

A FACT-FINDING MISSION IN KURDISTAN, IRAQ: GAPS IN THE HUMAN RIGHTS INFRASTRUCTURE

July 2008

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INFRASTRUCTURE

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KURDISH HUMAN RIGHTS PROJECT
BAR HUMAN RIGHTS COMMITTEE

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Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.



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LIST OF ABBREVIATIONS

AKP	<i>Adalet ve Kalkinma Partisi</i> (Justice and Development Party)
CDO	Civil Development Organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHP	<i>Cumhuriyet Halk Partisi</i> (Republican People's Party)
CPJ	Committee to Protect Journalists
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICG	International Crisis Group
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
KDP	Kurdistan Democratic Party
KHRP	Kurdish Human Rights Project
KNA	Kurdistan National Assembly
KRG	Kurdistan Regional Government
MHP	<i>Milliyetçi Harekat Partisi</i> (National Action Party)
NGO	Non-Governmental Organisation
PKK	Kurdistan Workers' Party
PUK	Patriotic Union of Kurdistan
UNAMI	United Nations Assistance Mission for Iraq
UNHCR	United Nations High Commissioner for Refugees

FOREWORD

During visits to Kurdistan, Iraq, throughout 2007 and early 2008, KHRP representatives frequently encountered a profound sense amongst inhabitants of the region of hope and optimism for a brighter future. To encounter this in a region which in its recent past has experienced successive waves of war, genocide, mass displacement and economic underdevelopment was a particularly positive experience for all mission members.

In many respects, such optimism was the result of positive change that has already occurred on the ground, reflecting the significant successes that the Kurdistan Regional Government (KRG) has registered since the fall of Saddam Hussein in 2003, in terms of strengthening economic development, security and democracy. That this has occurred in a country where these are in desperately short supply is a testament to the government of Iraq, including the KRG, and an active and resourceful civil society. KHRP was extremely encouraged to observe the closure of all of the camps for internally displaced persons that it visited in 2003, and the resettlement of their residents.

It is now the hope of many inhabitants of Kurdistan, Iraq, and indeed many people outside it, that such developments will lay the groundwork for genuine rule of law and human rights for all inhabitants of the region. There is no doubt that change in this direction requires time - a fact that is recognised by many officials, civil society representatives and other inhabitants of the region. Institutions cannot be built and developed overnight, just as a robust public perception and understanding of human rights cannot be implemented at will.

Despite this recognition, KHRP was particularly concerned to observe that the long-term strategy needed to ensure that these processes do occur over time has yet to be made known in Kurdistan, or at least has yet to be fully harnessed. Progress to date has happened *in spite of* the lack of a clear and coherent plan for the region's development and with very sparse support from the international community. In lieu of this, corruption and mismanagement of resources continue, whilst

human rights abuses, ranging from domestic violence to arbitrary detention, are commonplace.

The concern now is that a significant amount of time has already passed without adequate improvement in many areas, with momentum being lost and opportunities regularly missed. Mission members concluded that without a comprehensive and long-term commitment evidenced by a visible strategy and action plan, complete with international support to resolving these issues, there is every chance that 'optimism and hope' will be replaced by 'frustration and despair', and that this may even already be happening.

On a larger scale, the KRG has yet to fully resolve its relationship with the other Iraqi political groupings and the failure of the major parties in Iraq to resolve outstanding territorial disputes remains a dark cloud on the horizon. Similarly, it is evident that the drive for greater freedom and prosperity by the Kurds in Iraq has aroused deep suspicion and hostility in Iraq's neighbours, particularly Turkey. As with its past, the future of Kurdistan, Iraq, is intimately bound to the broader 'Kurdish question'. In practice, this means that Kurds in Iraq continue to suffer from the militaristic approach that regional powers have adopted towards this issue. Without a change in approach, peace and stability could give way once again to conflict and systematic human rights abuse.

This report provides a timely assessment of the challenges that still need to be negotiated if Kurdistan, Iraq is to secure a future based on human rights, equality and the rule of law. Considerable time and effort has been invested into its research and writing since the initial fact-finding mission conducted in January 2007. Indeed, KHRP felt that what was missing in existing reports documenting ongoing human rights abuses in the region was a clear analysis of the root causes of human rights violations and the ways in which these can be countered. These causes are fundamentally intertwined and mutually-reinforcing, meriting a holistic approach that addresses all of them at the same time.

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EXECUTIVE SUMMARY

Prior to conducting the series of fact-finding missions that form the basis of this report, KHRP last sent a mission to Kurdistan, Iraq, in 2003, shortly after the United States-led war against Saddam Hussein. This mission resulted in a detailed report entitled *After the War: The Report of the KHRP Fact-Finding Mission to Iraqi Kurdistan* (KHRP, October 2003). This focused on the humanitarian situation in the region, the ability of civil society organisations to engage in capacity building, the ongoing consolidation of the legal system and the building of a politically viable infrastructure, as well as the overall conduct of the occupation forces. The building of structures essential to human rights protection was underlined as being of paramount importance.

