

## **Recommendations for Resolving the Remaining Land and Property Issues in the Province of Kirkuk**

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## **I. INTRODUCTION**

### **I.1. Background: Multiple Land and Property Issues that Remain Unresolved Today**

More than five years after the fall of the regime, the Kirkuk Province continues to be faced with multiple, sometimes overlapping land and property issues that find their origin in different periods of the Province's history. A large part of the current land and property issues are the consequence of the policies of the former regime, and especially its deliberate attempts to alter the communitarian make-up of the Province. Other issues find their origin in events that occurred after 2003 such as the influx and return of a large number of refugees and internally displaced persons and the violations of land and property rights that accompanied it. In some instances, the measures taken after 2003 to deal with the land and property issues caused by the former regime have themselves become cause for tensions, resentment and further problems.

Today, the Kirkuk province has arrived at a point that the urgent resolution of the pending land and property issues is one of the absolute conditions for the normalization of relations between the different communities. If there is one issue that all communities appear to agree upon, it is that the unresolved land and property issues are harming the Province and its population. This is a matter of economic development and recovery of Kirkuk city and the surrounding area –unlikely to happen if a large number of land and property disputes remain unresolved– as well as a matter of social peace and stability. The continued inability of the Iraqi State to resolve those problems also undermines the broader trust in the State and the current political system's ability to address the needs of the population and instate the rule of law.

Taken together, these elements plead in favor of an overhaul of the manner in which land and property issues are currently approached in the Kirkuk Province. Any new approach would need to contain two essential elements. On the one hand, it should allow for a drastic acceleration of the implementation of existing policies and remedies. The concern that "justice delayed is justice denied" is certainly warranted when it comes to the current experience of the Kirkuk Province as regards existing compensation and restitution schemes and delays have affected all communities. On the other hand, such new approach should ensure that all victims of land and property rights violations have access to a remedy. This is required by both Iraqi and international law. Moreover, experience elsewhere has shown that, unless all communities feel that their grievances have been taken into account, a durable and stable peace usually remains elusive.

### **I.2. Purpose of this Report: Support the Article 23 Committee**

The purpose of this Report is to assist the Article 23 Committee with its task to "*identify the trespasses on the public and private properties in Kirkuk before and after April 9, 2003*" (Article 23 Elections Law of the Provincial, Districts and Sub-Districts Councils) and find ways to address the different land and property rights issues in the Kirkuk Province that remain unresolved today. The Report will formulate a number of concrete ideas and recommendations as to how these issues could be addressed and existing processes could be improved. The Report is not, however, intended to limit or encroach upon Iraqi sovereignty. Iraqi decision makers are the sole actors that can decide how land and property issues in the Kirkuk Province will be addressed and to what extent the ideas and recommendations formulated in this Report will be adopted, if at all.

### **I.3. Overview of the Different Land and Property Issues Facing the Kirkuk Province**

It is beyond the scope of this Report to set out in great historical detail how the current land and property issues in Kirkuk Province have come about. This would require a much longer document. Moreover, while this history was taken into account when formulating the ideas and the recommendations contained in this Report, it was felt that it was most useful for the Report to focus on how the outstanding issues could be resolved. Instead of an extensive history the table below provides a summary overview of the different types of land and property issues facing the Kirkuk Province today. It sets out, for each particular issue, a short description; the number of cases or properties involved (where known); the institution(s) responsible for addressing the issue; the available remedies; and the section(s) of the Report where the issue is addressed.

TYPE OF LAND AND PROPERTY ISSUE	CLAIMLOAD SIZE	INSTITUTION	REMEDIES	RECOMMENDATIONS
<b>Pre-9 April 2003 Land and Property Issues</b>				
Claims related to the <u>expropriation and seizure of land and property by the former regime</u> for political, ethnic or religious reasons that occurred within the period from 17 July 1968 to 9 April 2003	41,874 claims submitted with the CRRPD in its five offices in the Kirkuk Province (CRRPD figures, April 2008)	CRRPD	Previous owner: restitution or compensation  Current occupant: compensation	Recommendations 4 and 7
<u>Destruction of property</u> by the former regime e.g. in the frame of the Anfal Campaign	- total number of destroyed properties unknown; - currently 9,750 compensation claims from families whose homes were destroyed in the Anfal campaign are pending with the CRRPD Dibbis Office (claims are outside the CRRPD jurisdiction)	No program is in place to provide compensation to families whose homes were destroyed by the former regime (in Kirkuk or elsewhere)	No remedies <sup>1</sup>	Recommendation 10
<u>Termination of agricultural contracts</u> by the former regime on political, ethnic or religious grounds and their allocation to "newcomers".	- number of contracts cancelled by the former regime: unknown  - number of contracts awarded by the former regimes that have so far been cancelled by the Article 140 Committee: approx. <b>6200</b>	Article 140 Committee and Civil Courts for appeals	Restoration of the contract for the person who lost it under the former regime  Compensation for the current farmer (for value-added structures only)	Recommendation 4
<b>Post-9 April 2003 Land and Property Issues</b>				
<u>Violations of private land and property rights</u> - this includes a variety of land and property rights violations that took place after 2003.	The exact figures are unknown as no systematic mapping or data collection exercise as regards this type of violations	Civil courts CRRPD <sup>2</sup>	Ordinary Iraqi law remedies	Recommendations 8 and 12
<u>Occupation or trespassing on public buildings and public land</u> by political parties and private citizens	An estimated number of  No mapping has to been done so as to establish who is occupying what public building or land	Resolution 440	Grant and waiving of legal consequences for occupants under certain conditions	Recommendations 9 and 12

Even though it is mostly not mentioned by the different communities in Kirkuk, the resolution of the issues listed in this table is further complicated by a general housing shortage in Kirkuk and difficulties for the most vulnerable inhabitants of the Kirkuk Province to have access to housing of an acceptable standard. Hard figures about the general housing shortage are currently unavailable.

#### **I.4 General Considerations Regarding the Resolution of the Land and Property File in the Kirkuk Province**

This Report has been drafted based upon the following generally considerations as regards addressing land and property issues in the Kirkuk Province:

- the need to ensure that the resolution of land and property issues occurs through transparent legal and

<sup>1</sup> Various sources indicated that the KRG has provided financial support for the reconstruction of some of the villages destroyed during the Anfal Campaign. Anecdotal evidence suggests, however, that most of the funds were geared towards the reconstruction of infrastructure rather than private homes.

<sup>2</sup> Example: Person X obtained a property that was taken from the original owner by the former regime as part of the Arabisation process. After the fall of the regime, Person X is forced out of the house by the former owner who returned to Kirkuk. Person X flees. Under the CRRPD Statute, however, Person X would, under certain circumstances have obtained compensation in case the property would have been restituted to the original owner.

administrative processes in full accordance with the law and with respect for the principles of good governance;

- the requirement of respect for the human rights of the individuals and families directly involved and affected by the land and property issues that form the subject of this Report;
- the requirement to, as much as possible, take the needs of all individuals affected by land and property issues into account;
- the need to avoid that the today's policies would create a whole new set of problems or, worse, themselves become the cause of social unrest, conflict or violence; and
- the need to design solutions and proposals that are adapted to the Iraqi context and realities, and start from already existing laws, processes and institutions.

### **1.5. Political Considerations Regarding the Land and Property File in the Kirkuk Province**

While this Report contains a number of concrete, technical suggestions on how to tackle the land and property file in the Kirkuk Province, its eventual resolution will depend upon the sustained political will to resolve the different issues in a fair, transparent and non-discriminatory fashion. Concretely, the following political commitments are required:

- to find solutions that are to the benefit of the peace, stability and economic development of the Kirkuk Province as a whole and that will assist all individuals currently living in the Province;
- to commit significant financial and human resources to the resolution of the Kirkuk property file: these resources need to match the scope and significance of the file; and
- to refrain from acting outside the rule of law, politicizing individual cases or issues and undermining the legitimacy of the outcomes produced by institutions that act within the boundaries of their mandate and Iraqi law.

## **II. RECOMMENDATIONS**

The recommendations contained in this Report are the outcome of consultations with a broad range of stakeholders in the Kirkuk Province. They draw from experiences with land and property issues in other transitional countries, and take on board the lessons learned from the ongoing Iraqi experience with resolving land and property issues especially through the Commission for the Resolution of Real Property Disputes (CRRPD). In as far as possible, they build upon existing policies and structures.

The recommendations are intended to serve as a starting point for working on solutions to the Kirkuk property file as a whole. They are not intended to already provide the full answer: if Iraqi decision makers would decide to adopt any or all of the recommendations contained in this Report, the following steps would still be necessary:

- create a broad political consensus around the solutions especially in the Kirkuk Province itself, as only broadly accepted solutions will have a chance to work in the current, highly politicized environment in the province. Adopting solutions that cannot count on broad political support risk to further exacerbate communitarian tensions, rather than reduce them; and
- further work out the details of the chosen solutions, including an inclusive implementation plan, appropriate funding requirements and an indicative, realistic timeline for implementation. If requested, UNAMI could provide support to the appropriate Iraqi Government actors to further work out some of the recommendations contained in this Report.

### **II.1. General Recommendations**

## RECOMMENDATION 1

### Ensure that implementation considerations form an integral part of policy making

#### A. Background Considerations

A number of measures and initiatives that have been taken so far to address the land and property file have failed to durably resolve the issues they were intended to address. Partial implementation and extremely slow processes have led to further frustration amongst the population and, in some instances, additional social tensions. The adoption of measures that cannot be implemented, for example because of a lack of funding or human resources, undermine faith in the Iraqi State Institutions' capacity to address the problems citizens face in this, and other, areas. This may lead people to increasingly look to other non-state actors to address their land and property issues, thereby further undermining the Iraqi State's influence and capacity to act.

While expectations are sometimes unrealistic as people tend to underestimate the complexities of resolving long-standing land and property issues, some of the current frustrations could have been avoided by a more careful consideration of implementation and resources issue before measures are announced. Examples include:

- The Article 140 Committee had, by the end of May 2009, cancelled approximately 5,800 agricultural contracts. In principle, farmers whose agricultural contracts are cancelled have a right to compensation for the crops, installations and legal constructions they built on the land. However, while contracts have been cancelled, not a single farmer has as yet received compensation due to the lack of functioning administrative and financial procedures to pay out compensation.
- Council of Minister's Resolution 440 of 2008 intended to address the occupation of public buildings and land in Iraq foresees that provided occupiers leave within sixty days they can under certain circumstances receive a grant to assist them with finding alternative housing. Discussions in Kirkuk, however, revealed that no funds were set aside in the 2009 budget for such compensation payments and that it was unclear what administrative route would need to be followed, rendering the Resolution effectively impossible to implement in the coming period, despite the fact that it has already been announced.
- The Iraq Property Claims Commission (IPCC) was established in June, 2004, while the Commission for the Resolution of Real Property Disputes (CRRPD) which took over the IPCC's mandate and claims load, has been operating since 2006. In this five year period, however, the IPCC/CRRPD has only been able to resolve 8 percent of its total caseload in the Kirkuk Province.

#### B. Recommendation

In light of the above, this Report strongly recommends that decision makers ensure that implementation considerations form an integral part of the policy making process in the future and that no measures are taken or announced unless the funding and implementation aspects have been sorted out.

