok province. Some 5,000 Turkomans, comprising 1,000 families, were expelled to the Kurdish area by the government, but there is no indication as to whether this figure included those expelled before 1991.<sup>10</sup>

A preliminary survey carried out in Iraqi Kurdistan by the United Nations Center for Human Settlements (UNCHS or Habitat) estimated the number of internally displaced persons at 805,505 by the end of October 2000, comprising 23 percent of the population of that region.<sup>11</sup> Of these, the number of those expelled as a result of "Arabization" (classified as "victims of ethnic cleansing") was estimated at 58,706 persons, significantly lower than the figures compiled by Kurdish and Turkoman political parties.

No data is available for the numbers of those forcibly expelled to government-controlled areas in central and southern Iraq, although they are believed to run into the thousands. The lack of access to such areas by human rights investigators has rendered the task of documenting their cases difficult. They reportedly include people who had signed an obligatory "nationality correction" form but were nevertheless forcibly expelled.<sup>12</sup> Many of the Assyrians expelled from their homes, for example, were reportedly transferred to locations in Baghdad.<sup>13</sup> Kurds and Turkomans were largely transferred elsewhere. One of the favored destinations is the Arab town of al-Ramadi (located west of Baghdad, in al-Anbar province). In September 2002, Human Rights

Watch interviewed several people in Iraqi Kurdistan who had either been initially expelled to al-Ramadi in the early 1990s, or had visited relatives expelled there.<sup>14</sup> They spoke of dire living conditions and continued official surveillance of their every move. The sizeable Kurdish community expelled there apparently gave rise to a whole neighborhood in al-Ramadi that has come to be known as *hay al-akrad* (the Kurdish quarter).

The sheer number of people expelled from their homes solely on the basis of their ethnic identity, and the highly consistent testimonies they provided as to the nature of the measures employed in furtherance of "Arabization," leave no room for doubt as to the Iraqi government's motives. Moreover, the weight of this evidence is supported by the government's own documents, captured by Kurdish opposition forces during the 1991 uprising. Some of these documents refer to punishments for persons who changed their officially registered ethnicity from Arab to Kurd. Other documents list the means by which officials should entice Arabs to move to Kirkuk. These and other statements show the evolution of policy over time toward minorities, including the Turkoman population and the Yezidis whom the authorities designated as Arabs.<sup>15</sup>

During its September 2002 mission to Iraqi Kurdistan, Human Rights Watch obtained from Kurdish and Turkoman political parties, and from the expelled families themselves, documentation attesting to the continuation of forced expulsions in the decade following the 1991 Gulf war. This included scores of individual expulsion orders as well as papers that families were made to sign stating that they were leaving their homes of their own free will.<sup>16</sup> In some instances, the government used legal pretexts in order to justify the expulsions. Some families were told that they were being expelled because they had infringed laws that regulate the transfer of residence from one province to another. In other instances, families earmarked for expulsion were forced to submit an official request to the governor stating that they were "displaced" Kurds wishing to return to the "Autonomous Region."

Kurdish officials told Human Rights Watch, that since the mid-1990s it has become increasingly difficult for ethnic minority families to retain these types of documents upon expulsion, and that Iraqi officials made a point of removing all such papers from them. The victims themselves concurred with this, saying that this policy was aimed at depriving them of the means with which to prove that they had been forcibly expelled. They added that occasionally it was possible, with several thousand dinars, to bribe the police accompanying them to the checkpoints to allow them to photocopy their expulsion papers or other documents.<sup>17</sup> Copies of some of these were given to Human Rights Watch.

The Iraqi government's attempts to "Arabize" the oil-rich regions are not limited to the expulsion of ethnic Kurds, Turkoman, and Assyrians and their replacement with Arab families brought in from the south. The authorities are attempting to wipe out all evidence of a non-Arab presence by "Arabizing" all aspects of life. According to many of the families interviewed by Human Rights Watch, for example, administrative officials refuse to register newborn children with non-Arab names.<sup>18</sup> When non-Arab couples attempt to get married, they are pressured to adopt Arab names.<sup>19</sup> Non-Arabs find it almost impossible to register homes or other property unless they adopt Arab names.<sup>20</sup> Around June 2002, it became forbidden to give businesses in Kirkuk non-Arab names.<sup>21</sup> Even those who register their ethnicity as Arab are still considered second-class citizens, and face continued discrimination: "Property owned by Arabs can only be sold to other Arabs, and Arabs who are considered 'second degree' [i.e., those who 'corrected' their ethnicity] can only buy or sell from each other."<sup>22</sup>

The rate at which other aspects of the "Arabization" policy are being implemented also appears to have accelerated during the 1990s.<sup>23</sup> This includes compelling the use of Arab names for historic sites, city or town districts, streets, public buildings such as schools and hospitals, and private property such as restaurants, shops, and other businesses. In addition to transferring to Arabs the title deeds to property owned by those expelled, the authorities also expanded the government's housing construction program: in late 2001, for example, new housing was built in villages around Altun Kopri and Tuz Khormatu to accommodate yet more Arab families. On September 6, 2001, Iraq's Revolutionary Command Council passed Decree 199, "allowing" non-Arab Iraqis aged eighteen or over to change their official ethnic identity

by applying to register as Arabs.<sup>24</sup> In October 2001, the teaching of Kurdish in schools in the town of Makhmour (Nineveh province, formerly Mosul) was officially banned, and scores of Kurdish teachers were reportedly transferred to other areas and replaced with Arabs.<sup>25</sup> Official instructions for the "Arabization" of place names in Makhmour reportedly included the writing on tombstones: all non-Arabic engravings had to be deleted and re-engraved in Arabic. More recently, in April 2002, the authorities reportedly gave additional incentives (in the form of plots of land) to Arabs resettled in Kirkuk who brought the remains of their dead relatives and reburied them in the city's cemeteries.<sup>26</sup>

On December 4, 2001, the executive director of the U.N. Office of the Iraq Program (OIP) told the Security Council he was "greatly concerned with the increasing number of internally displaced persons," due in large part to the Iraqi government's continued expulsion of Kurds, Turkmen, and Assyrians from areas under its control as part of its continuing "Arabization" campaign. The living condition of some of those displaced was described by the OIP as "abominable." Although some of those forcibly displaced, notably the Turkomans, were able to find shelter with relatives living in Arbil, Sulaimaniya, and other urban centers, the majority has been accommodated – ironically – in the same collective towns that the Iraqi government had built in the 1970s and 1980s for the specific purpose of housing those Kurds it had forcibly relocated at the time as a prelude to the Anfal campaign.

Their future is uncertain. For a decade and more they have been living as forcibly displaced persons in their own country. In the event of armed intervention by the United States and its allies, the possibility of returning to the cities, towns, or villages from which they were forcibly expelled may become a viable option. Most of those interviewed by Human Rights Watch in September 2002 stated that in such an eventuality, they would seek immediate return. They expressed the hope that Arab families occupying their homes would return to their original places of residence in central or southern Iraq of their own accord.<sup>27</sup> Many stressed that they had no quarrel with these Arab families, but that since the government had brought them, the government should take them back. A small number said they would be prepared to wait if a fair and speedy mechanism for the settlement of claims to property were to be set up. Given the complexity of the problems created by the Iraqi government's program of forced population transfer and its manipulation of census data over a long period of time, some of these claims may never be settled. The vast majority of those expelled have no documentation proving past ownership of property, which was systematically withdrawn or destroyed by officials. Some of the properties in question no longer exist, having been razed to the ground as part of the punitive measures adopted by the government. As for the Arab families resettled in these areas, many are by now in their second or third generation, with their children knowing no other home. Some also have extensive economic interests tied up in Kirkuk, and may prove unwilling to relinquish them. Others will have acquired property in good faith and in all likelihood will contest the claims made by the returnees. Compounding all these problems are the competing claims – which have already surfaced – for a stake in the oil riches of Kirkuk by Kurds, Turkomans, and Arabs alike, on the basis of a proven majority. The likelihood of inter-ethnic violence in such a context is very high.

## Origins of "Arabization"

The forced mass displacement of populations on the basis of their ethnic identity, which defines the Iraqi government's "Arabization" policy, is only the latest chapter in the long history of government persecution of Kurdish and other minorities, a history that includes the genocidal Anfal campaign of 1988, when more than 100,000 Kurds were killed.<sup>28</sup>

Iraqi government attempts to "Arabize" Kirkuk date back to discovery of major oil reserves in Kirkuk in the 1920s, while Iraq was still under British mandate.<sup>29</sup> Rapid growth of the city was then reflected in its multiethnic demographic makeup. Even then, according to Kurdish sources, the government-controlled oil industry brought in large numbers of Arab workers instead of employing the local Kurdish population.<sup>30</sup> Kirkuk also became a rich agricultural region, as the Iraqi government embarked on massive irrigation

projects, starting in the 1930s, on the Hawija, Qaraj, and Qari-Teppa plains around Kirkuk and settled several large nomadic Arab tribes from southern Iraq on the newly fertile lands.<sup>31</sup>

The city of Kirkuk, located some 200-250 miles 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. During recent times, Kirkuk has accounted for more than a third of Iraqi oil exports.<sup>32</sup> Kirkuk's current dominant place in Iraqi oil production reverses pre-1990 Gulf War production patterns, when the southern Rumaila fields were responsible for nearly two-thirds of Iraqi oil production. Production in southern Iraq was particularly affected by destruction caused by the Gulf war, and has not recovered from this blow. The quality of Kirkuk's oil is also significantly higher than that of the southern fields (lower density and lower sulfur content), and production is less plagued by problems such as water intrusion into the oil reserves, a major problem in the south.<sup>33</sup>

Negotiations between the Kurds and successive Iraqi governments over autonomy for the Kurdish region have invariably foundered over the question of Kirkuk and Kurdish demands that it be designated as an integral part of the autonomous region. Shortly after the Ba'th Party first seized power in February 1963, KDP leader Mulla Mustafa Barzani sought to have the oilfields of Kirkuk, Khaniqin, and north-west Mosul included within the proposed autonomous region, together with a proportionate share of their revenues. The government rejected these terms: "The key reason lay with the oilfields," wrote David McDowall in his history of the dispute, "but the government could also point to 1947 census which indicated that Kurds comprised only 25 percent of the population of Kirkuk town, and only 53 percent of the province."<sup>34</sup> The stalemate eventually led to clashes between the two sides and the government stepped up its "Arabization" program. In that year, it reportedly destroyed thirteen villages surrounding Kirkuk, evicted Kurdish villagers from dozens of villages that were then populated with Arabs, and dismissed many Kurdish oil workers and civil servants.<sup>35</sup>

Barzani reiterated his demands after the second Ba'th takeover of the government in July 1968, but once again Kirkuk was the main obstacle to an agreement: the government, according to McDowall, "yielded to Mulla Mustafa on the principle of territoriality, but insisted that demarcation would depend on where there was a proven majority, and that this would be decided either by plebiscite or by census."<sup>36</sup> The March 11, 1970 peace accord that the two sides eventually signed provided for the "unification of areas with a Kurdish majority as a self-governing unit" (article 14). The census for the contested areas of Kirkuk, Khaniqin, and Sinjar, scheduled for December 1970, was initially delayed and then indefinitely postponed. Barzani charged the government with resettling Arab tribes in the contested areas.<sup>37</sup> McDowall writes that Barzani

told the government he would not accept the census results if they indicated an Arab majority. He also dismissed the offer of the 1965 census, which he said was forged. When the government proposed to apply the 1957 census to Kirkuk, Mulla Mustafa refused it, since this was bound to show that the Turkomans, although outnumbered in the governorate as a whole, were still predominant in Kirkuk town.<sup>38</sup>

The early 1970s were characterized by the worsening of relations between the Kurds and the government over Kurdish claims to the Kirkuk oilfields. Barzani also raised other grievances, not least the government's failure to carry out the planned census and to allow displaced Kurds to return to their original homes. The policy of forcing changes to the ethnic composition of entire villages around Kirkuk, 'Aqra, Shaikhan, and Khaniqin was still being implemented.<sup>39</sup> On March 11, 1974, the government unilaterally declared a new Autonomy Law and gave Barzani two weeks in which to accept it. The law met none of the Kurdish demands regarding Kirkuk and other key issues. Barzani rejected it, heralding a period of open revolt against the central authorities.

