



Reversing Ethnic Cleansing in Northern Iraq Human Rights Watch

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

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

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

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

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

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

The impact of three decades of forced displacement and Arabization has been immense. U.N.-Habitat counted a total of 805,505 displaced persons living in the Kurdish governorates of Arbil, Duhok, and Sulaimaniyya in 2001. Arabization, as a policy of forced transfer of populations, constituted a crime against humanity, and the victims of that policy have a right to return to their homes or be compensated. However, the rights of the victims of Arabization must be implemented in a manner that does not cause additional human rights abuses against the ethnic Arab populations who settled in the north. Fair and impartial procedures are needed to determine the status of claims and the rights of individuals. Special efforts may be necessary in order to guarantee that returning women, including but not limited to heads of households, are able to exercise their property and inheritance rights. It will also be important to ensure that property restitution rights not be restricted to owners of housing or other property but also address the rights of tenants, cooperative residents, and other tenure groups.

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

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

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

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

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

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

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

Over time, with no tangible steps having been taken to resolve property disputes, and with mounting tensions and deteriorating security conditions in Kirkuk and its environs, attitudes on all sides have hardened considerably. More than one year on, it has become doubly difficult to find a just and peaceful resolution to the many competing claims. Both coalition and Kurdish officials alike must be held responsible for the lack of both pre-war and immediate post-war planning. As one CPA official told Human Rights Watch, "We missed an opportunity to put something in place that would inspire confidence."

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

Kurds and others in northern Iraq who are attempting to return to their homes.

To the Iraqi Interim Government

- Ensure that the Iraq Property Claims Commission (IPCC) takes up the adjudication of property claims at the earliest possible time, in a manner that is non-discriminatory, fair, and efficient, and in accordance with international due process standards.
- Ensure that all necessary resources are in place to deal promptly with the expected large number of claims.
- Ensure that law enforcement resources are sufficient to enforce property restitution judgments in a manner consistent with international human rights standards.
- Ensure that property records are freely accessible to displaced persons.
- Conduct a campaign to disseminate as widely and as effectively as possible, in Iraq and in countries with sizeable Iraqi refugee populations, all necessary information about property restitution rights and procedures for submitting a property claim.
- Ensure that there is a durable and equitable resettlement solution for Arab families displaced or to be displaced as part of the property claims resolution process, a solution that does not render them homeless and recognizes their right to choose their place of residence without coercion.
- Ensure that property claims resolution mechanisms and resettlement programs fully address the rights of returnee women to full equality with regard to housing, property, and land restitution, in particular in terms of access, control, ownership, and inheritance rights.
- Ensure that the housing restitution rights of tenants and other tenure groups as well as owners are addressed.
- Ensure access to legal counsel for all persons affected by the property claims resolution mechanisms.
- Ensure that property restitution rights extend to heirs of original owners, and clarify that claims are not rendered void due to the passage of time.
- Ensure that compensation provided in resolving property claims is reasonable in relation to the damage suffered by the victim of displacement and/or illegal property confiscation.
- Review and where necessary amend existing legislation to ensure compliance with international standards regarding the rights of refugee and displaced persons to return to their homes and/or receive compensation for illegal confiscation or destruction of their property.
- Incorporate the principles of the Iraqi Property Claims Commission Statute into domestic legislation.

To the principal Kurdish, Turkoman, and Assyrian political parties:

- Urge communities and constituencies to exercise restraint and refrain from exercising force or threats of force to repossess claimed property.
- Discourage further returns of internally displaced persons (IDPs) to former places of residence until property claims are processed.
- Coordinate provision of humanitarian assistance to IDPs who have returned to places of origin but are living in dire or makeshift conditions.
- Ensure that there are no further forced expulsions of Arabs who benefited from the former government's Arabization campaign, in particular by the *Peshmerga* or other party militias.

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

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

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