#### C. Implementing the Recommendation

Implementing this recommendation would require at least the following:

- prior consultations with the relevant provincial government and state institutions to assess whether the envisaged policy can be implemented, what the implementation challenges are likely to occur and what additional resources the relevant institutions require for implementing a new policy;
- prior cost assessment of the policy in question and corresponding budgeting in the relevant parts of the State or Provincial budgets; and
- prior assessment of the political situation in the different Provinces to determine whether or not the envisaged policy is (a) likely to create significant political or social tensions; (b) possible to implement given the political configurations on the ground; and (c) likely to create a new set of problems and what

can be done to prevent those from occurring.

## RECOMMENDATION 2

### **Establish an Inter-Institutional Task-Force for the Resolution of Land and Property File in the Kirkuk Province**

#### A. Background Considerations

Currently, there is not one single institution or body in charge of the “land and property file” (i.e. all land and property issues listed in the table above) in the Kirkuk Province. Land and property issues are managed by a number of institutions such as the CRRPD, the Article 140 Committee, the Property Registration Department and the Ministry of Agriculture. Also the civil courts and the Execution Office play a role in respectively resolving certain land and property disputes and enforcing decisions taken by the CRRPD and the civil courts. Moreover, those institutions are all implementing institutions each with their own limited mandate, rules and procedures. While there is ad-hoc collaboration in certain areas or in regards of certain cases, there is no shared responsibility as to the land and property file as a whole. Each institution is foremost concerned with what it needs to achieve itself and much less with what its impact is on the overall situation.

In reality, however, land and property issues are not neatly divided into the jurisdictional areas of the different institutions involved. There is factual overlap, such as for example the frequent instance where a piece of farm land is simultaneously the object of a restitution claim before the CRRPD and a cancellation decision by the Article 140 Committee. Most caseloads also involve different institutions for their resolutions (e.g. the CRRPD needs the collaboration of the Property Registration Department and the Execution Office). In addition, the different institutions also face similar challenges, which would make the availability of an institutionalized forum to discuss those challenges and systematically exchange information potentially beneficial to all. But maybe most importantly, the different land and property issues in the Kirkuk Province form “one file” in terms of the socio-political impact of the (non-)resolution of the different claims loads. Different communities in the Kirkuk Province are affected by different sets of land and property issues, and how and what issues do and do not get resolved have an impact on the overall relationship between those communities.

#### A.2. Recommendation

In light of the strong inter-linkages between the different land and property issues in the Kirkuk Province, the need for inter-institutional coordination, planning and monitoring, this Report recommends the urgent establishment by the Governor of an *Inter-Institutional Task-Force for the Resolution of Land and Property Issues in Kirkuk Province*. Such Task-Force could, in addition to the Governor, include the DGs or heads of the different state institutions and Ministries involved in addressing land and property issues in the Kirkuk Province, complemented by the DG(s) of the Ministry/ies and authorities involved with public housing, and the Head of the Governorate Council. The Governor’s Office could dedicate a few staff members to serve as a dedicated secretariat for the Committee.

The mandate of this Task-Force could include the following:

- overall coordination of the different efforts to resolve land and property issues in the Kirkuk Province including the development of a Kirkuk Land and Property Action Plan including the coordination of data collection;
- overall, systematic monitoring of the implementation of the different efforts to resolve land and property and ensures that when problems or issues arise, the responsible institutions take and implement the required measures;
- resolve coordination issues or problems that may arise between the different institutions involved with resolving land and property issues in the Kirkuk Province
- organize a regular dialogue and outreach with the different stakeholders in land and property issues to

discuss progress and problems and, where necessary, ease tensions e.g. through mediation. This could include pro-active information campaigns to affected communities e.g. about the progress made;

- identify gaps and land and property issues for which not appropriate solutions exists and formulate and adopt proposals to address them (and, where necessary, liaise with the Kirkuk or Baghdad Central Government e.g. for budget requirements);

The Task-Force could establish functional Sub-Committees focusing on particular areas, issues or problem as the need would arise. Ideally, the Task-Force should also have a small dedicated secretariat that can assist the Task-Force with the implementation of its mandate. In case it is requested to do so, UNAMI could provide and organize international technical assistance to the Task-Force and its secretariat. The Task-Force would also have a role to overview the work of the Kirkuk Property Recovery Authority if the latter would indeed be established (*see further Recommendation 12*).

### **RECOMMENDATION 3**

#### **Prioritize the resolution of a limited number of land and property caseloads**

##### **A. Background Considerations**

Resolving all land and property issues facing Kirkuk will inevitably take considerable time, even under the best of circumstances. Moreover, even if Iraqi decision makers would decide to proceed with making institutional or structural changes to increase the speed with which land and property claims are currently being resolved, the implementation of such changes would itself take considerable time. This is especially true for those changes that would require legislative changes, additional monetary resources or real institutional reforms or overhauls.

There are, however a number of land and property issues that especially require urgent attention, either because they create unacceptable humanitarian situations or because they create a high level of social tension that can quickly descend into violence. In addition, there are a number of land and property issues that are so simple to resolve that they should neither be held up by the more difficult cases nor burden the institutions that should focus their attention on the more difficult cases. Moreover, the measures required to resolve those cases rapidly are themselves relatively easy and straightforward and fit within already decided policies.

Prioritizing those two caseloads – the urgent and the easy ones - would provide short-term relief to those individuals and families directly involved and ease the political and social tensions around these particular caseloads. It would also have a wider positive impact, including the creation of a positive momentum around the resolution of land and property issues in Kirkuk generally. Moreover, it would also address one of the major complaints heard from all communities in Kirkuk, i.e. that resolution of land and property issue is going far too slowly and that different authorities are not doing what is expected from them. Finally, the fair and transparent resolution of visible and important caseloads would contribute to increasing confidence of the citizens in the capacity of the state to deliver.

##### **B. Recommendation**

In light of the above this Report recommends that Iraqi decision makers (e.g. through the Inter-Institutional Task-Force mentioned here above) identify a limited, urgent and/or easy caseload of land and property claims for quick resolution (between 12-18 months). This Report has identified a number of land and property caseloads that could be subject to such fast resolution and that Iraqi decision makers could consider in this respect. They are addressed here-below under heading II.

The work on resolving these land and property caseloads could start immediately, and does not require any initial steps. In the meantime, ongoing processes such as the CRRPD could continue doing their work on the remaining caseloads. UNAMI also recommends that the work towards improving, expanding and increasing the efficiency and expediency of those ongoing processes as well as the planning for resolving remaining caseloads for which no special mechanisms are available is started also immediately, so that this work is finalized by the time the quick resolution claim loads are resolved. The recommendations in this respect are listed under heading III.

## II.2. Recommendations – Priority Caseloads

### RECOMMENDATION 4

#### **Prioritize the land and property issues surrounding agricultural land in the Kirkuk Province**

The issues surrounding agricultural land are urgent to resolve because of their potential to create further social tension and unrest. They are also at least in part relatively easy to resolve provided a number of practical steps are taken to change the way this caseload is currently being addressed.

#### A. What are the Main Outstanding Issues?

The unresolved land and property issues related to agricultural land in the Kirkuk Province comprise essentially two caseloads:

- unresolved ownership issues related to agricultural land (essentially the caseload currently pending before the CRRPD); and
- unresolved cancellation of the agricultural contracts issues (essentially the caseload before the Department of Agriculture).

There exists an overlap between the two caseloads as a significant proportion of the land that is affected by the cancellation of the agricultural contracts is also subject to a restitution claim before the CRRPD.

#### A.1. *Unresolved Ownership Issues*

##### A.1.a Current Policy

The policies of the former regime to change the demographic situation in the Kirkuk province, and its policies of political repression more broadly, caused many landowners to lose their rights over their land, in most cases with little or no compensation. This affected mostly, but not solely, Kurdish and Turkmen landowners. In 2006, the Iraqi Parliament decided to establish the Commission for the Resolution of Real Property Disputes (CRRPD) as the successor organization to the Iraq Property Claim Commission itself established by the Coalition Provisional Authority Regulation 12 of 27 June 2004.

With the establishment of the CRRPD, the Iraqi Parliament in essence decided to reverse the expropriation, seizure and confiscation of properties carried out by the former regime “for political reasons, ethnic reasons or on the basis of religion or religious doctrine”<sup>3</sup> and return the title in respect of the concerned properties to the former owners. The Iraqi Parliament thereby explicitly excluded returning properties that were seized in accordance with the law of agricultural reform or for public use, provided they were subsequently used for public interest.<sup>4</sup>

##### A.1.b Current Status of the CRRPD Claims

In application of this decision, the CRRPD had, on 19 March 2009, received 41,874 claims through its five offices in the Kirkuk Province (Kirkuk 1, Kirkuk 2, Dibbis, Dakuk, and Taza). The below table indicates, broken down by office, the status of those claims.

**Table: Status of CRRPD Property Claims in the Kirkuk Province<sup>5</sup>**

Office	Received	First Instance Decision	Final Decision	Pending Cassation Commission	No Decision	Remaining Unresolved (No Decision + only First Decision)
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<sup>3</sup> Article 4, I, CRRPD Statute. The mandate of the CRRPD is not limited to agriculture land but also applies to urban land, homes and businesses.

<sup>4</sup> Article 4, II, CRRPD Statute

<sup>5</sup> Figures from the CRRPD Weekly Report of 19 March 2009

<b>Kirkuk 1</b>	10494	3330	1014	2316	7164	9480
<b>Kirkuk 2</b>	8404	311	7	304	8093	8397
<b>Dakuk</b>	2098	1297	607	690	801	1491
<b>Dibis</b>	14631	2619	270	2349	12012	14361
<b>Taza</b>	6247	3052	1338	1714	3195	4909
<b>TOTAL</b>	41874		3236			38,638

As shown in the table, the total number of resolved claims (i.e. claims that have a final decision) in the Kirkuk Province amounts to only 3236 claims out of 41,874 claims filed. The total resolution rate represents less than 8% and this after close to five years existence of the CRRPD and the IPCC.

The total number of claims that remain unresolved, i.e. 38,638 claims, includes 9,750 claims filed at the Dibbis Office that relate to the destruction of property during the Anfal Campaign, an issue that falls outside the current mandate of the CRRPD.<sup>6</sup> This means that, for the purpose of assessing how much time it will take the CRRPD to complete the remaining caseload in the Kirkuk Province, these claims can be deducted from the total remaining load (even though resources will be required to take formal negative decisions in case the mandate of the CRRPD is not extended to cover those cases). This would reduce the remaining caseload to 28,888 claims.

If the CRRPD would continue to resolve its Kirkuk Province claims at the rate it resolved claims in 2008, i.e. 630 final decisions on claims from the five CRRPD offices in the Kirkuk Province for the year, and no further claims are filed with the CRRPD in the Kirkuk Province (there is currently no deadline for filing claims), it would take the CRRPD an additional **45 years** to resolve the remaining claims from the Kirkuk Province. This would mean completion of its work in the Province in **2054**.

#### A.1.c Why Has Progress Been Slow?

It is common to claim that the resolution rate is so slow because of Cassation Commission in Baghdad, which takes a long time to decide the appeals it receives. This is certainly an important part of the problem: out of the 10,609 decisions taken at the first instance, 7,373 claims are awaiting a verdict from the Cassation Commission. It is clear, in this respect, that the capacity of the Cassation Commission has to be increased, and a number of proposals have been made in this respect (*see further Recommendation ...*).