Early measures instituted by the government against the remaining Kurdish, Turkoman, and Assyrian populations in Kirkuk and other "Arabized" areas included placing restrictions on the acquisition or retention of title deeds to property; placing restrictions on employment and the transfer of government employees to

posts outside the Kurdish region; the "Arabization" of place names; and the offer of financial rewards to Arabs who married Kurdish women in an effort to expedite the process of ethnic assimilation. Others fell victim to arbitrary arrest, prolonged detention without trial, torture, or execution.<sup>40</sup>

By 1975 the government had embarked on a concerted campaign to alter the demographic composition of the predominantly Kurdish northern provinces of Sulaimaniya, Arbil, Duhok, and Kirkuk in advance of any new official census. This came in the wake of the collapse of the Kurdish revolt, when Iran and Iraq signed the

March 1975 Algiers Agreement and Iran withdrew its support to Kurdish opposition forces.<sup>41</sup> In the three provinces of Sulaimaniya, Arbil, and Duhok (designated as the Autonomous Region of Kurdistan under the 1974 Autonomy Law), the government's campaign was marked by the widespread destruction of villages and smaller towns and the forced resettlement of "at least 600,000" of their inhabitants in purpose-build

collective towns close to the main urban centers.<sup>42</sup> Elsewhere, in the oil-rich regions, the government had already resorted to re-drawing Iraq's administrative map in an effort to alter the demographic makeup of disputed areas once and for all. The boundaries of Kirkuk province were redrawn such that an Arab majority was ensured in key areas. Several major towns with a clear Kurdish majority were reallocated to existing neighboring provinces or to the newly created Salahuddin province.<sup>43</sup> Kirkuk province (part of which was now subsumed under Salahuddin) was renamed al-Ta'mim (literally, 'nationalization,' marking the nationalization of the western-owned Iraq Petroleum Company in 1972).

The authorities then embarked on a massive campaign of forced relocation: tens of thousands of residents were evicted from their homes in areas with significant oil deposits as well as in disputed areas. These included Kirkuk, Khaniqin, Mandali, Shaikhan and, further afield, Sinjar and Zakho. The majority of deportees were removed to desert locations in southern Iraq: many were abandoned without any shelter. Others were housed in rudimentary camps along major routes under military control. In their place came Arab families from various southern tribes encouraged by the government with financial remuneration and other benefits. A comparison of the 1957 and the 1977 populations censuses with regard to the ethnic composition of Kirkuk province showed that the proportion of Kurds had declined from 48.3 percent to 37.53 percent, and that of the Turkomans from 21.4 percent to 16.31 percent, while the proportion of Arabs had risen from 28.2 percent to 44.41 percent.<sup>44</sup>

An estimated 4,500 villages were systematically razed over a ten-year period between 1976 and 1986, with several hundred thousand people becoming internally displaced. Although initial village clearances were aimed at creating a buffer zone between government-controlled areas and those controlled by Kurdish opposition forces, by early 1987 they had spread to areas firmly under government control. The inhabitants of the cleared areas were forbidden from returning to their homes. Prior to the 1987 population census, these inhabitants of the now prohibited areas were offered an ultimatum: they could either accept to live in purpose-built settlement camps or lose their Iraqi citizenship and be considered as military deserters. This second option amounted to a death sentence, since the census legislation made those who refused to be counted subject to an August 1987 decree of the ruling Revolutionary Command Council (RCC) making desertion a capital offense.<sup>45</sup> The census also offered only two options for the registration of nationality:

Arab or Kurdish.<sup>46</sup> This was particularly problematic for those minorities who were largely based in the Kurdish regions, such as the Assyrians, the Chaldean Christians, and the Yezidis. Those who refused to register as Arabs were automatically designated as Kurds, for which they were to suffer several months later when the Anfal campaign directed at the Kurds was launched.

## **The 1991 Uprising and its Aftermath**

Following the 1991 Gulf war, mass uprisings against the Iraqi regime occurred in the Kurdish north and the Shi'a south, at least in part incited by then-President George H. Bush's call to the Iraqi people to "take matters into their own hands to force Saddam Hussein, the dictator, to step aside."<sup>47</sup> Saddam Hussein responded to the uprisings by sending his dreaded minister of the interior, 'Ali Hassan al-Majid, to Kirkuk with heavy reinforcements (al-Majid had been in charge of the genocidal Anfal campaign against the Kurds in 1987,

where he earned the nickname "Chemical 'Ali"). Al-Majid ordered the arrests of thousands of Kurdish males in Kirkuk in an attempt to prevent the uprising from reaching the strategically important city.<sup>48</sup> Al-Majid's troops also began demolishing Kurdish homes in pro-Kurdish areas.

Those acts of repression did not prevent the uprising from reaching Kirkuk on March 18, and Kurdish rebels briefly seized control of the city around March 19 or 20. The Kurdish rebels killed some security and Ba'th Party officials, but spared the majority of Iraqi soldiers who surrendered. Kurdish control of Kirkuk was challenged almost immediately, and by March 21 the city was under heavy bombardment from Iraqi tanks, helicopters, and artillery. Hundreds of civilians were killed in the bombardment. The worst killings took place after Iraqi troops recaptured Kirkuk on March 28 and began exacting revenge on the local population.

According to Kurdish residents interviewed by Human Rights Watch at the time, Iraqi security troops ordered the Kurdish populations of Kirkuk to leave, often going from home to home in Kurdish neighborhoods. Tens of thousands of Kurds fled for the mountains above the city. In the immediate aftermath of the uprising's defeat, abandoned Kurdish homes and neighborhoods were reportedly either demolished or repopulated with Arabs brought in from other cities. When Kurdish residents of Kirkuk attempted to return home, they were turned back at Iraqi government checkpoints, or found their homes occupied or destroyed. International journalists who visited Kirkuk months after the end of the uprising reported that almost none of the Kurds who fled had managed to return.<sup>49</sup> The Kurdish exodus from Kirkuk following the 1991 uprising turned into permanent displacement for many who today remain in displaced persons' camps inside the Kurdish areas.

There was no let-up in the forced expulsions after the 1991 Gulf war. A last-ditch attempt on the part of the Kurds to come to an agreement with the government took place in April 1991. The talks were abandoned four months later and Kirkuk was once again one of the key issues on which the two sides remained far apart.

Responding to the Iraqi repression and internally displaced persons crisis that followed the failed uprisings, the U.N. Security Council adopted Resolution 688 calling on Iraq to end "the repression of the Iraqi civilian population."<sup>50</sup> The resolution was soon followed by a massive humanitarian operation, "Operation Provide Comfort," mounted by the allied forces inside Kurdistan, and the establishment of a "safe haven" in Iraqi Kurdistan. On April 19, 1991, the allied forces announced the creation of an "air exclusion zone" north of the 36th parallel, forbidding Iraqi fixed wing planes from entering this area. (Later a similar air exclusion zone was established in southern Iraq.)<sup>51</sup> In October 1991, Iraq withdrew its troops and administration from the three major Kurdish districts (Dohuk, Arbil, and Sulaimaniya), effectively ceding control of the area to the KDP and the PUK.

The areas of Kirkuk and Mosul, however, fell outside the air exclusion zone and remained under Iraqi government control. The Iraqi government continues to forcibly expel Kurds, Turkomans, and Assyrians from Kirkuk, and replace them with Arabs brought in from elsewhere in a blatant attempt to change the demographic make-up of the region.

### III. FORCED EXPULSIONS

The information gathered by Human Rights Watch during its September 2002 mission clearly establishes that the Iraqi government is continuing a policy of forced expulsions of Kurds, Turkomans, and Assyrians from Kirkuk and other oil-producing regions. The process of forced expulsions from Kirkuk is a centrally organized, bureaucratic government campaign, involving formal documents such as the expulsion orders many victims received.

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

As with most Iraqi government abuses, multifarious security agencies are directly implicated. Among the most prominent agencies involved in the expulsions are the General Security Directorate (*Mudiriyyat al-Amn al'Aam*), headquartered in Baghdad and with centers in major cities across the country, and the internal security service of the Ba'th Party (*Amn al-Hizb*). Both these apparatuses directly implement the policy of forced population transfers at all its major stages, namely surveillance of targeted individuals or families, putting pressure on them to comply with official demands, threatening arrest, expulsion, or other punishment for failure to comply, earmarking or issuing expulsion orders, and seizure of property and assets. Additionally, General Security Directorate officials are involved in the arrest, interrogation, and sometimes torture of those who refuse to succumb to their pressures and, together with the police, in the detention of the head or male member of targeted families, effectively as hostages, until the expulsion process is completed. The Ba'th Party's security officials are also involved in identifying persons who failed to join the party, and exerting pressure on them to do so.<sup>52</sup>

Frequently, the pressure on ethnic minority families by security officials is backed up by the *mukhtar* – the civilian community representative in a particular neighborhood in cities, towns, or villages. Necessarily members of the Ba'th Party, the mukhtars have intimate knowledge of the families residing within a given area and are able to report regularly to security officials on the situation of individual families, any changes in their circumstances, and any acts on their part that indicate of disloyalty to the authorities. They frequently accompany security officials on their rounds of targeted homes, and participate in exerting pressure on families to comply with official demands.

The local police in each district are also involved in the execution of orders concerning forced expulsions, such as the detention of a family member pending expulsion. They are also charged with being present at the homes of families on the day of their expulsion, to record the names of each family member, to ensure that they do not take with them prohibited articles or belongings, and to draw up a list of all other major items that are being taken. Where the families concerned are expelled to the northern Kurdish-controlled region, the police are also required to escort them to the last government-controlled checkpoint. At that point they take any documentation still remaining in the families' possession with the exception of their nationality certificates, which they are permitted to keep. The police also escort those families that are expelled to destinations in southern Iraq, handing over their expulsion papers to local officials upon arrival.

Finally, the government of Iraq has resisted efforts by the United Nations, including its main refugee agency, the United Nations High Commissioner for Refugees (UNHCR), to facilitate the return of Iraqis displaced from the Kirkuk region. In the immediate aftermath of the 1991 Gulf war and subsequent uprisings, 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 and Turkomans "ran directly counter to government plans."<sup>53</sup> Government opposition to the facilitation of returns was made even more apparent in August 1991 when the U.N. Executive Delegate requested permission from Baghdad to establish a sub-office in Kirkuk and was denied.<sup>54</sup> One month later, the Iraqi government refused to allow U.N. guards to accompany a convoy of 3,417 returnees to Kirkuk.<sup>55</sup>

## Combined Pressure Tactics

Iraqi officials use a wide range of tactics and demands to pressure targeted Kurdish, Turkoman, and Assyrian families prior to forcing them to abandon their homes. These include forced change of ethnicity, forced

recruitment into the Ba'th Party, forced recruitment into "volunteer" paramilitary structures, pressure on families with relatives in Kurdistan, and attempts to recruit informers. Most of the families are subjected to a range of such pressures until they either leave voluntarily out of fear or are forcibly expelled.

- The family of 'Abdullah Ramadan Ma'ruf, a thirty-six-year-old Turkoman from Kirkuk, had been pressured to change their ethnicity, join the Ba'th Party, and participate in "volunteer" paramilitary forces. On an almost monthly basis, Ba'th Party officials would survey their neighborhood, visiting each home to check on who had complied with their demands to change their ethnicity to Arab. When Ma'ruf refused an additional demand that he join the Jerusalem Army, his wife related, a Ba'th Party official pressured the family into sending their fourteen- and twelve-year-old sons for military training with Saddam's Cubs. "When they asked my husband to train with Jaysh al-Quds, he refused, so then they said we will take your sons," she said. After this incident, pressure on Ma'ruf to join the Ba'th Party increased, but he refused, saying he was "independent." Ten days after his refusal, police officials came to the family home and told Ma'ruf and his family that they would be expelled within two days.

On the July 21, 2002, the day of their expulsion, the police came to their home and scrutinized the possessions the family wanted to take with them. The family was asked to choose between going to the Kurdish-controlled north or government-controlled south, and they chose to go north. The family was forced to pay a 25,000 dinar bribe at the last government checkpoint, and had their ration and residence cards confiscated.<sup>56</sup>

- Ba'th Party officials first came to the home of Qassem 'Abd al-Rahman Khadr, a Turkoman carpenter in July 2002. The officials demanded that he and his seventeen-year-old son volunteer for the Jerusalem Army. The family paid the officials 200,000 dinars in lieu of this. Soon thereafter, the same officials returned and informed the family that they would be expelled because they had refused to change their ethnicity from Turkoman to Arab. A week before the expulsion [on July 15, 2002] police officers came to their home to arrest Khadr, taking him to the al-Muthanna police station. He was only released on the day of the expulsion [on July 22, 2002], after the family paid a 20,000 dinar bribe and he agreed to sign a paper saying he had left Kirkuk "voluntarily." The family was only allowed to take clothes, blankets, and some small belongings.<sup>57</sup>
- Fifty-year-old As'ad Karim Salah, a Kurd, was expelled from Kirkuk on June 16, 2002. Prior to his expulsion, Ba'th and security officials put constant pressure on his two sons, aged twenty and twentythree, to join the Ba'th Party and to alter their ethnicity. The twenty-year-old son, who was studying at Mosul University, was also pressured to spy on his fellow students. When he refused, he was expelled from the university.

In March 2002 another son, twenty-three years old, fled to Kurdish-controlled territory, and the pressure on the remaining family members increased. From April to June, the visits by officials became almost constant. On June 10, Ba'th Party officials came to Salah's home a final time, demanding that he return his son to Kirkuk. Salah explained he could not do this. On June 16, the police came and took the entire family to the al-Muthanna police station in Kirkuk, again demanding the return of the son, and that the family change their ethnicity, join the Ba'th Party, and join the Jerusalem Army. When the family refused, they were immediately deported to Kurdish-controlled territory. They were only allowed to take a few small items, and had to leave their household appliances and other belongings behind.<sup>58</sup>

- Forty-nine-year-old Muhammad Karim, a Kurd, was expelled from the al-Shorja district of Kirkuk in June 2002, together with his wife and seven children. His ordeal shows the constant pressure that many non-Arab families face:

Officials from the Amn [General Security Directorate] and the Istikhbarat [Military Intelligence] and the mukhtar [neighborhood administrator] kept coming to our house and putting pressure on us. They told me I must become a member of the Ba'th Party, and sign up for military training in

Jaysh al-Quds. They also tried to recruit my son [aged eighteen] into the Jaysh al-Quds, so he fled [to Kurdish-controlled territory.] It was after that that the pressure on me increased, and when I refused to become a Ba'th Party member, they told me they were going to expel me. I had also been under pressure to correct my ethnic identity. The Ba'th Party official responsible for our district came to our house and proposed I do this. Again I refused. That is how we got expelled.<sup>59</sup>

The family was only allowed to take their clothes and a few personal belongings, but had to leave behind all household appliances and other items of value.

- Twenty-five-year-old Salim Ismail (not his real name), a Kurd from the Rahim Awa district of Kirkuk, was first harassed by Iraqi officials in December 2001: "They told me, 'You must become a Ba'thist, you must correct your identity [ethnicity], and you must participate in Jaysh al-Quds.'" He gave the officials a bribe of 19,000 dinars to leave him alone. In March 2002, the officials returned and renewed their demands, and he again bribed them. When the officials came back yet again in June 2002, they told him he had to choose between participating in Jaysh al-Quds and joining the Ba'th Party or being expelled. He chose expulsion. He was given the choice between being expelled to Arbil or Sulaimaniya in the Kurdish-controlled territories, or the Iraqi government-controlled city of alRamadi. He chose to be expelled to Sulaimaniya.

A few days later, agents from the General Security Directorate came to his home and registered the personal details of all the family members, the numbers of their ration cards, details of their educational qualifications, and the names of their relatives remaining behind in Kirkuk. They were told they had fifteen days to leave. On the day of the expulsion, an officer and a policeman from the Andalus police station came to their home, made a list of their possessions, and then took the family to the police station. Upon arrival, Salim Ismail had to sign a paper saying he was leaving his home "voluntarily." At the first checkpoint [Kirkuk checkpoint], he was ordered to leave behind two of the three barrels of fuel he had purchased, as well as three of the four gas cylinders, on the pretext that only one of each was allowed. At the second checkpoint, dubbed *Saytarat alTahaddi* [Defiance Checkpoint], the officials took away the family's ration cards and the police documents, including the expulsion order, but allowed them to keep their nationality certificates. The family of eleven now live in the Parda Qaraman refugee camp near Sulaimaniya.<sup>60</sup>

- Forty-six-year-old Hamid Zein al-'Abidin Saleh, a Turkoman father of nine, worked in Kirkuk as a freelance photographer. He refused to change his ethnic identity when Ba'th Party officials came to his home. In 1999, he received a summons to join the Popular Army, but he refused to obey it.<sup>61</sup> Soon thereafter, he was picked up by the police and sent to the Kirkuk Deportations Center [*Markaz Tasfirat Kirkuk*]. On June 25, 1999, he was expelled to Kurdish-controlled territory. The police took him to the al-Muthanna police station, and ordered him to sign papers saying he was leaving Kirkuk "voluntarily," threatening him with a six-month prison sentence if he refused. Before being allowed to leave, he had to pay a 50,000 dinar fine "in lieu of imprisonment," to the police. A police officer accompanied Saleh and his family to the last checkpoint, where they had to pay another 25,000 dinars to pass through quickly.<sup>62</sup>

- Forty-three-year-old Salah 'Uthman Hamad, a Turkoman who worked as a nurse in Kirkuk, was constantly harassed: "They used to put pressure on us to undergo military training, to join the Ba'th Party and become comrades. They used to come to our house regularly, and as we kept refusing they said we had to be expelled." Salah Hamad bribed the officials 100,000 dinars to avoid having to undergo military training, and then had to pay another 25,000 dinar bribe to avoid having to change his ethnicity to Arab. Finally, in September 1997, the mukhtar came to his home, accompanied by police officers, and informed the family of their expulsion order, which gave them three days' notice. The family, with seven children, hired a truck and left with their clothes, blankets, and some small items of furniture. They were forced to hand in their ration cards and identity cards. An Arab family that had

been relocated from the south moved into their home. At the last checkpoint, police officials collected the official expulsion order the family had received.<sup>63</sup>

## Forced Change of Ethnicity

One of the most common Iraqi government pressure tactics is to pressure Kurdish, Turkoman, and Assyrians living in government-controlled areas to "correct" their ethnicity and register as "Arabs," a process often referred to as "nationality change." It was formally introduced in 1997, prior to carrying out a population census (which did not cover the region under Kurdish self-rule), when the government distributed "nationality correction" forms. These required members of ethnic groups residing in Kirkuk, Khaniqin, Makhmour, Sinjar, Tuz Khormatu, and other districts to relinquish their Kurdish, Turkoman, or Assyrian identities and to register officially as Arabs. Those who refused were invariably expelled from their homes.

The pressure to change ethnicity is focused in a discriminatory fashion on Kurds, Turkoman, and Assyrians – Arabs are never pressured to change their ethnicity. The process is part of a broader campaign to wipe out the non-Arab characteristics of the Kirkuk region, a campaign that also involves refusing to register non-Arab names and insisting on Arabic names for formerly Kurdish (or Turkoman and Assyrian) schools, districts, mosques, and streets.

The Iraqi government has acknowledged that it is engaging in a process of nationality changes, but claims this is a process designed to correct "erroneous" registrations dating back to the Ottoman era. In an April 2002 communication to the U.N. special rapporteur on Iraq, the Iraqi government explained that it promulgated Revolutionary Command Council Decree 199 (see above) because of "the presence of cases left over from the records of the Ottoman period ...in which Iraqi citizens have been wrongly registered ...as being of non-Arab ethnicity, and in order to provide Iraqis with the right to choose their ethnicity."<sup>64</sup> Iraq claims that the intent of the decree is not discriminatory because "this right is optional and not discriminatory."<sup>65</sup>

The Iraqi government has also admitted to the practice of refusing to register newborns with "foreign names." The Iraqi government explained this practice to the special rapporteur:

Some parents give their children foreign names that are alien to the heritage of Iraqi society, thereby forcing the bearer of the name to face the astonishment and persistent and embarrassing questions of those around them as to the meaning of their socially unusual names. For this reason, a decision has been taken that names must be either Iraqi, Arab or Islamic.<sup>66</sup>

The Iraqi government denied that this decision was discriminatory against Kurds, stating "the concept of Iraqi identity embraces the names of all religious and ethnic communities, including Kurdish, Turkoman, Christian and other names of other communities."<sup>67</sup> However, witnesses interviewed by Human Rights Watch in Iraqi Kurdistan consistently testified that they had been unable to register their newborns with Kurdish or other non-Arabic ethnic names.