However, a capacity increase in the Cassation Commission requires a legislative change and, subsequently, the appointment of the required number of additional judges by the High Judicial Council. This means that, while necessary, the enlargement of the Cassation Commission is unlikely to produce short-term relief. Moreover, the fact that final decisions are delayed is not only due to the slow progress by the Cassation Commission. It is also due to the very high rate of appeal which amounts to almost 80% in the Kirkuk Province (compared to 10-30% appeals rate in similar processes abroad).

The reason for this very high appeals rate has to do with the nature of the claims in the Kirkuk Province, on the one hand, and Government policy, on the other hand. The large majority of the claims filed by former owners in the Kirkuk Province are claims against the Iraqi State. These are claims whereby the property that was expropriated, seized or otherwise taken by the former regime is today still registered in the name of a Ministry (often the Ministry of Finance or the Ministry of Agriculture) or another government entity. While exact figures are not available, it seems likely that well over half of all claims in the Kirkuk Province are of this type, with the figure for claims relating to agriculture land probably being higher. In all cases where the CRRPD Judicial Committee decides to return the property to the previous owner, the Ministries file an appeal with the Cassation Commission.

The Ministries are doing this on the basis of a rule that requires them to file an appeal in all cases whereby the Iraqi State stands to lose, a rule that applies in both ordinary court cases and cases before the CRRPD. This rule is apparently based on public interest considerations. In practice this leads to the contradictory situation whereby the Iraqi State, on the one hand, has taken the decision to return property taken by the former regime (i.e. through the adoption of the CRRPD Statute) and, on the other hand, each time a CRRPD decision actually

<sup>6</sup> Figures provided by the Head of the CRRPD Office in Dibbis. Apparently, those who filed those claims know that the CRRPD can resolve them, but wanted to have it on record that their properties were destroyed by the former regime and that for them no remedy is available (*see further recommendation...*).

returns the property to the claimant, this same State immediately appeals this decision.

Given the estimate that 70% of all claims in the Kirkuk Province are against the Iraqi State, this policy will potentially create up to 30,000 appeals cases for Kirkuk Province alone (i.e. 70% of 41,000 claims filed). It is clear that even with increased capacity of the CRRPD Cassation Commission, such appeals load will take considerable time to resolve.

There are other structural reasons why the claims resolution rate has remained low, and the Report will formulate recommendations for the further streamlining of the CRRPD process (*see further Recommendation 7*). Implementing changes to the CRRPD process, however, will require time; is unlikely to produce a spectacular increase in resolution rate; and will also require changes within other institutions involved in the CRRPD process. In short, they will be unable to bring the short term relieve that the Kirkuk Province require.

## A.2. *Unresolved cancellation of agricultural contracts issues*

### A.2.a Current Policy

Article 140 Committee Decision No. 4 of 4 February 2007 mandated the cancellation of agricultural contracts “*concluded within the policy of demographic change (Arabisation) in the disputed areas which are included within Article 140 and especially Kirkuk Province and return the situation back to what it was before the conclusion of these contracts*”. The Decision provided that it should be implemented by 15 March, 2007. Decision No. 4 was subsequently ratified by the Prime Minister's Cabinet on 29 March, 2007.

On 3 December, 2007, the Article 140 Committee decided to take measures to mitigate the effects of the cancelled contracts including (1) trying to find alternative land for the farmer in his province of origin if possible; and (2) the payment of compensation for plants, installations and other constructions legal as per Article 36 of instructions No. 4 to the affected farmers. The Committee also requested that the PM Cabinet would provide sufficient funds required for the compensation.

### A.2.b Current Status of the Work of Article 140 Committee

Subsequent to Decision 4, approximately 5800 agricultural contracts were cancelled in 2008, primarily affecting farmers in the districts of Dakuk and Dibbis and the sub-districts of Laylan, Taza, Ya'atchi, Sagaran, Qara Hanjeer, Schwan and Altun Qupri. The implementation of Decision 4, however has been strongly contested and remained incomplete. Today, the following issues remain outstanding:

- approximately 4,000 families whose contract was cancelled have left the land they worked on but all are still waiting to receive compensation – at the time this Report was written, the Article 140 Committee had received 3200 compensation claims from farmers whose contract had been cancelled, none of which have been resolved.<sup>7</sup>
- approximately 1,600-1700 families are refusing to leave the land they are using or live on. In the meantime they are prohibited from farming.
- a number of farmers are challenging the legality of the decision to cancel their agricultural contracts before the civil courts and there is a wider concern that some cancellation decisions may have been unjustified.

## A.3. *Negative impact of the current situation*

There is an urgent need to resolve the current situation as it has important negative consequences for both the parties directly involved and the wider community in the Kirkuk Province:

- the previous owners are unable to use or benefit from their land until their CRRPD claim is resolved, which may take many more years. Moreover, when they eventually obtain their ownership title back, they may still be faced with farmers occupying their land and unwilling to leave.

<sup>7</sup>

Figures received from the Article 140 Committee Office in Kirkuk.

- the farmers whose contract has been cancelled and who have left the land face difficulties in starting over elsewhere because of a lack of means, while those who have refused to leave are currently prohibited from farming and unable to make a living from the land they are on.
- the Ministry of Agriculture faces many pressures from both disgruntled previous owners and farmers whose contract was cancelled and spends considerable resources in managing a substantive caseload of disputed land before the CRRPD.
- Iraq and especially the Kirkuk Province suffers from the postponement of the necessary investment and upgrading in agriculture until the pending agricultural land issues are resolved.

Finally, there is a real risk that if the issues surrounding the disputed agricultural lands are not rapidly resolved, tensions between communities will further increase, with in some areas a real risk for renewed violent conflict.

#### B. Recommendation

In light of the negative impact of the unresolved land and property issues surrounding agricultural land in the Kirkuk Province and the high importance that all communities attach to the quick resolution of those issues this Report recommends that those issues are prioritized for rapid resolution. In light of the fact that different issues are affecting different communities, UNAMI also recommends that all outstanding agricultural issues are resolved side-by-side through a coordinated and, where possible, integrated approach. Attempts to prioritize one particular type of issue in isolation from the others is likely to be perceived as a sign of favoritism and bias by those communities affected primarily by other issues and as such likely to increase mistrust and tension.

Given the size of the outstanding issues surrounding agricultural land in the Kirkuk Province, it is quite inconceivable that they can be rapidly resolved without, in some instances, the adoption of significant changes to the way those issues are currently addressed. In other instances, it simply requires the immediate implementation of measures that are already in place. While it is up to the Iraqi decision makers to decide how they want to approach implementing this recommendation if they would choose to adopt it, this Report has listed a set of measures here below, that taken together, stand a good chance of allowing the majority of the outstanding issues surrounding agricultural land in Kirkuk to be resolved within a 18-24 month period from their adoption.

#### C. Implementing the Recommendation

The above recommendation could be implemented through taking the following integrated set of measures:

- arrange and implement the direct restitution of agricultural land still in the hands of the Iraqi State today to the previous owners;
- undertake a rapid administrative review of the Article 140 Committee decisions to cancel agricultural contracts, to ensure that no contracts were erroneously cancelled;
- expedite and simplify the compensation for farmers whose agricultural contracts were cancelled by Committee 140;
- facilitate and encourage the conclusion of private land rental contracts between current farmers and previous owners where possible;
- immediately suspend the prohibition to farm for the farmers who are currently waiting to receive compensation or who are challenging the decision to cancel their contract;
- engage with all stakeholders involved and make efforts to build a broad consensus around the integrated approach to the agricultural land issues in Kirkuk.

### C.1. Direct Restitution of Agricultural Land

The direct restitution of agricultural land would entail that the Ministries and other Government Entities that currently hold title over disputed agricultural land in the Kirkuk Province would return this title directly to previous owners outside the CRRPD process. This would only apply for previous owners who lost their title for one of the reasons listed in Article 4 of the CRRPD Statute and who currently have an unresolved claim pending before the CRRPD. Such direct restitution process could occur through a simple administrative process managed by the legal departments of the Ministries and other government entities holding title to such land. Once the process of direct restitution is completed, the previous owner would then withdraw his or her claim from the CRRPD.

While the establishment of a direct restitution process involves a change in approach and procedures, it is in essence merely a different manner of implementing the fundamental policy decision of the Iraqi Parliament that the former regime's confiscation and seizure of property on the basis of political, ethnic or religious reasons should be reversed. The direct return of property to the previous owners would in no way violate the CRRPD Statute as it would essentially be a "bilateral arrangement" between the parties in a claim that would make the claim before the CRRPD devoid of substance and thus ready for withdrawal. It would not disadvantage the Iraqi State as it would involve only land that the State in any case would have to give up once the CRRPD process completed.

The establishment of a direct restitution process would require at least the following steps:

- annulment of the Revolutionary Command Council decisions and the dissolved Northern Affairs Committee Decisions that lay at the basis of the confiscation and seizure of property for political, ethnic or religious reasons in the Kirkuk Province;
- issuing of an instruction by the Iraqi Government to the Ministries and other State Entities holding agricultural land in the Kirkuk Province to take the necessary steps to commence the return of agricultural land to previous owners who lost their land for the reasons listed in Article 4 of the CRRPD Statute.<sup>8</sup>

Such instruction could also include:

- an outline of the administrative process through which this direct restitution should occur including the criteria for eligible cases including an allocation of additional staff resources where and if necessary;
  - a realistic deadline by which all agricultural land concerned by this measure would have to be returned. Depending on the administrative process developed a deadline of 18 to 24 months from implementation would appear to be realistic, taken into account the expected caseload;
  - the clear stipulation that previous owners can only benefit from this process if they agree in advance to withdraw their claim from the CRRPD once their agricultural land has been re-registered in their name; and
- issuing a request to the CRRPD to assist this direct restitution process by providing information about the files of the previous owners choosing to participate in this process to the Ministries confirmed.

To avoid abuse or collusion, the Office of the Inspector-General could be asked to establish a monitoring procedure whereby the Office regularly carries out sample reviews of direct restitution decisions by the different Ministries and to take the necessary action in case any problems do arise.

If requested by the Government of Iraq, UNAMI would be able to provide an international expert on administrative restitution processes to support the Government with designing this direct restitution process.

<sup>8</sup> Art. 4 of the CRRPD Statute provides that the CRRPD has jurisdiction for claims related to the period from 17 July 1968 to 9 April 2003 and that concern: "(I) properties that were confiscated and seized for political, ethnic reasons, or on the basis of religion or religious doctrine or any events resulting from the policies of the previous regime of ethnic, sectarian and nationalist displacement" or "(II) properties that were seized without consideration or expropriated with manifest injustice or in violation of the legal procedures adopted for property expropriation". Notably, Article 4 II excludes cases related to properties seized "according to the law of agricultural reform, the cases of in kind compensation and expropriation for public interest and which were actually used for public interest".