- Twenty-five-year-old Nahro Fattah, a Kurd, fled to Kurdish-controlled territory in 1996 because of constant demands from Iraqi officials that he join the army. After he fled, his remaining relatives were constantly pressured to change their ethnic identity or leave for Kurdistan. The family twice paid bribes of 20,000 dinars and 15,000 dinars to Iraqi officials to leave them alone. On July 17, 2002, the five remaining members of Fattah's family received notification that they would be expelled from Kirkuk within ten days. The family was also notified that their home would be seized without compensation. Within days, an official came to collect the family's ration cards and residence cards. On July 27, 2002, the day of their expulsion, a police officer came to check what possessions the family was taking with them, telling them they could take only their clothes, two empty gas cylinders, and other small items.<sup>68</sup>

- Hamid Fatah Qader, a forty-nine-year-old father of four and a Kurd, lived in the Kakayakan district of Kirkuk. On September 13, 2001, five or six officials from the General Security Directorate came to his home at about 8:00 p.m. They asked Qader for two photographs of himself and told him to complete the forms necessary to change his nationality from Kurdish to Arab, and further ordered him to become a member of the Ba'th Party. Qader refused, asking the men if they would ever change their nationality from Arab to Kurd. One of the security officials became incensed, and whipped Qader several times with a wire cable in front of his crying wife and children.

After the beating, Qader was arrested, handcuffed, and taken to the Kirkuk Deportation Center, where he was detained together with around thirty-five other Kurds, all awaiting expulsion. Qader spent fifty-one days at the detention center, and was beaten regularly:

There was a narrow walkway, and they would bring us there, one after the other, all of us. Three people would come from Military Intelligence just to beat us. They beat us with cables and fists. They would hold us by the hair and hit us with fists in our face until blood came out of our mouths. I was beaten like this many times. They accused us of belonging to [the Patriotic Union of Kurdistan of] Jalal Talabani – and that we had to go [to Kurdistan].

After fifty-one days, Qader was transferred to the al-Muthanna police station. The police ordered him to sign an expulsion form, which he could not read because it was written in Arabic, and forced him to pay a 10,000 dinar bribe "for the cost of the paper." The police then accompanied him to his home, where he hired a truck for his family's journey to the Kurdish-controlled territory. The family was not allowed to take their electric appliances, which they had to sell cheaply at the market.<sup>69</sup>

- Forty-six-year-old Nawal Nameq was expelled in 1998 together with her husband, her five children, and eight other relatives. Officials from the General Security Directorate came to their home and told them to report to the Governorate of Kirkuk. At the governorate they were told to change their ethnic identity. When they refused, they were told they would be expelled. Nawal Nameq's husband, Ramadan 'Umar Khadr, was arrested at that time and kept in detention for five days, until the day of their expulsion. The family was forced to abandon their restaurant and café that provided them with income, and left with only their clothes: "We wanted to take other things, but since my husband was about to be detained again, we left quickly."<sup>70</sup>
- In early November 1997, Hawar 'Ali Sadeq (not his real name) was summoned to the Governorate of Kirkuk. He was ordered to change his ethnicity identity from Kurd to Arab. When he refused, officials told him he would be expelled to Sulaimaniya, and the police immediately confiscated his food ration cards and other identity documents. On November 27, 1997, the entire family of fourteen hired a truck and left for the Kurdish-controlled region, accompanied by an Iraqi policeman. They were only allowed to take their clothes, three gas cylinders, and two cans of oil. At the last government checkpoint, the policeman accompanying them returned their identity documents but not their ration cards. Since then, the family has lived in a mud hut in the impoverished Parda Qaraman camp.<sup>71</sup>
- Sixty-nine-year-old Yassin Saber 'Abdullah used to be a farmer in the village of Djaghmagha, where he owned 500 dunums [approximately 125 acres] of farmland. During the 1980s, the Iraqi government forcibly expelled the non-Arab population of Djaghmagha and most of the other villages in the area, giving the seized agricultural land to Arab tribes from southern Iraq. 'Abdullah lost all of his land without compensation, and was forced to move in with relatives in the Rahim Awa quarter of Kirkuk, doing odd jobs.

'Abdullah's three sons served in the Iraqi army. Despite this, Ba'th Party officials regularly came to visit him, even stopping him in the street several times, to pressure him to change his ethnic identity to Arab. In 1996, after he had repeatedly refused to comply, 'Abdullah was arrested and kept for two weeks at the Rahim Awa police station, until he managed to pay a 20,000 dinar bribe for his freedom. In 1997, he was arrested again, and taken to the deportation center in Rahim Awa. "We were fifteen or sixteen people there, all of us about to

be expelled." After a week of detention, the authorities brought 'Abdullah's family to the center and immediately expelled them all to the Kurdish-controlled areas. The family was only allowed to take some clothes, blankets, and other small items.<sup>[72](#)</sup>

## Forced Recruitment into the Ba'th Party

Since 1968 Iraq has been ruled by a single political party, the Arab Ba'th Socialist Party. Its role in Iraqi society remains pervasive, facilitated by its own intelligence and security structures. Ba'thist officials frequently attempt to recruit Kurds, Turkomans, and Assyrians to join the party, the aim being multifold. Membership serves as a means through which the state strives to retain control of individuals and to monitor any anti-government activity on their part. Becoming a member is invariably followed by pressure on individuals to act as informers in their local neighborhood, their professional milieu, or other spheres. Above all, willingness to join the party serves as a test of loyalty to the government. Refusal or reluctance to join raises suspicion, resulting in the person concerned being placed under surveillance and facing innumerable obstacles and discrimination in their daily lives. In the case of ethnic minorities, it also serves as a pretext for their forced expulsion from their homes.

- Mu'tasam 'Abd al-Rahman Taha, a twenty-five-year-old Kurd from Kirkuk, was forced by Ba'th Party officials to join the Jerusalem Army in July 2001, and spent two months undergoing military training at the al-Qadisiyya Garrison in Kirkuk. About three-quarters of the recruits he trained with were also Kurds. He was discharged in September 2001. On September 9, 2002, Ba'th Party officials again came to his home and demanded that he work for the party or face expulsion. He and other family members refused to comply. On the same day, the police arrested Mu'tasam Taha's brother, thirty-two-year-old 'Adnan, and detained him at the al-Muthanna police station.<sup>[73](#)</sup>

At the police detention facility, 'Adnan Taha found himself imprisoned with five other men whose families also faced expulsion. One of the men had been in detention for twenty-two days because his family couldn't afford the bribe demanded. Two days after his arrest, 'Adnan Taha's relatives paid a 100,000 dinar bribe for his release, and the family of fourteen was immediately expelled to Kurdish-controlled territory. They had to pay 75,000 dinars to hire a truck, 50,000 dinars to pass the Defiance Checkpoint, and another 25,000 to the policeman who accompanied them. Their residence and ration cards were taken away. The family owned a house in Kirkuk, and were forced to hand over the house keys before they were expelled, losing their home without compensation.<sup>[74](#)</sup>

- Tawfiq Rahman, a Kurdish laborer from Kirkuk, is a father of seven children. Ba'th Party officials regularly attempted to force him to join the party, but he successfully avoided them repeatedly by staying away from his home and ignoring their demands that he visit the local party office. In January 2001, Ba'th Party officials and the local mukhtar came to his home early in the morning to inform him that his family was being expelled. Security officials accompanied Rahman as he went to hire a truck and loaded up his goods. He was forced to sign a "voluntary" expulsion paper, which was collected at the last government checkpoint.<sup>[75](#)</sup>
- Tareq Nameq Shahwar, a forty-four-year-old Turkoman driver from Kirkuk, first came under pressure to become a member of the Ba'th Party in 1994, and the harassment intensified over the next two years: "They put pressure on us to join the Ba'th Party.... The party comrades used to come to our house regularly, then the police started coming. In the beginning it was once every two months, then it became more frequent. Finally, they told us they were going to expel us."

The family was expelled on February 6, 1996, one of at least fifteen families from their neighborhood expelled that month. They were given the choice of going north to the Kurdish-controlled areas or south into government-controlled areas, and were told that if they moved south, they could take all their possessions with them. So they chose to head south to al-Ramadi. A policeman accompanied them, and gave their expulsion documents to officials at the governorate building in al-Ramadi. The family moved into the Kurdish quarter of al-Ramadi, and found that most of their neighbors were also expelled families from

Kirkuk: "There must have been at least three hundred families living there who were expelled from the North." The family found life in the south impossible because of regular demands that Tareq Shahwar join the Popular Army, almost constant surveillance, and their inability to find work on account of having been expelled. The family left the south in secret, for Kurdish-controlled territory.<sup>76</sup>

## Forced Recruitment into "Volunteer" Paramilitary Forces

The Iraqi government has over the years created a number of paramilitary forces, either as auxiliary support to the regular armed forces or as "elite" units – effectively private armies answerable to the political leadership. In the latter category fall Saddam's Martyrs (*Fida'iyyi Saddam*), and a new force reportedly created in 2002 known as Sword of the Leader (*Sayf al-Qa'id*). The principal auxiliary force created during the 1970s was the Popular Army (*al-Jaysh al-Sha'bi*) headed by Vice-President Taha Yassin Ramadan, purportedly a volunteer force whose purpose was to provide military support to the regular armed forces during the Iran-Iraq war.<sup>77</sup> Many of the Kurds, Turkomans, and Assyrians who were forcibly expelled from their homes during the early 1990s had been recruited into the Popular Army under pressure. A newer force, the Jerusalem Army (*Jaysh al-Quds*) was created in February 2001 amid much official fanfare, its declared purpose being the "liberation" of Jerusalem. Like the Popular Army, it is nominally a volunteer force. In practice, many of its recruits – including Kurds, Turkomans and Assyrians – have been pressured into enlisting. Training typically takes place over one or two months, focusing on the use of light weaponry such as Kalashnikov rifles, rocket-propelled grenades, and light artillery.