This direct restitution process would have the following positive effects:

- for the previous owners / CRRPD claimants:
  - o a much more rapid restitution of their lands – it is estimated that between forty and sixty percent of the claims currently pending before the CRRPD offices in Kirkuk Province could be resolved through these administrative restitution processes
  - o this administrative process would also benefit claimants whose claims are not eligible for the administrative process (e.g. because their property is currently registered in name of a private party) as the CRRPD resources that have become freed up can be used to resolve their claims
  - o finally, it would also benefit claimants outside the Kirkuk province, as the Cassation Commission would see a significant proportion of its caseload falling away, freeing up more time for the remaining cases<sup>9</sup>
- for the CRRPD:
  - o a direct restitution process between the relevant Ministries and the previous owners would lead to a significant reduction of its caseload both at the first instance and the cassation level and would allow the CRRPD to allocate its resources to the remaining, more complex cases; and
  - o the CRRPD could still claim credit for the resolution of the cases under the direct restitution process as they would be instrumental in providing the relevant Ministries with information on the relevant claims
- for the Iraqi State:
  - o the direct restitution process would allow the Iraqi State to quickly deliver on the commitment it has made to undo the expropriation policies of the former regime and thereby increase the general confidence in its ability to implement its policies;
  - o resolving a large proportion of the claims through this process would reduce the costs and resources currently required from the Iraqi State (less management and representation costs for the cases itself; and a shorter life-time for the CRRPD, which is also funded by the Iraqi State); and
  - o the quicker resolution of one of the main unresolved land issues in the Kirkuk Province would allow for quicker upgrading of the agriculture in the Province (which would benefit the whole of Iraq) and would reduce also the risk of further tensions and conflict in the Province.

## C.2. Resolve the outstanding agricultural contract issues through a four-pronged approach

The decision to cancel the agricultural contracts has raised significant frictions in the areas concerned. While the previous owners of the agricultural land concerned will be greatly helped by the adoption of the direct restitution approach described here-above, it is important to also design a sufficient policy response to the legitimate concerns amongst the farmers. This Report that the agricultural contract file is addressed through a four-pronged approach which consists of:

- the temporary suspension of the prohibition to farm;
- the facilitation of the conclusion of private land rental contracts between willing farmers and owners;
- the acceleration of compensation payments to the farmers for whom private farming contracts are not an option; and
- the rapid activation of the Review Committee to allow for an administrative review of the disputed cases.

<sup>9</sup> In case the direct restitution process would be accepted for the Kirkuk Province, and turn out to be as workable as is estimated, there is no reason why it could not also apply to other governorates with a significant caseload of disputed properties still in State hands. Similarly, it could also be applied to buildings and urban land still in the hands of the Iraqi State today.

a. Temporary suspension of the prohibition to farm

The decision to suspend farming has created hardship amongst the concerned farmers and has further increased tensions around the agricultural contracts issues. It is also a decision that brings benefits to no-one: it helps neither the Iraqi State nor the previous owners who may eventually receive the land back through the CRRPD or, if it would get adopted, the direct restitution process. In fact, in as far as the decision to prohibit farming creates harder attitudes on the side of the farmers who are still on the land, it is likely to complicate and delay the resolution of the agricultural contracts issues, which goes against the interests of the previous owners and the Iraqi State. Finally, forcing farmers off the land before the process to review the Article 140 Committee decisions as well as the compensation part of the cancellation decisions is implemented appears difficult to defend also from a legal perspective, especially given that they have no role in the delay that has occurred as regards the compensation process.

To facilitate the resolution of the agricultural contracts issues in the Kirkuk Province, it would be advisable to temporarily suspend the prohibition to farm for farmers who are currently still present on the land. This temporary suspension could be issued by the Ministry of Agriculture together with the statement that this suspension in no way impacts the validity of the cancellation decision. The suspension can be temporary and last until such time the review process has been completed; the compensation decision on the particular case has been taken; or a private contract between the farmer and the owner of the agricultural land has been taken.

b. Facilitate and encourage the conclusion of private land rental contracts between previous owners and farmers

Currently, the farmers whose agricultural contracts have been cancelled only have the option to apply for compensation for crops, installations and legal constructions. However, to facilitate the rapid resolution of the agricultural contract file, it may be worthwhile to consider complementing this remedy with the possibility to conclude a private land rental agreement with the owner of the land. This solution has already been adopted in a number of cases, but could be further institutionalized and more broadly made available.

This solution could apply to land (1) that has been or will be returned to the previous owner through the CRRPD process or, if it would be adopted, the direct restitution process described under point C.1. above and (2) where the farmer whose agricultural contract has been cancelled by the Article 140 Committee is still present today. It would involve the conclusion of a long-term land rental agreement between the farmer and the previous owner, whereby the former can continue to use and/or live on the land against the payment of a regular rent to the latter. Such agreement could of course only be concluded with the full consent of both parties.

In the current situation in the Kirkuk Province, this solution would require the encouragement and careful accompaniment by the local authorities possibly under the guidance of the Governor and the Ministry of Agriculture. Such encouragement and facilitation could be done through:

- conducting outreach and discussion about this possibility with the previous owners and the farmers affected by the cancellation of agricultural contracts and currently remaining on the land;
- developing a model land rental agreement and target rental prices based on the size and quality of the agricultural land in question and the improvements or structures constructed by the farmer during his stay on the land;
- establishing a small team of mediators to assist individual owners and farmers with the negotiation of their land rental agreements;
- prioritizing the restitution of agricultural land through the process described in C.1. for previous owners whom agree to conclude a private land rental agreement with the farmers currently living on their land; and
- once agreements have been concluded, ensuring follow-up and monitoring so that possible problems can be addressed early on.

The conclusion of private land rental agreements has the potential to reconcile the interests of the previous

owners –to get the title to their land back– with the interest of the farmers who want to continue living and farming on the land where they currently are. It would be a model of cohabitation and compromise between members of the different communities, which may also have a positive impact in community relations beyond those immediately involved. This would, however, require that all parties enter those agreements in good faith and that all efforts are made to ensure that both parties fully understand their respective rights and obligations.

c. Accelerate the payment of compensation to the farmers whose contracts have been cancelled

At the time this Report was written, no farmer had as yet received any compensation for plants, installations or other legal constructions. At the time of writing this Report, approximately 2000 technical assessments had been carried out for 3200 compensation claims received. In as far as the compensation process has been firmly established it would appear to have the following basic features:

- farmers are required to submit a compensation form with the Ministry of Agriculture using the standard form developed for this purpose;
- compensation will be calculated individually for each farmer, based on the actual value of the plants, installations and other legal constructions on the land;
- to determine this value, a technical committee will visit the land of all farmers who claim compensation and carry-out an assessment;
- subsequently a compensation decision will be made, awarding a certain amount of compensation or no compensation at all, as the case may be;
- the decision is then transferred to Baghdad - at the time of writing it was not yet clear whether any procedure had been established in Baghdad for the treatment of these files or whether money had been allocated to pay out such compensation.

It is at least in part because no compensation has yet been paid that a significant number of farmers refuse to leave the land they are currently using or living on. There may also be a legal issue with the fact that, on the one hand, the decision to cancel the contracts would be enforced against the farmers, while, on the other hand, a decision taken by the same entity to compensate the same farmers for their loss, would not be enforced or, at least, enforced only at a much later phase. Basic fairness and legality would appear to require that both components are implemented simultaneously.

In light of this, the Report recommends that the compensation process is accelerated significantly, so as to ensure that all farmers have received their compensation by the end of this year. This would require:

- rapidly establishing a process in Baghdad for confirming the compensation decisions taken by the DG Agriculture in Kirkuk. Rather than reviewing each compensation decision anew in Baghdad, it would be preferable to use a sample review approach, whereby only a small proportion of the compensation decisions are reviewed to see whether there are no problems with the decision;
- the immediate freeing up of funds to pay the compensation – payment of compensation itself should be decentralized and done directly in Kirkuk, so as to avoid problems of access for the farmers; and
- compensation decisions should clearly explain how the amounts have been arrived at, for transparency purposes and also to avoid appeals or rejection of the decisions by the concerned farmers.

Finally, this Report recommends that the deadline for filing a compensation claim with the Ministry of Agriculture is kept open, until a significant number of compensation claims have been decided and paid out. It is only once real compensation payments will have been made that the process will become sufficiently credible in the eyes of all farmers concerned. When a deadline is set at that time, it will be crucial to ensure that all concerned farmers are informed of this deadline.

d. Rapidly activate the Review Committee to allow for an administrative review of the disputed cases

There appear to be sufficient indications that in some cases erroneous agricultural contract cancellation decisions have been taken and that some farmers' contracts may need to be reinstated. While some farmers have appealed against the cancellation decisions before the civil courts, there is some concern that others may not have sufficient means to do so. In light of this, it is important that an administrative review process is made

available to all farmers who wish to contest the cancellation decision. This could be done through the activation of the Review Committee established by the Governor of Kirkuk Province in 2008.<sup>10</sup> This would involve:

- issuing a clear communication to the concerned farmers on the criteria that will be used to review the contested cancellations decisions and set a deadline by which all decisions will be reviewed;
- regularly keep the tribal and other leaders representing the farmers fully informed of the progress made and explain any delays that may occur;
- issuing decisions clearly explaining why a cancellation decision is upheld or why it is annulled, as the case may be.

This Review Committee could also play a role in providing an administrative review of the compensation decisions, as there are likely to be farmers that do not agree with the proposed compensation amount.

Finally, this Report recommends that the Governor evaluates whether the Review Committee needs a small secretariat to support it in its work (e.g. to prepare review decisions for approval by the Review Committee). In case there is such a need, a temporary allocation of staff members from the DG Agriculture to such secretariat is probably the most expedited way to establish such a secretariat.

## **RECOMMENDATION 5**

### **Prioritize the occupation of the Kirkuk Stadium**

#### **A. Current Situation**

The Kirkuk Stadium has been occupied by people living there since 2003. The latest available information (which dates from 2007) indicates that 475 families and 2322 individuals including women and children are living in the Stadium. All live in make-shift accommodation and under deplorable humanitarian conditions that fall well short of the basic requirements for a free and decent life, as guaranteed to all Iraqis by Article 30 of the Iraqi Constitution. The impact of this ongoing occupation is negative, not only for those families living in the Stadium, but also for the communities living in the neighborhood of the Stadium and Kirkuk as a whole. In addition to being a symbol for the problems that continue to affect the city and the failure of the relevant institutions to address those problems, the occupation of the Stadium also prevents the much needed re-development of the Stadium and its use by the population of Kirkuk.

#### **B. Recommendation**

This Report recommends that urgent measures are taken to provide durable solutions to the families currently occupying the Kirkuk Stadium. Doing so would address a deplorable humanitarian situation for the families involved and would provide a powerful symbol that the problems facing Kirkuk are being addressed. Any solution for the Kirkuk Stadium will, however, need to be based on a case-by-case approach, as different families may have different needs.

#### **C. Implementing the Recommendation**

No detailed assessment has as yet taken place of the needs and the wishes of the families currently living in the Kirkuk Stadium. Anecdotal evidence suggests, however, that the population in the Stadium is a mixture of families that: (1) are awaiting a compensation decision by the Article 140 Committee; (2) have a property claim pending with the CRRPD; (3) have nowhere else to go; (4) have alternative accommodation available to them in Kirkuk or elsewhere but are for some reason unable to go there.

In light of the above, the occupation of the Kirkuk Stadium could be resolved by taking the following steps:

<sup>10</sup>

In October 2008, the Governor formed a Committee composed of the Director of the Ministry of Agriculture in Kirkuk; the Head of the Agricultural Committee in the Kirkuk Provincial Council; and representatives from the CRRPD and the property registration department for this purpose.

- Registration and assessment of the families living in the Kirkuk Stadium

A first step would be the registration of the families living in the Kirkuk Stadium to obtain an accurate number of families, their composition, their names and where they came from.

At the same time, an assessment could be carried out to identify to which of the four categories listed above or to what other category each family belongs to. This could be registered in a simple registration database and subsequently used to design and implement the appropriate solution for each family.

Such registration and assessment effort would require clear outreach and community to the population in the Kirkuk Stadium, to ensure trust and avoid any disturbances or protests that such registration and assessment efforts may cause.

Given the sensitivity of such registration effort, the involvement of an international actor such as UNHCR or the International Organization for Migration (IOM) could be considered in this respect.

- If the assessment exercise confirms that all families living in the Kirkuk Stadium belong to one of the four categories listed above, the following integrated action and policy steps could be taken to resolve the occupation of the Kirkuk Stadium:
  - Design a “Property and Housing Recovery Package” that eventually can be applied to resolve also the occupation of the other public buildings (see further) together with a standard administrative procedure to determine access to this “Property and Housing Recovery Package”.<sup>11</sup>

Such Property and Housing Recovery Package could include:

- Housing support for families that do not have access to inhabitable or alternative housing (to be verified during the standard administrative process) in the form of:
  - a recovery grant in case families have housing that is destroyed or damaged;
  - the provision of building materials for families that have land but do not have accommodation on the land (if this is too complicated to implement, such families could also receive a recovery grant, to be used for the construction of accommodation)
  - access to public housing if the family has no other alternatives and falls within the appropriate vulnerability criteria – if necessary, the Government of Iraq could set-up a collaboration with appropriate international actors who could establish and implement rapid housing construction
- Provision of transportation support for the families to move to their new accommodation – if necessary, the Government of Iraq could request the support of appropriate international actors to assist with this transportation component.
- Provision of administrative support to obtain the necessary documents in the places of settlement – where they exist, such support could be provided through the Minister of Displacement and Migration’s Returnee Centers or, alternatively, through international and local actors that have legal aid centers.

So as to ensure durable integration, it may also be worthwhile to consider complementing this Property and Housing Recovery Package with providing access to income-generating projects in the places of settlement for families that comply with the relevant vulnerability criteria. Unless families have access to income-generating

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<sup>11</sup> This Property and Housing Recovery Package could also be used to resolve the occupation of public buildings and land more broadly (see further, Recommendation 9).

activities, their removal from the Kirkuk Stadium risks to simply be a displacement of the problem. If those families have no income, they may again decide to move elsewhere, be unable to maintain their access to housing and/or become dependent on government support in their places of settlement. The Government of Iraq could request the support of appropriate international actors that are currently engaged in income-generating projects such as, for example, the International Organization for Migration

The type of Land and Housing Recovery Package a family should be provided with could be decided through an administrative process. In this respect, the following considerations should be taken into account

- It would be important to identify one authority that will be responsible for determining the allocation of the “standard recovery package” and identify the additional resources that such authority would require to take on this particular task;
- The standard administrative process should be a simple, transparent and non-bureaucratic as possible and should rely on decentralized decision making combined with regular oversight to avoid abuses or mismanagement e.g. by the Office of the Public Prosecutor; and
- If requested, UNAMI could provide support with further working out the details of such standard recovery package and a standard administrative procedure to allocate this package to individual families.

The adoption of a standard recovery package and standard administrative procedure could be adopted for the whole country, and not only for the Kirkuk Province

In addition to the Land and Housing Recovery Package, the following measures should be taken for the relevant families occupying the Kirkuk Stadium:

- For families that qualify for the returnee grant under Article 140:  
  
Prioritize the Stadium caseload of the Article 140 Committee and link the payment of compensation award to the departure of the returnee families involved from the Stadium; and
- For families that have a CRRPD restitution claim pending:  
  
Ask the CRRPD to provide an overview of the type of cases families currently in the Kirkuk Stadium have pending with them – some cases may be eligible for direct restitution (see above), while others could be prioritized through the mediation solution foreseen under the CRRPD Statute.<sup>12</sup> For cases where short-term resolution appears unlikely, alternative accommodation will have to be made available;
- For families who have alternative accommodation available:  
  
They should, on the one hand, be assisted with the return to this accommodation if required and, on the other hand, be served with an eviction notice if they continue to refuse to return without a valid reason once such assistance is in place.

The decision to resolve the Kirkuk Stadium as well as the occupied public buildings caseload in the Kirkuk Province would need to be taken at the Government of Iraq level. Such decision would need to include also the different criteria that will need to be used to determine what exact package individual families will receive.

The resolution of the occupation of the Kirkuk Stadium could be managed and monitored by the Inter-Institutional Task-Force for the resolution of land and property issues in the Kirkuk Province (*see Recommendation 2 above*). Such effort should be coordinated also with the Police, especially to avoid re-occupation of the Stadium.

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<sup>12</sup> Article 8 of the CRRPD Statute provides that the CRRPD shall encourage reconciliation and amicable resolution of resolution of the property disputes between the parties of the claim. In practice, little effort has been made to operationalise this provision or to encourage parties to choose this route.

## RECOMMENDATION 6

### Prioritize the occupation of the schools

#### A. Current Situation

The occupation of public buildings and land in the Kirkuk Province is a widespread problem that will require an integrated policy, a dedicated budget and considerable time for its full resolution (*see recommendation ... below*). However, one particular type of occupation that should be resolved in the short-term is the occupation of approximately 30 schools in the Kirkuk Province.<sup>13</sup>

This occupation occurs against the background of a severe shortage of school buildings in the Kirkuk Province (estimated by the Education Ministry in Kirkuk at approximately 300-350 buildings), leading to multiple sessions being given at the schools and a severe reduction in schooling time. This affects all communities in Kirkuk and reduces the quality of education that the State can provide. While proportionately, the number of buildings occupied is low compared to the overall school building shortage, the freeing up of 30 school buildings in the short-term would still have a significant, positive effect.

No assessment of who is occupying those schools building has been made. Anecdotal evidence suggests, however, that some buildings are occupied or used by political parties while others are occupied by families of returnees or displaced families.

#### B. Recommendation

In light of the school building shortage in the Kirkuk Province and the obvious benefit to all communities if that shortage is reduced as soon as possible, this Report recommends that the occupation of the schools is prioritized for resolution. Similar to the resolution of the occupation of the Kirkuk Stadium, a successful resolution of this problem would be a powerful symbol of progress in the Kirkuk Province.

#### C. Implementing the Recommendation

Resolving the occupation of the schools in Kirkuk would involve the following steps:

- Establish a complete lists of all occupied school buildings, which could be done by the Ministry of Education;
- Carry out an assessment to identify and, for private families, register the type and number of occupants for each school, including for private families their needs, wishes and alternative accommodation situation. In light of the sensitivity of such registration exercise, assistance could be asked from UNHCR or IOM in this respect.
- For the buildings that are occupied by political parties without a valid legal basis: pressure should be put on the political parties to vacate the building within a set, short deadline. This could be through an intervention of either the local, regional or the central Government. Names of parties that continue to illegally occupy school buildings could also be rendered public to further increase pressure through “naming and shaming”. Formal eviction notices should be delivered and evictions should be carried out.
- For the buildings that are occupied by private families: apply the same “Property and Housing Recovery Package” combined with the same prioritization of Article 140 Committee and CRRPD decisions as proposed for the Kirkuk Stadium here above. The families that are occupying a school building and that do have alternative accommodation available should be treated in the same manner as described above in respect of the Kirkuk Stadium.

Also this process could be managed and monitored by the Inter-Institutional Task-Force for the resolution of land and property issues in the Kirkuk Province (*see Recommendation 2 above*).

<sup>13</sup>

Information provided by the Ministry of Education in Kirkuk

### II.3. **Recommendations – The Remaining Caseload**

This report does not advise to wait starting to work on the remaining caseload until the priority caseload is completed. Instead, it strongly recommends that the preparation for improving the way in which the caseloads listed below are addressed, is started immediately.

#### **RECOMMENDATION 7**

##### **Take the necessary steps to expedite the CRRPD process**

#### **A. Background**

As explained above under Recommendation 4, the progress of the CRRPD process in the Kirkuk Province has been very slow. While the adoption of the direct restitution process described under Recommendation 4 would significantly reduce the caseload pending before the CRRPD and therefore allow for the more rapid resolution of the remaining cases, further amendments and changes to further expedite the process are required.

#### **B. Recommendations**

To further expedite the CRRPD process, this Report recommends that the following steps are taken:

- Adopt an alternative to the automatic appeal against CRRPD Judicial Committee decisions by the concerned Iraqi Ministries:

Concretely, appeals are lodged in all cases where the Iraqi State has to pay compensation to the current occupant of the property in cases where the CRRPD returns that property to its original owner or where the Iraqi State has to return a property to the original owner that is currently registered in the name of a Ministry or other Government Institution. This concerns the majority of cases before the CRRPD in the Kirkuk Province.

While this seriously delays the process and thereby significantly increases the cost of the CRRPD process,<sup>14</sup> it also undermines the transitional justice objectives the Iraqi Parliament sought by establishing the CRRPD. If one of the core-aims of the CRRPD is to redress the past wrongs of the Iraqi State, the automatic appeal by that State of any decision that provides such redress sends contradictory signals to the victims. Moreover, the delays this practice causes gives rise to the suspicion amongst the population that “Baghdad” is deliberately blocking the return of properties and payment of compensation to the victims of the former regime.

The need to protect public funds and public interest which this automatic appeals process is intended to serve is, however, a legitimate and necessary goal for the Iraqi State to pursue. Alternative, less cumbersome mechanisms to obtain this goal should be considered. While the proposed alternatives described below differs from State practice in ordinary cases against the Iraqi State e.g. before the civil courts, this is justified by the fact that the CRRPD is a special process addressing a special situation (i.e. the occurrence of mass land and property rights violations under the former regime).

An alternative approach to preserve public funds and public interest could be as follows:

#### **Option1:**

- Prior review by the legal departments of the Ministries concerned to determine whether there are any apparent errors in the CRRPD decision that involves return of property or the payment of compensation by the Iraqi State. They should only appeal cases where there are “manifest errors or breaches of the CRRPD Statute or other applicable law”, while for the other decisions the appeals process should be left to lapse; and

<sup>14</sup> Additional costs related to this “automatic appeals practice” include: longer life-time of the CRRPD; additional CRRPD staff costs related to the work caused by the appeals; and resources required for the different Ministries filing those appeals. All these costs are the “hidden burden” this practice puts on the Iraqi State Budget the practice intended to protect.

- Regular sample review of decisions involving the Iraqi State by the Office of the Inspector-General to verify whether decisions have been taken in full accordance with the CRRPD Statute and any other applicable laws. If errors or mistakes are found in decisions taken by certain judicial committees of the CRRPD, a more systematic review of their decisions could be carried out. For decisions that have legal errors or irregularities, the relevant Ministry could then file and appeal.