Many of the Kurdish and Turkoman men interviewed by Human Rights Watch said they had been forced to undergo several paramilitary training courses and were threatened with expulsion from their homes if they refused. Those who fled to the Kurdish-controlled region to avoid expulsion cited recruitment into the Jerusalem Army as one of the main reasons for their flight. They also stated that in cases where males over the age of eighteen in a given family were absent or ill, the authorities would recruit the eldest boy in lieu of an adult male, and that in some cases recruits were as young as fifteen. Boys between the age of twelve and seventeen are normally recruited into yet another force known as Saddam's Cubs (*Ashbal Saddam*), which also involves periodic training in light weaponry over one month during summer vacations. One fourteen-year-old Turkoman boy told Human Rights Watch that many of his classmates had undergone the training course. His mother explained that she had fled to the Kurdish-held region because she feared that her young sons would be forced into joining Saddam's Cubs.<sup>78</sup> Other families with young boys also cited this as a reason for their expulsion or flight.

- Thirty-two-year-old Muhammad Khaled was first forced to join the Jerusalem Army in March 2001, when Ba'th Party officials came to his home in Khaniqin, a town south west of Kirkuk and close to the border with Iran. They ordered him to report for training. He was forced to leave his work and go with his family to a military training camp near Baghdad, where he received two months of training in light weaponry. He received 20,000 dinars a month for his family "which is barely enough to make ends meet.... Our situation was very bad."<sup>79</sup> After the training, he returned home in May 2001, but was then again forced in November 2001 to undergo two more months of training in the Jerusalem Army. After completing the second round of training, and desperate to escape another round, Khaled moved to Kirkuk city:

I thought I would be safe there. But in Kirkuk it was very difficult to survive. I was a barber and tried to find work, but the [Ba'th] party comrades kept harassing me. They called me a son of a dog and told me I had no chance there. And the pressure to continue to train with Jaysh al-Quds was worse in Kirkuk than in Khaniqin. My [economic] situation in Khaniqin used to be good until I had to join the Jaysh al-Quds.<sup>80</sup>

Unable to earn a living and facing constant pressure from Iraqi officials, he decided to escape to Kurdish-controlled territory. Ba'th Party officials confiscated his ration card and personal identity cards.

## **Harassment and Expulsion of Families with Relatives in Iraqi Kurdistan**

Iraqi government agents have frequently targeted for harassment ethnic minority families with relatives living in the Kurdish-controlled region. This was particularly the case when a male member of a given family had fled in order to escape forced enlistment into a paramilitary force, or was an army deserter. Pressure also increased on these families when their relatives joined Kurdish or other fighting forces, or became affiliated with one or another of the opposition groups based in the north. In some cases, the authorities put pressure on the families concerned to convince their relatives to return to governmentcontrolled areas, and then used the failure to comply with this demand as a pretext for expulsion.

- Two of twenty-one-year-old Madiha Hamid's brothers left for the Kurdish-controlled areas to escape recruitment into the Jerusalem Army. Following their departure, Iraqi officials regularly came to Madiha's home and asked why the family had remained in Kirkuk when her brothers were in Kurdistan: "Why are you here? Your brothers are in Kurdistan," the officials would say.<sup>81</sup> At the beginning of August 2002, the officials took away the ration cards of the family, and soon thereafter the family was presented with a formal expulsion order for Madiha, her father, her niece, and her two sisters. They were expelled from Kirkuk on September 5, 2002.<sup>82</sup>
- The Turkoman family of Nihayat Muhammad Gharib came under pressure from the General Security Directorate in 2002 because her brother-in-law was living abroad:

There was no pressure on us to join the Ba'th Party or to train with the Jaysh al-Quds, or even to change our ethnic identity. It was because of my husband's brother, who has been abroad for about five years now. Security [officials] interrogated my husband about that, but we kept saying we didn't know anything about him. They told us, 'In that case, you cannot remain here and you will be expelled.'

Gharib's family decided to flee before they faced further harassment or a formal expulsion order, taking only their clothes with them.<sup>83</sup>

- Barzan Karim Kakel, a thirty-seven-year-old Kurdish construction worker from Kirkuk, and father to seven children, fled to Kurdish-controlled territory in late August 2002. His brother had already fled there earlier that year. Barzan had not been harassed prior to that, but after his brother's departure, Ba'th Party officials began coming regularly to his house, telling him he had to join the party, change his ethnicity to Arab, and join the Jerusalem Army. After six months of harassment, he fled to Arbil with his family. Although he lived in poverty in a camp for displaced persons, he insisted on stressing to Human Rights Watch that he preferred life in the camp: "I don't have to be afraid of anyone, I am free here and my life is secure."<sup>84</sup>
- Jalal Sharif Karim is a sixty-six-year-old cobbler from the town of Tuz Khormatu. Two of his sons were living in Kurdish-controlled territory, working as *Pesh Merga* fighters.<sup>85</sup> Beginning in April 2002, security officials from the General Security Directorate began coming to his workplace, asking questions about his two sons. Ba'th Party officials also came regularly, urging him to change his ethnic identity, but he argued back: "I told them I am a Kurd, and even if I become king, I will always remain a Kurd." On June 10, Jalal was arrested together with his twenty-year-old son Kamal, and held for eight days at the Tuz Khormatu police station, where they were repeatedly questioned and threatened with long prison sentences and hanging, but they were not beaten. On June 18, they were released after paying a 100,000 dinar bribe. The family left immediately for Kurdish-controlled territory, arriving in the desolate Parda Qaraman displaced persons camp near Sulaimaniya on June 21, 2002. Before leaving, Jalal managed to sell his house to his Turkoman neighbors, who were told by the Iraqi authorities that they would have to adopt Arab names if they wanted to register the deeds of the house in their own names.<sup>86</sup>

- Haja Mahmoud Rashid, a fifty-six-year-old Turkoman widow, was living in Kirkuk but had two sons who left for Kurdish-controlled territory in the mid-1990s, one to escape harassment and another to join the Kurdish Pesh Merga forces. In May 2002, security personnel and Ba'th Party officials came to her house, demanding that she bring her son who had joined the Pesh Merga to them or face expulsion. Haja Rashid refused, and was expelled on June 10, 2002. On the day of her expulsion, police officials came to make sure she was not taking any electrical or other household appliances with her, allowing her only to pack some clothes, blankets, and small personal items. The police accompanied the family to the last government checkpoint, where they took away their ration cards, residence cards, and expulsion papers.<sup>[87](#)</sup>

- Amin Najmuddin Muhammad, a sixteen-year-old Kurdish student from Kirkuk, had a brother who fled Kirkuk to Kurdish-controlled territory and joined the Pesh Merga. After his brother fled, the family began receiving almost daily visits from Ba'th Party and security officials, demanding that they bring their brother back to Kirkuk. The officials also demanded that the family join the Ba'th Party and enlist in the Jerusalem Army.

In May 2001, security officials came to the home and arrested Amin's father, telling the family they were being expelled from Kirkuk and that they should prepare for their departure:

They kept my father for four or five days. During this time, we had to prepare everything in our house. We couldn't take all of our possessions. We had to leave behind our appliances such as our refrigerator – they prohibited us from taking such things. We signed the expulsion paper, which was taken from us at the last checkpoint.<sup>[88](#)</sup>

- Fifty-one-year-old Ahmad Hamid, a Turkoman, was deported from Kirkuk in 1992. His brother had fled Iraq in 1982 to escape army service, traveling through Iran and Syria before obtaining refugee status in Sweden. In 1992, Iraqi security officials detained Ahmad Hamid, two other brothers and their father, and gave them the choice between expulsion to Kurdish-controlled territory or going south to al-Ramadi. The family was expelled because of the brother's desertion from the army and his residence abroad.

The family chose to go to al-Ramadi because they were allowed to take some of their belongings with them. When they arrived in al-Ramadi, they were housed in a crowded abandoned school with about fifty other families, all Kurds and Turkmen who had been expelled from Kirkuk. The families lived in crowded conditions, with two or three families sharing one room. After six months, the family fled to Kurdishcontrolled territory, taking advantage of heavy rain to hide in the back of a truck and pass through the many checkpoints.<sup>[89](#)</sup>

## Recruitment of Informers

At times, Iraqi government agents also attempt to coerce Kurds and other non-Arabs into becoming informers for the various security or intelligence apparatuses, or for the Ba'th Party, focusing particular attention on those who have relatives living in the Kurdish-controlled region. When those who are recruited to spy on their families refuse to cooperate, they face instant expulsion. Others face trumped-up charges of espionage or are accused of involvement in opposition activities, and face torture and abuse before being expelled.

- Thirty-four-year-old 'Ali Karim Muhammad Rashid's brother, a mathematics professor, was expelled from Kirkuk in 1999 when he refused to change his ethnicity and became a teacher in the Kurdishcontrolled town of Derbendikhan. In May 2001, 'Ali Karim was summoned to the offices of the General Security Directorate in al-Karama and ordered to bring his brother to the Directorate. 'Ali Karim told Human Rights Watch that he was tortured by being suspended from a ceiling fan with his hands tied behind his back, a common torture technique in Iraq. He was finally released eight hours

later when he agreed to pay the officials a 310,000 dinar bribe. A month later he was again summoned by officials and told to convince his brother to work for them as a spy. He had to pay a 250,000 dinar bribe to secure his release.

Soon thereafter, three agents from the General Security Directorate came to 'Ali Karim's home and threatened to give his father fifty lashes unless 'Ali Karim agreed to convince his brother to work as a spy. 'Ali Karim agreed to travel to the Kurdish-controlled areas to visit his brother and was advised by Kurdish security officials to "play along." Two weeks after he returned, he was contacted by other officials, this time from the *mukhabarat* (intelligence service), who forced him to undergo a week's training in the use of explosives as a prelude to working for them.

In November 2001, 'Ali Karim was again summoned to the General Security Directorate. He was asked to produce the deeds to his home, and told that he faced the choice of working as a spy or being expelled. The next morning, unwilling to work as a spy, he took his family to safety to a relative in al-Qadisiyya, and he himself fled to the Kurdish-controlled region on November 3, 2001. Iraqi officials tracked down his family and expelled them on November 11, 2001. At the final checkpoint before entering Kurdish-controlled territory, the family was forced to sign a form stating that they had left "voluntarily."<sup>90</sup>

### **Re-allocation of Farm Land to Arab Families**

In addition to the pressure tactics used against non-Arab families living in and around Kirkuk to leave their homes, the Iraqi government has forcefully ejected large non-Arab farm communities in the province, seizing their property without prior notice or compensation and leaving them destitute. Entire villages of non-Arab farmers have often been forcibly vacated en masse, in contrast with the more individualized pressure tactics used on urban dwellers. Many of those who find themselves internally displaced to the Kurdish-controlled region today were effectively subjected twice to forcible transfer. Expelled from their rural homes in the first instance, such families headed for Kirkuk city and other urban centers where, at best, they were able to find temporary shelter with relatives. Formerly relatively affluent landowners in the countryside, they found themselves eking out a living as manual laborers in the city. Years later, as the government's "Arabization" policy increasingly focused on urban centers, they were forcibly expelled once again, this time to the Kurdish-controlled region. Some of the more valuable seized properties were presented as "gifts" to senior Ba'th Party and other officials in return for services rendered to the state, but most were distributed to Arab tribal families brought in from southern Iraq.

The Iraqi government, in response to a query from the U.N. special rapporteur on Iraq, stated that a process of land reform was underway in northern Iraq. The government attempted to cast this process as necessary to "make best possible use of land suitable for agriculture," and claimed that the land was distributed to "all farmers willing to exploit it for agricultural purposes, without regard to their ethnic affiliation."<sup>91</sup> In fact, the Iraqi policy is aimed at removing Kurdish and other non-Arab farm communities and replacing them with Arab farmers.

- Hussain Saleh Amin, a thirty-eight-year-old Kurd, was a farmer who owned about eighty dunums [twenty acres] of land in the town of Makhmour, located mid-way between Mosul and Kirkuk. In late 2000, he came home from a day's work in his fields to find that all of his belongings had been thrown out of his home. The head of the Makhmour municipality informed him that his farm was being seized, and that his family was being expelled to Kurdish-controlled territory. He left the next day for Arbil, only allowed to take his clothes with him. An Arab family took possession of the farm.<sup>92</sup>

## **IV. FORCED POPULATION TRANSFERS AS A CRIME AGAINST HUMANITY**

The expulsions of ethnic Kurds, Turkmen, and Assyrians from the Kirkuk region amount to an Iraqi government policy of forced transfer of populations, pursued to change the demographic nature of the Kirkuk region – a policy commonly referred to as the "Arabization" of the Kirkuk region. Underlying this demographic change is the government's desire to reduce the political power and presence of ethnic

minorities in order to retain or increase government control over this oil-rich region. The forced and arbitrary transfer of populations, that is, without any grounds permissible under international law, is a crime against humanity.

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."<sup>93</sup> 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 and Rwanda.<sup>94</sup> The long-standing definition of "deportation" as a crime against humanity included the crime of forced population transfer within a state's borders.<sup>95</sup>

The Statute of the ICC, which came into force on July 1, 2002,<sup>96</sup> includes among its definition of crimes against humanity "deportation or forcible transfer of population." According to one commentator, forcible transfer of population was specifically included "to make it expressly clear that transfers of populations within a State's borders were also covered."<sup>97</sup> The crime of forcible transfer of population 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."<sup>98</sup>

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 of the attack."<sup>99</sup> 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 armed hostilities, or any violent force at all."<sup>100</sup> In the landmark Akayesu judgment, the International Criminal Tribunal for Rwanda defined "attack" to encompass 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.<sup>101</sup>

The expulsions of ethnic Kurds, Turkmen, and Assyrians from Kirkuk 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 are civilians. In order to be widespread, the attacks must include "massive, frequent, large scale action, carried out collectively with considerable seriousness," a requirement which is met by the tens of thousands of victims of the expulsion policies.<sup>102</sup> The use of standardized expulsion procedures – such as expulsion orders, and specialized detention centers – as well as the clear involvement of Iraqi officials in all aspects of the expulsions including opposition to U.N. facilitated returns, also reflects the systematic character of these attacks, a requirement that is defined as requiring "a pattern or methodical plan" that is "thoroughly organized and following a regular pattern."<sup>103</sup>

The actions of the 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," thousands of Kurds, Turkmen, and Assyrians "to another ...location, by expulsion or other coercive acts."<sup>104</sup> Second, the persons expelled or forcibly transferred from the Kirkuk region "were lawfully present in the area from which they were deported or transferred."<sup>105</sup> Third, the Iraqi government knew that the expelled persons were lawfully present in the Kirkuk region.<sup>106</sup>

The expulsions from Kirkuk are pursued as a matter of government policy, as indicated by the existence of standard documents such as the "expulsion orders," the existence of "deportation centers," the government opposition to U.N. facilitated returns, and the similarity of the experiences of the expelled persons.

## **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."<sup>107</sup> The freedom to choose one's residence incorporates the right not to be moved.<sup>108</sup> Restrictions on movement and choice of residence are permitted only when provided by law and for reasons of "national security, public order (ordre public), public health or morals, or the rights and freedoms of others," and such restrictions must be consistent with other rights recognized by the ICCPR.

Various U.N. bodies have further defined this right. In a 1997 resolution, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the U.N. Commission on Human Rights affirmed "the right of persons to remain in their own homes, on their own lands, and in their own countries." It also urged governments and other actors to do everything possible "to cease at once all practices of forced displacement [and] population transfer ...in violation of international legal standards."<sup>109</sup>

### **"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."<sup>110</sup> 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.'"<sup>111</sup> Ethnic cleansing is similar to forced population transfer, but involves an additional element of the use of "terrorinspiring violence."<sup>112</sup> 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.<sup>113</sup>

While the Iraqi efforts to expel the ethnic Kurdish, Turkmen, and Assyrian populations from the Kirkuk region have not generally included the same level of terror-inspiring violence which characterized ethnic cleansing in the Balkans, the Iraqi policies do appear to share with the Balkan policies an aim to permanently alter the ethnic make-up of the Kirkuk region – 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 decision relating to Bosnia-Herzegovina:

[A]ny 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.<sup>114</sup>

### **The Right of Forcibly Displaced Persons to Return to their Homes**

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 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."<sup>115</sup>

Most international human rights instruments recognize the right to return to one's country.<sup>116</sup> There is no specific provision in international covenants affirming the right of internally displaced persons to return to their places of origin. However, 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.<sup>117</sup> 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. 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."<sup>118</sup>

Numerous resolutions of the U.N. General Assembly and of the Security Council as well as several international peace agreements also recognize the right to return to one's home and/or property.<sup>119</sup> The right to an effective remedy, contained in ICCPR article 2(3), requires that Iraqis should be able, in principle, to repossess their homes after being deprived of them under the "Arabization" policy.

The Commission on Human Rights has often recognized the need for property restitution as an effective remedy for forced displacement.<sup>120</sup> 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.<sup>121</sup> 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."<sup>122</sup>

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.<sup>123</sup>

While the ethnic Kurds, Turkmen, and Assyrians displaced by the "Arabization" policies have a right to return to their homes in the Kirkuk region and 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 Iraqi government has brought ethnic Arab populations – some also against their will, others with financial incentives – to Kirkuk to advance its "Arabization" drive, and many of those ethnic Arabs now live in the former homes of displaced persons. The right to repossess private property must be balanced against any rights these secondary occupiers may have in domestic or international law, using impartial and efficient procedural safeguards.<sup>124</sup> In Bosnia, property claims administrators have attempted to resolve these disputes in a manner that respects the rights of the first possessor as well as the secondary occupier.<sup>125</sup>

In many 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.<sup>126</sup> Programs aimed at returning displaced populations and re-creating multi-ethnic communities in the Balkans after years of forced displacement have faced severe obstacles, including continuing discrimination policies and violence between ethnic communities.<sup>127</sup> In order to prevent communal violence and retaliation, any program to implement the right to return of the displaced communities must take place in a legal and security context that ensures the protection of the rights of all involved persons, including the displaced as well as the communities that have taken their place.

## V. RECOMMENDATIONS

Human Rights Watch urges the Iraqi government to stop immediately the continuing forced transfer of ethnic minority populations from Kirkuk and other regions and to take steps to allow for their return.

In the event of war in Iraq, there is an urgent need for the international community to prepare for humanitarian crises, as well as for a post-conflict period when internally displaced persons seek to return to

the homes from which they were forcibly expelled by the Iraqi government. In the absence of a mechanism for the gradual return of the internally displaced, the likelihood of inter-ethnic violence erupting as individual families seek to re-establish claims to property and assets is very high. It is equally crucial that the international community provide both financial assistance and expertise for the administration of a mechanism allowing for the orderly return of internally displaced persons. It should also take all measures possible to ensure that Iraqi officials implicated in the perpetration of the policy of forced transfer of ethnic minorities – defined as a crime against humanity under international law – be held accountable and brought to justice.

## To the Government of Iraq

- Respect the right to freedom of movement of all Iraqi citizens, including their freedom to choose and to remain in their place of residence and the right of all Iraqis to family unity.
- Cease immediately the forced expulsion of ethnic minorities, namely Kurds, Turkomans, and Assyrians, from their homes in Kirkuk and other areas where the policy of "Arabization" has been implemented.
- Cease immediately the resettlement of Arab families from southern Iraq in the homes seized from those expelled.
- Cease the coercive use of RCC Decree 199 of September 6, 2001, which "allowed" non-Arab Iraqis aged eighteen or over to change their official ethnic identity by applying to register as Arabs. Cease use of the "nationality correction" form to coerce members of ethnic minorities to register themselves officially as Arabs.
- Cease all coercive policies associated with the forced expulsion of ethnic minorities, including the seizure of property, businesses and other assets; forced recruitment into the Ba'th Party and paramilitary forces or as informers; the intimidation and harassment of families with relatives living in Kurdish-controlled areas; and the compulsory adoption of Arab names for persons and places. Lift all legal restrictions on the ownership and registration of property in their own right by ethnic minorities.
- Preserve all records in the possession of the government establishing the ethnicity and place of origin of displaced Iraqis, including duplicates of nationality correction forms, confiscated expulsion orders, and ration cards.
- Take immediate steps to provide a public and accessible register of all Kurds, Turkomans, and Assyrians forcibly expelled from their homes and of Arab families resettled from southern Iraq, as well as of all seized or confiscated real property. Make available all documentation necessary for the full, speedy and fair resolution of all claims regarding the return of housing and other real property and provide a public family tracing and reunification registry and service.
- Investigate and prosecute officials implicated in the policy of forced transfer of ethnic minorities, defined in international law as a crime against humanity, in accordance with principles of due process and the rights of the accused established under international law.
- Establish a specialist agency dedicated to implementing the safe and dignified return of internally displaced Iraqis.
- Set up a planning forum with representatives of governmental, nongovernmental and intergovernmental organizations with relevant expertise, as well as representatives of displaced Iraqis to develop a program to ensure that the internally displaced can return to their homes in safety and dignity and can resume their livelihoods and/or access publicly available assistance. All return programs should be consistent with the U.N. Guiding Principles on Internal Displacement and respect the rights of displaced Iraqis, and effectively publicize its provisions to all Iraqis.

- Set up a planning forum with representatives of governmental judicial, nongovernmental, and intergovernmental organizations with relevant expertise, as well as representatives of displaced Iraqis, to develop an impartial and efficient mechanism for family reunification and to resolve place of origin and property claims disputes in accordance with standards of international human rights and humanitarian law. Ensure that the family reunification, place of origin, and property claims dispute resolution mechanism respects the human rights of all parties involved, including the rights of unaccompanied minors to family unification, the property and place of origin rights of displaced persons, and the property and place of origin rights of resettled persons. Ensure that the property claims dispute resolution mechanism includes procedures for several remedies including *inter alia*: property restitution, or should restitution prove impossible, financial compensation.