Option 2:

- The CRRPD Cassation Commission could be given the authority to have a special, lighter procedure for reviewing appeals by Ministries e.g. by allowing these appeals to be treated by a single Cassation Commission judge and be limited to a quick review to determine that there are no apparent legal errors or mistakes in the decision. Only in cases where apparent errors or mistakes were made, the decision would be submitted to a full Cassation Commission review. In all other cases, the decision would be confirmed.
- Increase the capacity of the CRRPD Cassation Commission in accordance with the expected caseload

In addition to limiting the number of appeals filed by the Ministries, the CRRPD Cassation Commission should be provided with additional capacity so as to increase the speed with which appeals are dealt with. The determination of how much additional capacity is required should be done through a realistic projection based on (1) the expected total appeals caseload from now until the completion of the CRRPD's mandate and (b) the average caseload per month the Cassation Commission can realistically handle, based on past performances and, projecting forward, taking into account the envisaged expansion.

The increase in capacity could be achieved by creating multiple chambers within the Cassation Court, while simultaneously increasing the number of judges within the Cassation Commission or reducing the number that is required to sit in each case. Each chamber could be given a particular type of caseload to deal with, so as to ensure specialization and streamline the treatment of appeals. One option in this respect would be to create chambers that specialize in particular regions of Iraq. E.g. to deal with the extensive claim load related to the Kirkuk Province, a special Kirkuk Province Cassation Commission Chamber could be created. Such Chamber could continue to be seated in Baghdad or could travel to Kirkuk from time to time.

One of the current proposals for changing the CRRPD Statute foresees that the CRRPD Cassation Commission would cease to exist and that, instead, the Federal Cassation Court would be given the jurisdiction to decide appeals against CRRPD Judicial Committee decisions. Before deciding on such a transfer of jurisdiction it is important to assess whether or not the Federal Cassation Court would need to be given additional capacity to deal with the additional number of cases it is likely to receive within the frame of the CRRPD process. If the Federal Cassation Court already has a full docket with appeals from the ordinary judicial system, such increase in capacity is likely to be necessary.

If no assessment of additional capacity requirements of the Federal Cassation Court is carried out, there is a great risk that the problem of a slow CRRPD Cassation Commission is simply replaced by the problem of a slow Federal Cassation Court, whereby the CRRPD caseload would also slow down the treatment of appeals from the ordinary judicial system. The basis for the assessment would again be the expected additional caseload that would come to the Federal Cassation Court from the CRRPD combined with the current monthly rate at which the Federal Cassation Court currently processes cases.

- Reactivate mediation as an option for resolving pending CRRPD cases

The CRRPD Statute foresees that the CRRPD “shall encourage reconciliation and amicable resolution of property disputes between parties of the claim”.<sup>15</sup> The Statute also foresees that the Judicial Committees need to certify the mediation outcome, which can serve as a protection against unfair mediation outcomes. In practice mediation has happened in very few cases, undoubtedly due to the difficult circumstances in Iraq over the past few years but also because little institutional effort has been made to render the mediation

<sup>15</sup>

Article 8, (a), CRRPD Statute

option more attractive. If approached in the right manner, mediation can be one way to increase the expediency with which claims are being decided. Mediation can also positively impact the implementation of the actual decisions, as both parties will, by definition, have agreed to the outcome.<sup>16</sup>

In light of its potential to expedite the process, the Report recommends for the CRRPD to advocate mediation as an option in the Kirkuk Province, especially for cases that involve individuals claiming against individuals.<sup>17</sup>

This could be done by taking the following steps:

- identify staff within the CRRPD Office in the Kirkuk Province that would be able to assist parties to come to mediated solutions. If necessary, the CRRPD could approach appropriate national or international actors to provide mediation training;
- make a commitment to prioritize assistance to parties willing to engage in mediation; ensure that a basic mediation framework is worked out; and ensure that the certification of mediated outcomes is a priority for the Judicial Committees; and
- conduct a targeted outreach and information campaign about the fact that it is possible to use mediation to resolve cases between private parties before the CRRPD, outlining the fact that it provides an opportunity to rapidly resolve a pending case.

## **RECOMMENDATION 8**

**Provide effective remedies for victims of post-2003 private land and property violations in the Kirkuk Province and mandate an independent body to carry out an assessment of the scope of these violations**

### **A. Background Considerations**

Since the fall of the former regime in 2003, a number of private land and property rights violations have taken place in the Kirkuk Province. Different from the violations that took place under the former regime, which were Government-driven, the post-2003 violations have been mostly committed by private citizens and groups, sometimes with the overt or covert backing from political armies or armed groups.

#### *Type of post-2003 land and property rights violations*

Available information indicates that post-2003 private land and property rights violations include (but are not necessarily limited to) the following type of cases:

- “Returnees taking their former properties back”:

Families and individuals who had been expropriated by the former regime came back to the Kirkuk province after the fall of the regime and forced out the individuals or families occupying or using their properties. There are also reported cases whereby the occupiers or users of properties expropriated by the former regime fled before the previous owners returned.

The issue with these cases is that the occupiers or users would have most likely received compensation from the CRRPD upon the return of the property to the previous owner, had the latter indeed submitted a restitution claim with the CRRPD. Now they have received nothing, unless the previous owner would have in extremis submitted a CRRPD claim and the CRRPD has managed to locate them (which is not self-evident, especially if they moved to another province).

<sup>16</sup> Enforcement is a real issue with the restitution decisions taken by the CRRPD. The Execution Office in Kirkuk reported that in over eighty percent of the cases, the losing party refuses to leave the house or land following a restitution decision by the CRRPD. In these instances, the police will eventually have to evict the unwilling party, something which is obviously delicate in a politically difficult context such as Kirkuk.

<sup>17</sup> Also because, if the direct restitution recommendation formulated in this Report would be implemented, claims by individuals against the state would in a large part be resolved through this direct restitution model (see above, Recommendation 4).

The basic problem for this group is that, in most cases, a legal remedy does exist but that they appear to be dependent on others (i.e. the previous owners) to activate it.<sup>18</sup> Even in cases where the previous owners has lodged a CRRPD claim after they forced the occupants out, it is unclear whether the CRRPD has always been able to contact those occupants especially in cases where they left the Kirkuk Province.

- “Expulsions by armed groups”:

In a number of instances, armed groups have forced people out of their properties and land, and placed their supporters or community members into these properties or onto this land. In some cases this concerned land and property that had been expropriated by the former regime in pursuit of its Arabisation policies, while in other cases there was no such contentious history as regards the property or land in question. However, whether or not the land and property had been the subject to expropriation, the fact remains that such forced expulsions were and are illegal.

Individuals and families who have been the victim of this type of expulsions could, at least in theory, have gone to the police to file a complaint, which should then have resulted in their return to the property or land in question (even in cases where a claim is pending before the CRRPD as the current occupant has the right to remain in that property until a final CRRPD decision is taken). In practice, very few victims appear to have taken the judicial route. Anecdotal evidence suggests that a lack of trust in the independence of the police and the courts may have been one of the factors explaining why so few victims filed complaints in this respect.

- “Illegal constructions on public land that is subject to a claim before the CRRPD”:

This type of cases concern the situation whereby people have built a house on public land to which they have no claim without permission and this public land is currently subject to an unresolved restitution claim before the CRRPD from the previous owner. While this is currently a problem of public land occupation, this will become a problem of a private land and property relations once the previous owner receives the land back either through the CRRPD or the direct restitution process described under Recommendation 4 above.

In principle, once the property is returned to them, the previous owners could ask the police and eventually the courts to evict the people who constructed houses onto the land without their permission. In practice, given the apparently considerable number of houses and people involved, this may not be a realistic option.

So far, no particular initiatives been taken to provide the victims of these violations access to effective remedies as, understandably, the focus has so far been on victims of land and property rights violations that occurred during the former regime.

#### *Lack of systematic, independently verified data*

While the fact that these, and possibly, other type of violations of private land and property rights occurred after 2003 is well established and to some extent documented by external organizations like Human Rights Watch<sup>19</sup>, no systematic, independently verified data collection has been carried out to determine the exact scope and size of the post-2003 private land and property rights violations. The lack of such data makes it difficult to assess the scope of the problem and the resources that are likely to be necessary to deal with the aftermath of those violations. Finally, it allows for rumors and recriminations to go around unchecked and create further tension between the different communities.

## **B. Recommendations**

### *Provide access to an effective remedy for the victims of post-2003 private land and property rights violations*

This Report recommends that measures are taken to ensure access to an effective remedy for the victims of

<sup>18</sup> The CRRPD staff that was asked about this type of cases was unable to provide a clear answer on whether or not such victim would have an independent right to file a claim before the CRRPD in absence of the previous owner having filed a restitution claim.

<sup>19</sup> Human Rights Watch, *Claims in Conflict*, August 2004 (retrievable at <http://www.hrw.org/en/reports/2004/08/02/claims-conflict>).

post-2003 land and property rights violations in Kirkuk. This is important both from a basic justice and rule of law perspective and a recovery and stabilization perspective. Unless remedies are provided to *all* victims of land and property rights violations, independent of their sectarian belonging and by whom and when the violation was committed, property recovery and compensation measures will not be seen as legitimate and just by all communities. As a consequence, they will remain very difficult to implement and, rather than fostering recovery and stabilization, risk to further create tensions between and amongst communities. Moreover, some of the unresolved violations committed after the fall of the regime also have the potential to become flashpoints for future violence. The widespread construction of houses on disputed public land is maybe the most prominent example in this respect.

#### *Mandate an independent body to carry out an assessment*

In light of the fact that no independently-verified, comprehensive set of data exists about post-2003 private property rights violations, this Report also recommends that an independent body is mandated by the Governor of Kirkuk to carry out an assessment study to determine the scope and size of the private land and property rights violations in the Kirkuk Province. This assessment could then be used to further fine-tune policies to provide remedies to victims. The Report recommends that work on providing access to an effective remedy for the victims is started immediately, and not postponed until after the assessment is completed.

### C. Implementing the Recommendations

#### *Providing effective access to remedy for the victims*

For the three types of post-2003 land and property violations described above, the current situation in terms of remedies available for victims and the institutions that could provide those remedies the situation is as summarized in the table below:

Type of Violation	Institution / Remedy	Challenges
(1) Victim forced out of property or from land that is subject to CRRPD jurisdiction (i.e. land or property that was expropriated by the former regime for one of the reasons listed in the CRRPD Statute)	CRRPD – compensation both for value of original property from the Iraqi state and for improvements from the previous owner to whom the property is returned to (CRRPD Statute applies) <sup>20</sup>	Challenges include: <ul style="list-style-type: none"> <li>the victim may depend on the previous owner actually filing a claim;</li> <li>even if the previous owner has filed a claim, the victim needs to be aware of this and have become part of the CRRPD-process (e.g. if victim has moved away to another province, the CRRPD may not have been able to locate him or her)</li> </ul>
(2) Victim forced out of property or land that is not subject to CRRPD jurisdiction (i.e. land or property that was not expropriated by the former regime for one of the reasons listed in the CRRPD Statute)	Civil Courts – return (of access to) property or land and compensation for damage done (ordinary Iraqi law applies)	Challenges include: <ul style="list-style-type: none"> <li>victim may lack the means to access court proceedings e.g. because of lack of money or because of distance between victim's current place of residence and the competent civil court;</li> <li>victim may be under (real or perceived) pressure not to file suit;</li> <li>victim may have a lack of faith in the police or the court system (real or perceived sectarian bias);</li> <li>will court decisions be enforceable without creating social or political tension or difficulties?</li> </ul>
(3) Previous owner who receives or will receive his or her land back from the CRRPD, but in the meantime (illegal) settlements have	Civil Courts – expulsion of families that have built illegal structures on the land and destruction of those structures (ordinary Iraqi law	Challenges include: <ul style="list-style-type: none"> <li>if there are a significant number of settlements on the land (which, from anecdotal evidence, appears to be the</li> </ul>

<sup>20</sup> Quote the relevant CRRPD Articles

been build on the land.	applies)	<p>case in at least some instances), court decisions may not be enforceable without serious social and political unrest or violence; and</p> <ul style="list-style-type: none"> <li>• victim may be put under pressure not to file lawsuit and/or to withdraw lawsuit.</li> </ul>
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The problems for the victims to access existing remedies could be addressed in the following manner:

- *Task the Ministry of Displacement and Migration to provide assistance to the victims for accessing the relevant institution*

The problem of a lack of access to existing remedies could be addressed through tasking a state institution with assisting victims of post-2003 private land and property rights violations falling within situations (1) and (2) in the table to access the CRRPD or the civil court for a remedy, as the case may be.