### **To the PUK and KDP authorities**

- Continue to compile records establishing the ethnicity and place of origin for displaced persons within areas under PUK or KDP control.
- Preserve all records currently in the possession of the PUK or KDP establishing the ethnicity and place of origin of displaced Iraqis, including duplicates of nationality correction forms, confiscated expulsion orders, and ration cards.
- Provide a public and accessible family tracing and reunification registry and service.
- Cooperate fully with a return program established in accordance with the U.N. Guiding Principles on Internal Displacement and with the family reunification, place of origin, and property claims dispute resolution mechanism.

### **To the international community, including donor governments and intergovernmental organizations with an interest in displacement, including the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), United Nations High Commissioner for Refugees (UNHCR), and the United Nations Development Program (UNDP)**

- Urge the government of Iraq to immediately stop forced expulsions of ethnic minorities, and lift all legal restrictions on the ownership and registration of property in their own right by ethnic minorities.
- Assure the government of Iraq of their willingness to contribute their expertise and experience to assist with protection and assistance for displaced Iraqis.
- Assist with the establishment of a mechanism of orderly return of displaced Iraqis to their homes. Offer technical and financial assistance to the government of Iraq, the PUK, and the KDP authorities in compiling ethnicity, place of origin, and property claims registers and in providing a public family tracing and reunification registry and service.
- Take all measures possible to ensure that officials implicated in the policy of forced transfer of ethnic minorities – defined in international law as a crime against humanity – be held accountable and brought to justice.

### **To the United States and its allies, should they become occupying powers**

- Respect the freedom of movement rights of all Iraqi citizens, including their freedom to choose a place of residence, and to move to a place of safety either inside or outside of Iraq.
- Protect all Iraqis from arbitrary or unlawful interference with their privacy, family and home.
- Ensure that all humanitarian agencies have free and unimpeded access to assist internally displaced Iraqis.

- Take all possible measures to prevent attacks of retaliation or reprisal against persons now residing in disputed areas in and around Kirkuk. Preserve all records establishing the ethnicity and place of origin of displaced Iraqis, including duplicates of nationality correction forms, confiscated expulsion orders, and ration cards.
- Promote the establishment of a public register of all Kurds, Turkomans, and Assyrians forcibly expelled from their homes, and a similar register for Arab families resettled from southern Iraq.
- Promote the establishment of a public register of all seized or confiscated real property, and make available all documentation necessary for the full, speedy, and fair resolution of all claims regarding the return of housing and other real property.
- Establish a public family tracing and reunification registry and service.
- Assist with the design and implementation of a fair, safe, and sustainable program of return in accordance with humanitarian and human rights law, including the U.N. Guiding Principles on Internal Displacement.
- Assist with the design and implementation of an impartial and efficient mechanism for promoting family reunification and resolving place of origin, and property claims disputes in accordance with standards of international human rights and humanitarian law.

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<sup>1</sup> Human Rights Watch, "Justice for Iraq," *A Human Rights Watch Policy Paper*, December 17, 2002.

<sup>2</sup> Human Rights Watch, "The Iraqi Government Assault on the Marsh Arabs," *A Human Rights Watch Briefing Paper*, January 25, 2003.

<sup>3</sup> As outlined below, the figures from the Patriotic Union of Kurdistan (PUK) for the years 1991 and up to May 2002 total 94,950 expelled Kurds, and those from the Kurdistan Democratic Party (KDP) (Arbil province only) is 16,772. Taking into account an estimated 5,000 Turkomans as well as several thousand Kurds from Duhok province, as well as Assyrians, brings the estimated total to some 120,000.

<sup>4</sup> Located in Sulaimaniya and Arbil provinces respectively.

<sup>5</sup> As of September 2002, the PUK's data was not computerized and consisted of paper archives.

<sup>6</sup> According to figures provided to Human Rights Watch in September 2002 by the KDP Ministry of Reconstruction and Development, the total number of Kurds, Turkomans, and others expelled to

Sulaimaniya, Duhok and Arbil provinces from Kirkuk and environs since 1991 stands at 138,662 persons (comprising 21,316 families). According to figures provided to Human Rights Watch, it is unclear what this figure is based on, and no breakdown was provided.

- 7 The data was given to Human Rights Watch during a field visit to Iraqi Kurdistan in March 2001. The figures include those displaced to Sulaimaniya province and to those areas of Kirkuk province under PUK control.
- 8 The data was compiled by the PUK Ministry for Human Rights and given to Human Rights Watch during a meeting with the minister, Salah Rashid, on September 8, 2002. The breakdown given for the years in question were as follows: 977 persons (1995); 1,262 persons (1996); 5,229 persons (1997); 2,548 persons (1998); 2,687 persons (1999); 1,539 persons (2000); 796 persons (2001); and 266 persons (January to May 2002).
- 9 The data was provided to Human Rights Watch in September 2002 by Nasreen Sideek Berwari, KDP minister of reconstruction and development. The breakdown for the years in question was given as follows: 12,750 persons (1991-1996); 1,227 (1997); 929 persons (1998); 770 persons (1999); 446 persons (2000); 426 persons (2001); and 224 persons (up to mid-2002). These figures, totaling of 16,772, are slightly lower than those compiled earlier in the year by the KDP's Higher Committee For Displaced People, which gave a total of 18,003 persons displaced to Arbil province between 1991 and May 2001, and which do not include those displaced to Duhok province.
- 10 According to data provided by the Iraqi Turkoman Front to Human Rights Watch, as of September 2002 there were 2,867 expelled Turkomans (comprising 608 families) in Sulaimaniya province, including Dukan and Derbendikhan, and Chamchamal in Kirkuk province, but the dates of their expulsions were not indicated. The KDP's estimates for the number of Kurds expelled from Kirkuk and environs before the 1991 uprising and displaced to both KDP and PUK areas is given as 116,890 persons (comprising 16,800 families). It is equally unclear to Human Rights Watch what this figure is based on. There was neither a breakdown nor an indication of the timeframe within which these expulsions took place.
- 11 UNCHS-Habitat, *IDP Site and Family Survey*, January 2001.
- 12 The Iraqi government introduced the "nationality correction" forms in 1997, ahead of a population census, requiring members of minority ethnic groups to register themselves officially as Arabs.
- 13 Human Rights Watch is not aware of any credible estimates of the number of Assyrians displaced from Kirkuk. According to the Assyrian Democratic Movement, one of the principal opposition groups representing the Assyrians in Iraq, there were an estimated 30,000 Assyrians living in Kirkuk prior to 1991 (cited in "Iraq Forcing Assyrians out of Kirkuk," *Iraq Report*, Radio Free Europe/Radio Liberty, February 15, 2002). Since the Iraqi government has expelled many of them to Baghdad and possibly other areas under its control, the task of assessing the extent of the expulsions is a difficult one.
- 14 Human Rights Watch interview with Haja Mahmoud Rashid, Arbil province, September 16, 2002; Human Rights Watch interview with Halima Sa'dun Majid al-Wandawi, Sulaimaniya province, September 20, 2002.
- 15 Human Rights Watch/Middle East, *Iraq's Crime of Genocide: The Anfal Campaign Against the Kurds* (New Haven and London: Yale University Press, 1995), p. 243. In a highly illustrative example, "a Ba'th Party file on a Chaldean soldier in the Iraqi army includes documents from 1982 in which the man is said to be an ethnic Chaldean; from 1985, in which he is said to be Arab-Chaldean; and from 1990, by which time he was referred to as Arab" (p. 243).
- 16 Typically, an expulsion order contains the names of all family members being expelled, and a list of the items that they are permitted to take with them. Papers stating that expelled families are leaving of

their own free will often state that they wish to relocate to the [Kurdish-controlled] "Autonomous Region" in search of employment and better living conditions.

17 In 2002, the Iraqi Dinar in circulation in government-controlled areas was worth approximately 1,850 to the U.S. dollar. At the time of this writing its was worth approximately 2,500 to the dollar..

18 Human Rights Watch interview with 'Abdullah Ramadan Ma'ruf, Sulaimaniya province, September 20,2002. The Iraqi government has acknowledged their refusal to register children with "foreign names." See Section III.

19 Human Rights Watch interview with 'Abdullah Ramadan Ma'ruf, Sulaimaniya province, September 20,2002.

20 Ibid; Human Rights Watch interview with Jalal Sharif Karim, Sulaimaniya province, September 9, 2002.

21 Human Rights Watch interview with 'Abdullah Ramadan Ma'ruf, Sulaimaniya province, September 20,2002.

22 Ibid.

23 For a comprehensive account of the policy of "Arabization," see Nouri Talabany, *Arabization of the Kirkuk Region* (Uppsala: Kurdistan Studies Press, 2001).

24 See Section III below. State "encouragement" to members of ethnic minorities to register as Arabs had existed in practice over a decade earlier. Official government documents from 1988 and 1989 revealed orders issued by the president of Iraq, Saddam Hussein, and 'Ali Hassan al-Majid to the effect that any citizen could become an Arab by means of a simple written application. Human Rights Watch, *Iraq's Crime of Genocide*, p. 58.

25 The teaching of Kurdish in the Kirkuk region had been officially prohibited since the mid-1970s.

26 According to a number of expelled families interviewed by Human Rights Watch, this was aimed at encouraging resettled Arab families to form "attachments" to their new place of residence, and to regard it as their "real" home.

27 This expectation was apparently based on events during the 1991 uprising, when the government lost control of the city of Kirkuk for several days, during which time a number of resettled Arab families did return south to their original homes.

28 Human Rights Watch, *Iraq's Crime of Genocide*.

29 Oil from the Kirkuk fields was not successfully extracted until 1927, but oil rights were first conceded to the Iraq Petroleum Company consortium on March 14, 1925 (Hanna Batatu, *The Old Social Classes and the Revolutionary Movements of Iraq* (Princeton, New Jersey: Princeton University Press, 1978), p. 189.) For a synopsis of the development of Iraq's oil industry, see Fadhl J. Chalabi, "Iraq and the Future of World Oil," *Middle East Policy*, vol. VII, no. 4, October 2000.

30 Nouri Talabany, *Arabization of the Kirkuk Region*, pp. 20-21.

31 These tribes included the al-'Ubaid, al-Jubur, al-Qurwi, and al-Leheb tribes.

32 For example, during the month of October 2002, the Iraqi State Oil Marketing Board projected exports of around 1.6 million barrels per day, of which 600,000 barrels per day were produced in Kirkuk. "Iraq Plans Around 1.6 million in October Exports," Dow Jones International News, October 20, 2002.

33 Iraq: Country Analysis. Kirkuk produces oil of a density of thirty-seven API and 2 percent sulfur, while the Rumaila production (known as "Basra") comes in at between twenty-two to thirty-four API and

between 3.4 percent and 2.1 percent sulfur. High API counts and low sulfur counts are considered desirable.

[34](#) David McDowall, *A Modern History of the Kurds* (London & New York, I.B. Tauris, 1996), p. 314.

[35](#) N. Talabany, *Arabization of the Kurdish Region*, p. 31.

[36](#) D. McDowall, *A Modern History of the Kurds*, p. 327.

[37](#) Ibid., p. 329: the tribes included the Tay, Shammar, and Ubaid (p. 341).

[38](#) Ibid., p. 329. The 1957 census, widely regarded as the last reliable census carried out in Iraq, showed the following distribution of Kirkuk's population according to mother tongue: 1) Arabic-speaking: 27,127 in the city and 82,493 in the province; 2) Kurdish-speaking: 40,047 in the city and 147,540 in the province; 3) Turkic-speaking: 45,306 in the city and 38,065 in the province; and 4) Chaldean and Syriac-speaking: 1,509 in the city and 96 in the province. Cited in Noury Talabany, *Arabization of the Kurdish Region*, p. 68.

[39](#) Ibid., p. 332.

[40](#) D. McDowall, *A Modern History of the Kurds*, p. 340.

[41](#) In return, Iran was granted shared access to the disputed Shatt al-Arab waterway. Earlier undertakings of military assistance to the Kurds by the United States, and to a lesser degree by Israel, failed to materialize. As Henry Kissinger famously remarked at the time: "Covert action should not be confused with missionary work."

[42](#) Others, namely Kurds suspected of supporting Barzani, were removed to destinations in southern Iraq, including al-Diwaniyya and al-Nasiriyya. According to McDowall, "at least 500 villages were destroyed in the first phase and may have reached 1,400 villages by 1978." D. McDowall, *A Modern History of the Kurds*, p. 339. Tens of thousands of villagers from the Barzani clan were relocated to barren sites in southern Iraq, deprived of all assistance or means of livelihood. Human Rights Watch, *Iraq's Crime of Genocide*, p. 24.

[43](#) The towns of Chamchamal and Kalar became attached to Sulaimaniya province, Kifri was attached to Diyala province, and Tuz Khormatu was attached to Salahuddin province. N. Talabany, *Arabization of the Kurdish Region*, p. 70.

[44](#) Ibid., pp. 68-69.

[45](#) Human Rights Watch, *Iraq's Crime of Genocide*, p. 6.

[46](#) The results of the 1987 census were never publicly divulged.

[47](#) See Human Rights Watch, *Endless Torment: The 1991 Uprising in Iraq and its Aftermath* (New York: Human Rights Watch, 1992).

[48](#) Ibid., p. 60. About 5,000 Kurdish men were arrested during this arrest campaign; most were released in April 1991, but ordered not to return to Kirkuk.

[49](#) Alan Cowell, "Iraq Won't Concede Kirkuk to Kurds," *International Herald Tribune*, June 6, 1991; Christophe Boltanski, "Kirkouk, Une Carte Vitale pour Baghdad," *Libération*, August 6, 1991.

[50](#) U.N. Security Council Resolution 688 of April 5, 1991 (S/RES/0688).

51 The southern air exclusion zone, below the 32nd parallel, was imposed on August 27, 1992, and extended northwards up to the 33rd parallel in 1996. Both the northern and southern zones were imposed by allied forces acting under U.N. Security Council Resolution 688.

52 According to testimony obtained by Human Rights Watch from the victims of forced expulsions, other state agencies have also been involved in implementing this policy, albeit to a lesser degree. These agencies include Military Intelligence (*al-Istikhbarat al-'Askariyya*). This appears to be largely in cases involving victims of expulsion who have relatives serving in the fighting forces (*Pesh Merga*) of Kurdish opposition groups.

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

54 Ibid.

55 Ibid, p. 40-41.

56 Human Rights Watch interview with Nawal Nouri, Sulaimaniya province, September 20, 2002; Human Rights Watch interview with 'Abdullah Ramadan Ma'ruf, Sulaimaniya province, September 20, 2002.

57 Human Rights Watch interview with Nermine Zein al-'Abidin Saleh, Arbil province, September 17, 2002.

58 Human Rights Watch interview with As'ad Karim Salah, Arbil province, September 15, 2002.

59 Human Rights Watch interview with Muhammad Karim, Arbil province, September 13, 2002.

60 Human Rights Watch interview with Salim Ismail, Sulaimaniya province, September 9, 2002. The witness requested anonymity, and Salim Ismail is a pseudonym.

61 The Popular Army is a paramilitary force that was created in the early 1970s.

62 Human Rights Watch interview with Hamid Zein al-'Abidin Saleh, Arbil province, September 17, 2002.

63 Human Rights Watch interview with Salah 'Uthman Hamad, Arbil province, September 16, 2002.

64 Note verbale dated April 19, 2002, from the Permanent Mission of Iraq to the United Nations Office at Geneva regarding the decree providing for a change of ethnicity.

65 Ibid.

66 Note verbale dated April 19, 2002, from the Permanent Mission of Iraq to the United Nations Office at Geneva regarding choices of names for newborn infants.

67 Ibid.

68 Human Rights Watch interview with Nahro Fattah, Arbil province, September 13, 2002.

69 Human Rights Watch interview with Hamid Fatah Qader, Sulaimaniya province, September 15, 2002.

70 Human Rights Watch interview with Nawal Nameq, Sulaimaniya province, September 9, 2002.

71 Human Rights Watch interview with Maliha 'Ali Sadeq, Sulaimaniya province, September 9, 2002.

72 Human Rights Watch interview with Yassin Saber 'Abdullah, Arbil province, September 13, 2002.

73 Human Rights Watch interview with Mu'tasam 'Abd al-Rahman Taha, Arbil province, September 13, 2002.

74 Human Rights Watch interview with 'Adnan Rahman Taha, Arbil province, September 13, 2002; Human Rights Watch interview with 'Abd al-Rahman Muhammad Taha, Arbil province, September 13, 2002.

75 Human Rights Watch interview with Tawfik Rahman, Arbil province, September 15, 2002.

76 Human Rights Watch interview with Halima Sa'dun Majid al-Wandawi, Sulaimaniya province, September 20, 2002.

77 Over time recruitment into the Popular Army became increasingly obligatory. A penal code was promulgated for its members, which provided the death penalty for desertion.

78 Human Rights Watch interview with Nawal Nouri and her son Shalaw, Sulaimaniya province, September 20, 2002.

79 Human Rights Watch interview with Muhammad Muhammad Khaled, Sulaimaniya province, September 9, 2002.

80 Ibid.

81 Human Rights Watch interview with Madiha Hamid, Sulaimaniya province, September 9, 2002.

82 Ibid.

83 Human Rights Watch interview with Nihayat Muhammad Gharib, Arbil province, September 16, 2002.

84 Human Rights Watch interview with Barzan Karim Kakel, Arbil province, September 15, 2002.

85 *Pesh Merga*-in Kurdish "those who face death"-is the term Kurds use to refer to those who have taken up arms against the central government, namely the militias of the various Kurdish parties.

86 Human Rights Watch interview with Jalal Sharif Karim, Sulaimaniya province, September 9, 2002.

87 Human Rights Watch interview with Haja Mahmoud Rashid, Arbil province, September 16, 2002.

88 Human Rights Watch interview with Amin Najmuddin Muhammad, Arbil province, September 14,

2002.89 Human Rights Watch interview with Ahmad Hamid, Sulaimaniya province, September 11, 2002.

90 Human Rights Watch interview with 'Ali Karim Muhammad Rashid, Sulaimaniya province, September 9, 2002.

91 Note Verbale dated April 17, 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva on the issue of exploitation of agricultural land in northern Iraq.

92 Human Rights Watch interview with Hussain Saleh Amin, Arbil Province, September 13, 2002.

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

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

*Law of the International Criminal Tribunal for the Former Yugoslavia* (New York: Transnational Publishers, 1996), p. 627-28 (arguing that the crime of "deportation" under the Nuremberg Charter included "all unjustified forceful transfers [including] internal displacement").

95 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 characterised as deportation and therefore crimes against humanity"); *Crimes Against Humanity Charges*, Serious Crimes Unit, February 25, 2003 (announcing the indictment, on February 24, 2003, by the Serious

Crimes Unit of the U.N.M.S.E.T. (established by Security Council Resolution 1272, 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").

96 In 1998, 120 countries voted in favor of the Statute of the ICC at the United Nations 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.

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

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

99 ICC Statute, art. 7(1).

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

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

102 Rodney Dixon in O. Triffterer, *Commentary on the Rome Statute of the International Criminal Court*, p. 126.

103 Ibid.

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

105 Ibid.106 Ibid.

107 International Covenant on Civil and Political Rights, art. 12.

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

109 United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Freedom of Movement and Population Transfer," E/CN.4/SUB.2/RES/1997/29. See also United Nations, Economic and Social Council, Commission on Human Rights, "Report of the Representative of the Secretary General, Dr. Francis Deng, Addendum, Compilation and Analysis of Legal Norms, Part II: Legal Aspects Relating to the Protection Against Arbitrary Displacement," E/CN.4/1998/53/Add.1, Section II, A, paragraph 4.

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

[111](#) Ibid., pp. 608-609.

[112](#) Ibid., p. 609.

[113](#) See Security Council resolutions 771 (1992), 780 (1992), 808 (1993), 820 (1993), and 941 (1994), and U.N. General Assembly resolutions 46/242 and 47/80.

[114](#) 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.

[115](#) 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.")

[116](#) The right to return to one's former place of residence is related to the right to return to one's homecountry. 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." [117](#) ICCPR, Art. 12.

[118](#) 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.

[119](#) With regard to Bosnia, see U.N. Security Council resolutions 947 (1994) and 859 (1993). See also Report of the Committee on the Elimination of Racial Discrimination, U.N. Doc. A/50/18 (1995) (requiring that "persons be given opportunity to safely return to the places they inhabited before the beginning of the conflict."). 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), 361 (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).

[120](#) 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. Since Annex Four is now the Bosnian Constitution, the right in this context is recognized in both international and domestic law.

[121](#) 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."

[122](#) See Rome Statute, art. 75, para. 1.

[123](#) See *Loizidou v. Turkey*, 81 Eur. Ct. H.R. 1807, 1817 (1998).

124 For example, in 1998, the Sub-Commission on the Promotion and 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, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems." See Sub-Commission on the Promotion and Protection of Human Rights, Resolution 1998/26, August 26, 1998.

125 For example, the Dayton Agreement set up the Commission for Real Property Claims (CRPC) and the Office of the High Representative Ombudsperson to resolve property disputes. See *Dayton Agreement*, Annex 7 (1995).

126 See, for example, Human Rights Watch, "Abuses Against Serbs and Roma in the New Kosovo," *A Human Rights Watch 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 in 1991. See Human Rights Watch, *Endless Torment*.

127 See, for example, Human Rights Watch, "Unfinished Business: Return of Displaced Persons and other Human Rights Issues in Bijeljina," *A Human Rights Watch Report*, vol. 12, no. 7(D), May 2000; Human Rights Watch, "Second Class Citizens: The Serbs of Croatia," *A Human Rights Watch Report*, vol. 11, no. 3(D), March 1999.

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