Such assistance could include the provision of legal assistance including legal aid in case of vulnerable persons; assistance with obtaining the necessary documents; and support to the victim with the implementation of the eventual CRRPD or Court decision. It would also include collaborating with the CRRPD to carry-out outreach campaigns to encourage victims to contact the CRRPD to find out whether a case regarding their former property or land is currently pending before the CRRPD.

In light of the fact that most of the victims will be de facto internally displaced persons it would appear the Ministry for Displacement and Migration (MoDM) (where some of those concerned may already have registered as an internally displaced person) may be the best institution to do this. Additional financial and human resources as well as capacity building of dedicated staff for this caseload are likely to be required if the Ministry does indeed take this caseload on. One option would for MoDM to approach its international partners for technical and financial support in this respect (currently, the MoDM collaborates with UNHCR and IOM).

An alternative to giving this responsibility to MoDM would be to make this part of the mandate of a still to be established "Property Recovery Authority" (*see further, Recommendation 11*).

- *Clarify whether or not current occupiers of properties or land within the mandate of the CRRPD have a standing before the CRRPD independent from the previous owner and take the necessary steps to ensure that this indeed the case*

The CRRPD secretariat should clarify whether or not current occupiers of properties and land that fall within the mandate of the CRRPD have standing before the CRRPD independent from the previous owners. If that is not the case, the CRRPD Statute should be amended so as to ensure that this is the case if (1) the current occupiers have been forcibly expelled from the land or property in question and (2) the previous owner (whether or not he or she was responsible for the expulsion) has not yet filed a restitution or compensation claim before the CRRPD. In either scenario, an outreach campaign should be carried out to inform current occupiers of this right.

- *Identify land that is subject to a claim before the CRRPD and where illegal settlements have been built and commence mediation between the previous owner, now claimant with the CRRPD, and those that have built houses on the land*

Where a significant number of settlements have been built on disputed land, the only viable solution would appear to be to regularize this factual situation. This can only occur with the full consent of the previous owner who stands to get his or her land back from the CRRPD. One option would be to conclude a long-term land lease agreement between the previous owner and those that are living in the settlements, whereby the latter would pay the former a regular fee for the use of the land. An alternative would be for the Iraqi Government to purchase the land from the previous owner and then subsequently lease it out to those currently living in the settlements.

Given the sensitivity of this issue, it may be advisable to consider requesting support from an international actor like the UN to provide support for this mediation exercise. The Inter-Institutional Task-Force for the Resolution of Land and Property Issues in the Kirkuk Province (*see Recommendation 2 above*) could take the initiative in this respect. One important issue is to ensure that, once it becomes known that attempts are made to regularize current settlement, this does not become a push factor for the construction of more illegal settlements. One way to do this would be to limit the regularization to settlements that were constructed before a certain date in the past.

One institutional alternative for addressing the post-2003 private land and property rights violations caseload is to have the above proposed solutions implemented by the yet to be established Kirkuk Property Recovery Authority (*see further Recommendation 12*).

*Mandate an independent body to carry out an assessment*

An assessment of post-2003 private land and property rights violations is only useful if there is a reasonable chance that all communities would accept the findings that come out of it. Given the politicization of the land and property question in Kirkuk, it may be advisable to consider asking the support of the UN or another international actor with a reputation of impartiality to carry-out such assessment. Regardless of what institution would eventually undertake this assessment, it will be important to allocate sufficient material and human resources for this task, which is considerable in both size and scope, and likely to take some time.

## RECOMMENDATION 9

### Address the occupation of public buildings and land through an integrated, comprehensive recovery policy

#### A. Background

As elsewhere in Iraq, the Kirkuk Province has since 2003 seen a number of public buildings and land become occupied by families and individuals in search for housing; political parties and opportunity seekers. The Department of Properties has provided UNAMI with the following list of public land and buildings in the Kirkuk Province that are currently occupied (in addition to Kirkuk Stadium and the schools):

Type of Property or Land	Number of Units Occupied
Houses	219
Buildings	80
Parks	2
Land Units	6595
Shops	15
Clubs	2
Factories	2
Flats	13
Garages	4
Child Care Facilities	6
Storage Spaces	7
Railway Stations	2
Swimming Pools	1
Playgrounds	3

The Department indicated that the list is based at least in part on information collected in 2008, so some of the information may be out of date. Also, some Ministries' buildings and land may not have been included in the list, even though they are currently occupied. There is no accurate information available about the people occupying the buildings. Anecdotal evidence suggests that occupiers include political parties, returnees and displaced persons without access to alternative housing as well as (a minority of) opportunity seekers. The humanitarian conditions under which people are living in the occupied buildings and land is not well documented either.

In 2008, the Council of Ministers passed Resolution 440, which is intended to resolve the occupation of public buildings and land all over Iraq and which therefore also applies to the situation in the Kirkuk Province. In essence, Resolution 440 contains the following elements:

- public awareness raising about the occupation of public buildings;
- possibility for the Sub-Committees on the evacuation of State Land and Properties<sup>21</sup> in the Provinces to propose that certain public land is allocated to those that are currently occupying it, under the condition that such allocation is not contrary to public interest such as urban planning or other particular use;
- waiver of the application of Resolution 154 of 2001 (which provides penalties for illegal occupation of public building), provided that occupants evacuate the public building or land within sixty days;
- payment of a grant of one to five million Iraqi Dinars for assisting the occupants with finding alternative accommodation, on a case-by-case basis;
- it allocates that responsibility for the evacuation process to the Ministry or entity that owns the public building or land; and
- foresees expulsion by the security services in case the occupants do not comply with the provisions of the Resolution

While this Resolution contains a number of important elements, the situation in Kirkuk is such that the Resolution may not be enough to durably resolve this problem and this mainly for two reasons:

- there appears to be no funds available to pay-out the compensation mentioned in the Decree – unless compensation is made available immediately, i.e. at the moment the occupier leaves the public building or land, it will not work as an encouragement for people to vacate the property or the land they are occupying; and
- the amount of compensation provided is likely to be too small for those who really do not have alternative housing available to them and, in addition, may not have a regular income – this category is likely to refuse to leave the public building or land they are occupying until a more durable solution is proposed

Other concerns include:

- a lack of criteria to determine who will have right to what amount of compensation (leaving it to the different Ministries risks to create discrepancies and unequal treatment, itself likely to undermine the legitimacy of the Resolution);
- the absence of a clear process for the implementation of the different provisions of this Resolution;
- the absence of a clear cut-off dead for application (the Resolution may itself become a pull-factor for the occupation of public buildings and land, as it potentially provides access to benefits in a context of economic hardship – one solution would be to state it only applies for occupation of public buildings that started before certain date); and
- the absence of rules to determine what land and buildings can be allocated to the current occupants and under what conditions (again risking to create unequal treatment).

While these concerns apply to the whole of Iraq, they are of particular concern to the Kirkuk Province, where there is heightened risk that any sign of unequal treatment is will quickly become perceived to a sectarian bias or discrimination.

## B. Recommendations

In light of the above, this Report recommends developing a new, comprehensive and integrated policy for the resolution of the occupation of public buildings and land problem in the Kirkuk Province, building upon, but further expanding, Decree 440. This Report recommends that this policy would be similar to the one proposed for the resolution of the occupation of the Kirkuk Stadium under Recommendation 4 above. The one additional

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<sup>21</sup> Established by the Council of Ministers Decision s/2/1/39/1303 of 28 January 2007

element here would be that, where possible, the regularization of the occupation of the public land and public building will be an alternative option for the current occupants.

Concretely, the core elements of such policy would be:

- a case-by-case approach, based on the situation and needs of those occupying the public buildings and land and implemented by one authority;
- the immediate eviction of political parties from the public buildings and land they occupy; and
- availability of the “Housing and Property Recovery Package” for families that currently occupy public buildings or land that would include:
  - Housing support for families that do not have access to inhabitable or alternative housing (to be verified during the standard administrative process) in the form of:
    - a recovery grant in case families have housing that is destroyed or damaged;
    - the provision of building materials for families that have land but do not have accommodation on the land (if this is too complicated to implement, such families could also receive a recovery grant, to be used for the construction of accommodation)
    - regularization of the occupation of public land and/or building provided not contrary to the public interest in terms of urban planning – this could be done through providing long-term lease contracts to the current occupiers, whereby they would have to pay a regular leasing fee to the Iraqi State; and
    - access to public housing if the family has no other alternatives and falls within the appropriate vulnerability criteria – if necessary, the Government of Iraq could set-up a collaboration with appropriate international actors who could establish and implement rapid housing construction.
  - Provision of transportation support for the families to move to their new accommodation – if necessary, the Government of Iraq could request the support of appropriate international actors to assist with this transportation component.
  - Access to income-generating projects in the places of settlement for families that comply with the relevant vulnerability criteria to ensure durable integration.
  - Provision of administrative support to obtain the necessary documents in the places of settlement – where they exist, such support could be provided through the Minister of Displacement and Migration’s Returnee Centers or, alternatively, through international and local actors that have legal aid centers.
  - Assistance to occupiers that qualify for the returnee grant under Article 140 with obtaining such a grant and to occupiers that have a claim pending before the CRRPD, with obtaining a CRRPD decision in respect of their claim.
  - Occupants that have alternative accommodation available they should be, on the one hand, assisted with the return to this accommodation and, on the other hand, if they continue to refuse to return without a valid reason once such assistance is in place, be served an eviction notice.

## C. Implementing the Recommendation

### *General*

The implementation of the policy described here above would involve at least the following steps:

- Update the list of occupied public buildings and land – ideally this would be done before the policy is adopted as it will provide important information for the cost and means assessment that should be carried out before the policy is adopted;
- Use that list to determine priorities for resolving the occupation of public buildings and land – it will be impossible to start the process for all buildings and land at once, hence the need to prioritize;
- Rapidly identify buildings and land that are occupied by political parties – here immediate eviction notices should be issued;
- Register those that are occupying the public buildings and land and, where private individuals and families are concerned, identify their needs and vulnerability, which will be the basis for the allocation of the Property and Housing Recovery Support

The data gathered could be registered in a simple registration database and subsequently used to design and implement the appropriate solution for each family.

Such registration and assessment effort would require clear outreach and community to the population in the public buildings and land, to ensure trust and avoid any disturbances or protests that such registration and assessment efforts may cause.

Given the sensitivity of such registration effort, the involvement of an international actor such as UNHCR or the International Organization for Migration (IOM) could be considered in this respect.

- Decide on each case using the standard administrative procedure described under Recommendation 4

As suggested under Recommendation 4, this Property and Housing Recovery Package could be complemented by providing access to income-generating projects for families that correspond to the relevant vulnerability criteria.

#### *Institutional*

For reasons of efficiency, consistency and fairness it would be preferable for one institution or ministry being in charge of the implementation of the policy aimed at resolving the occupation of public buildings and land problem in the Kirkuk Province. While this responsibility could be given to an existing institution or ministry – provided this institution or ministry is given adequate resources to take up this responsibility – an alternative would be to allocate this to a still to be established “Kirkuk Property Recovery Authority” (see below, Recommendation 12).

### **RECOMMENDATION 10**

**Consider extending the “Property and Housing Recovery Package” to people whose property was destroyed by the former regime**

#### **I. Background Considerations**

The former regime destroyed an important number of villages and houses in the Kirkuk Province, mainly during the Anfal campaign. The exact number of people that were affected by these policies and that are currently living in the Kirkuk Province is not known. The only available figure is that 9,750 claims regarding property destruction during the Anfal Campaign have been lodged with the CRRPD Office in Dibbis.<sup>22</sup> Anecdotal evidence suggests that a significant proportion of families currently occupying public buildings or land are people who returned after 2003 but found their villages destroyed by the former regime.

<sup>22</sup> Figures provided by the Head of the CRRPD Office in Dibbis.

Currently, no remedy is available for victims of property destruction by the former regime, as the CRRPD only provides remedies for the expropriation and seizure of property. This disproportionately affects the Kirkuk Province in light of the high number of properties that were destroyed there. The adoption of the recommendation to provide occupiers of public buildings and land with the Property and Housing Recovery Package would capture some of those victims, i.e. those that are currently living in a public building or on public land. Others would not, however, have access to this remedy.

## II. Recommendation

This Report recommends that the “Property and Housing Recovery Package” is made accessible to all victims of property destruction by the former regime. Through this Package, victims would be enabled to reconstruct their houses in their villages of origin or elsewhere. Ideally, this should be combined with the allocation of funds to the reconstruction of the infrastructure in the villages, as otherwise people will be unable as well as unwilling to return to their villages. A significant return to the villages, if it would indeed take place, would alleviate the pressure on housing and land in the city of Kirkuk.

## III. Implementing the Recommendation

Victims of property destruction could obtain access to the Property Recovery Package through a similar administrative process those occupying public buildings. Institutionally, the mandate to determine individual claims could be given to the still to be established Property Recovery Authority (*see Recommendation 12 below*)

### RECOMMENDATION 11

#### **Develop and implement an emergency social housing policy for the Kirkuk Province**

## I. Background

Like the rest of Iraq, the Province of Kirkuk suffers from a lack of sufficient housing. Currently, no exact figures about the missing housing stock are available. The widespread, non-regularized construction of houses on (disputed) public land as well as the widespread occupation of public buildings indicate, however, the extent to which existing housing needs remain unfulfilled through the “regular” housing market. The Property and Housing Recovery Package proposed in this Report can provide some relief in this respect, but the case-by-case approach proposed in this Report would ideally need to occur within a wider framework of an official social housing policy.

One of the challenges is how to reconcile the timeline for the resolution of the land and property issues identified in this Report, which is relatively short, with the timeline of developing and, especially implementing a social housing policy, which is typically longer term. One way of approaching this would be to develop an “emergency social housing policy” that is geared towards providing rapid access to housing for vulnerable individuals and groups.

## II. Recommendation

This Report recommends developing an emergency social housing policy that can provide access to housing for a considerable number of vulnerable families –including those that are concerned by the land and property problems discussed in this report– within a relatively short period of time. Such policy should be in line with the general social housing policy currently being developed in Iraq.

## III. Implementing the recommendation

The development of an emergency social housing policy could be done through a number of different steps:

- Make an inventory of all public land and public buildings available in the Kirkuk Province (occupied and non-occupied) that could be used for allocation to vulnerable families within the frame of an overall social housing policy.

- Organize a working meeting with all authorities concerned to discuss the main principles that an emergency housing policy should respond to. If requested, the UN could provide technical support in this area, by drawing from examples in other countries.
- The Ministry of Housing could be tasked with drafting an initial, simple plan for an emergency housing policy based upon the outcome of the working meeting mentioned above.
- Different funding options could be pursued – one model with be to have a joint-funding from the Iraqi State and a multi-donor Land and Recovery Fund for Kirkuk (*see Recommendation 13 below*).

#### **II.4. Administrative and Financial Conditions for the Resolution of the Kirkuk Land and Property File - Recommendations**

### **RECOMMENDATION 12**

#### **Consider Establishing a Kirkuk Property Recovery Authority**

##### **A. Background considerations**

There is currently not one single authority that deals with land and property issues that fall outside the mandate of the CRRPD. There a number of reasons why it may be appropriate to consider establishing a new authority to deal with the land and property issues discussed under Recommendations 8 (“post-2003 private land and property rights violations”), 9 (“occupation of public building and land”) and 10 (“property destruction by the former regime”):

- the overlap between the different caseloads: some of those currently occupying public land or buildings or private property that does not belong to them, are people whose houses were destroyed by the former regime;
- efficiency considerations: coordinating the work of multiple authorities working on resolving land and property issues will almost by definition result in a slower implementation rate and tend to require more resources, as each institution will have to develop and manage its own administrative system;
- consistency and fairness considerations: one authority can develop one set of rules and procedures that will be applied across the full caseload, while different authorities are likely to use their own particular set of practices, causing inconsistencies of treatment at the level of both procedure and substance;
- transparency considerations: with different institutions addressing different caseloads, it will be difficult for the population in the Kirkuk Province to get a full picture and understanding of what institution is doing what for whom and on the basis of what criteria or conditions. A unified approach by one institution would bring much more clarity in this respect, which may in itself facilitate access to the property recovery process for the victims;
- reduction of the risk of fraudulent claims and “institution-shopping”: if different authorities are providing remedies, the risk increases that some individuals will try to claim from all these different authorities, which will then need to rely on information-sharing to manage this issue. One institution, however, can use one information management system, thereby increasing the chances that fraudulent claims will be discovered;
- facilitates trouble-shooting and flexibility considerations: with an issue as complex as the land and property issues in Kirkuk, the implementation of the different policies proposed in this Report is likely to bring new issues to the surface. Having one institution implementing those policies would facilitate the identification of those issues early on and would also allow for more flexibility in terms of the response to those issues.

The establishment of an institution dedicated to resolving the land and property issues that do not fall within the CRRPD mandate would also send a powerful signal to the population of the Kirkuk Province that the Iraqi Government is serious about addressing those issues.

## B. Recommendation

In light of the above this Report recommends that the establishment of a Kirkuk Property Recovery Authority is considered. This Authority could receive the mandate to deal with (1) the post-2003 private land and property violations; (2) the occupation of public buildings and land and (3) the provision of a remedy to the victims of property destruction under the former regime in the Kirkuk Province. The Authority could address these caseloads in accordance with the respective recommendations contained in this Report.

One downside of the establishment of a new institution is that it will inevitably take time for this institution to be established and to start operating. In light of this, this Report would recommend that the priority caseloads discussed under Recommendations 4 (“agricultural land issues”), 5 (“occupation of the Kirkuk Stadium”) and 6 (“occupation of schools”) are addressed by existing authorities. While these urgent caseloads are addressed, the necessary steps to create and establish the Kirkuk Property Recovery Authority could be taken.

Finally, it may be worthwhile to consider that, in case the Iraqi Government would decide to adopt some or all of the policies suggested in this report and to establish a Kirkuk Property Recovery Authority to make this part of one “Kirkuk Land and Property Law”, to ensure coherence and comprehensiveness.

## C. Implementing the Recommendation

The Kirkuk Property Recovery Authority could take the form of an institution containing:

- a commission with representatives from the different communities in Kirkuk that would be responsible for the overall supervision as well as the approval of implementation strategies, decision criteria, and case-decisions prepared by the secretariat.

One option would be to foresee the inclusion of one or more international commissioners in the commission to facilitate decision-making (“honest broker role”) and increase the perceived neutrality and objectivity of the commission and therefore the Authority. International Commissioners could have full decision-making powers (e.g. in case a commission of four local representatives would be established, one international commissioner could be added to avoid any blockage with majority decision making) or be given a mere observational role.

- a secretariat that would carry out the daily work; receive, review and prepare individual case decisions; and prepare implementation strategies and decision criteria for approval by the commission.

If requested, UNAMI would be happy to prepare different blueprints for the Kirkuk Property Recovery Authority for consideration by the Iraqi Government and/or to provide further information about how this type of Authorities have functioned in other countries in transitional.

## RECOMMENDATION 13

### Consider Establishing a Kirkuk Province Land and Property Recovery Fund

## A. Background considerations

The resolution of the land and property issues in the Kirkuk Province will require considerable funds. An initial costing exercise will be necessary to determine the extent to which the Iraqi Government has funds to cover the policies recommended in this Report or any other policies the Iraqi Government would adopt to resolve the land and property issues in Kirkuk. It is important that such costing exercise makes a projection as to the period for which the funds will be needed, as the resolution of land and property issues in the Kirkuk Province will be a

multi-years exercise.

Chances are, however, that, given the multiple reconstruction and recovery needs that exist in the Kirkuk Province and elsewhere in Iraq, insufficient public funds will be available to durably resolve all caseloads identified in this Report. This may be a problem particularly in the short-term, as economic development in Iraq is still starting to pick up. One option, in this respect, would be to explore the possibility of complementing Iraqi State expenditure in the area of land and property recovery in the Kirkuk Province with internationally funded expenditure.

#### B. Recommendation

In light of the above, this Report recommends exploring to what extent the establishment of a Kirkuk Land and Property Recovery Fund would facilitate obtaining international funding for land and property recovery in the Kirkuk Province. One institution that the Iraqi Government could approach for the management of such a Fund is the World Bank, which has experience and expertise in managing multi-donor trust funds in other countries in transition. If requested, UNAMI could facilitate such consultations.

#### C. Implementing the Recommendation

Given the current economic climate, it will in any case not be self-evident to find international donors that would be willing (and able) to provide financial support in this area. UNAMI has not carried out expansive consultations with potential donors in this respect and is therefore in no position to assess to what extent international funding would indeed be available. However, even under the best of circumstances, a number of conditions will need to be fulfilled for such international funding to be a realistic option. They include:

- significant Iraqi State expenditure: international donors will only come forward if the Iraqi State itself commits significant funding to resolving the land and property issues in Kirkuk.
- a clear, comprehensive policy that is realistic in terms of implementation: unless there is a clear and realistic plan on how to address land and property issues in the Kirkuk Province, donors are unlikely to come forward with funding; and
- the proposed policy takes, in as far as possible, the needs of all individuals independent to what community they belong to, into account.