More than four years later, the situation in Kurdistan, Iraq, looks markedly different. The infrastructure, administration and legal system have all largely improved, with such relative stability making it distinct in an otherwise volatile region. A limited degree of economic prosperity and relative calm in Kurdistan, Iraq, have allowed the KRG to better concentrate on development. At the same time, the unification of much of the two administrations, the Patriotic Union of Kurdistan (PUK) with the Kurdistan Democratic Party (KDP), has served to ease long-standing tensions. However, as the missions learned, Kurdistan, Iraq, remains in a precarious and difficult position.

The series of fact-finding missions conducted by KHRP in 2007 and early 2008 sought to gauge the development of the region, particularly in terms of its human rights infrastructure. The missions interviewed civil society representatives, lawyers, politicians and religious leaders over various visits to Kurdistan, Iraq, in January, March, November and December 2007, and in January 2008. The intention was to get a picture of the measures in place in the region to forge a stronger culture of human rights and the rule of law. The missions' overarching observation on the basis of these interviews was that there is an enormous desire for the proper implementation of human rights norms, accountability and the rule of law amongst government officials and civil society organisations. The missions, however, noted that more often than not this desire has yet to be translated into the serious

investment of time and resources needed to make meaningful progress in these areas.

The missions observed that there had been shockingly little investment by the international community in training programmes to promote human rights, or in support of the creation of public administrative mechanisms which would ensure proper respect for human rights and meaningful recourse for those who have suffered abuse. There was a widespread lack of awareness amongst the public about their human rights. The missions found scant evidence of a consolidated strategic effort to instruct law enforcement officials or village leaders, never mind ordinary citizens, about their domestic and international obligations in terms of human rights. Further, the missions regularly heard stories suggesting a lack of clarity in the field of law. Lawyers, prosecutors and judges have received very little in the way of professional development in order to update their knowledge of the many and ongoing changes in Iraqi and Regional law. This has resulted in the misapplication of the law and in many cases the application of old Baathist law or tribal custom in its place.

Such a situation is of great concern to KHRP since ensuring the rule of law is one of the most basic preconditions for building a democratic, human rights culture. Without it, stability and infrastructure development are undermined. The missions found that the fundamental problem lies not in existing legal provisions - although certainly some laws ought to be strengthened (as in the case of minority rights) or abolished (as with the death penalty) - but rather, the lack of public education available both for practitioners and for ordinary citizens about each individual's obligations and rights. Repeatedly, the missions heard about ad hoc trainings or trainings in Dubai or Amman for high level officials, as well as large conferences in the KRG. However, these appeared to have little tangible impact on day-to-day life. The missions did not hear of one long-term, consistent training programme, or indeed, of a consistent resource of any kind, be it a library or on-line database, that would contribute to large-scale implementation of the rule of law.

The authors of this report found that the difficulties faced by the KRG in this regard stem from the absence of an adequate implementation of systems from the administrative infrastructure to provide the bureaucratic and legal mechanisms necessary for the effective application of law and procedure across all walks of life in Kurdistan, Iraq. Coupled with the lack of education of officials and the public, the absence of effective mechanisms of this kind means that the interaction between the public and state institutions falls back on family, personal and party ties. This encourages corruption, patronage and graft, and in some ways replicates the relationship between state and citizens that existed under the Baathists. Although the mission noted that there were several offices, ministries and committees within

government set up to examine human rights issues, the lack of sufficient mechanisms in place to prevent human rights abuses and the lack of clearly-defined avenues of recourse for victims of human rights abuses meant that violations and perceptions of violations are commonplace.

Several reports published in the last two years have noted the breadth of violations occurring in the regions. KHRP mission members noted that these reports were often the source of much frustration even on the part of those in civil society who were actively critical of government. The missions found that government and civil society felt they had been left between the proverbial rock and a hard place. They note that one of the primary causes of the absence of any unified or coherent public human rights education or institution-building has been a lack of planning and investment by the international community, despite pre-2003 concern about the human rights situation in Iraq. Though millions of dollars have been spent by international organisations and NGOs on various developmental projects across Iraq, the missions found that there has been no visible or known coherent strategy underpinning such work. Developmental projects, training and other 'nation building' measures appear to have been ad hoc, and therefore have failed to make democratic institutions take root in Kurdistan, Iraq, or indeed in Iraq as a whole. Many trainings for government leaders and NGOs have taken place without prior consideration of whether they are suited to their specific circumstances and knowledge base. In this context, the ample human rights provisions of the new Iraqi constitution have received scant developmental support, rendering their reach and effect minimal.

This report seeks to lay out the concerns and observations of the missions. Its findings are based on extensive interviews, as well as desk research. Section 1 provides a background to the current situation of the Kurds in Iraq, setting out the history of the Kurds in the region, the setup of the KRG, and the official frameworks, both regional and federal, within which Kurdistan, Iraq, operates.

Section 2 discusses the human rights framework in Kurdistan, Iraq, and the major obstacles to its consolidation. This includes outlining various observations the missions made in the areas of women's rights, detention, freedom of expression, minority rights and internal displacement. The observations made in this section are not intended as an exhaustive list of human rights strengths, problems or abuses occurring in Kurdistan, Iraq. Rather, they are designed to illustrate the report's wider discussion of the effect that the lack of strategic planning, infrastructure, education, instruction and investment is having on state-public relations and human rights.

Section 3 will discuss outstanding issues regarding the status of oil-rich Kirkuk and other 'disputed' Kurdish-inhabited areas of Iraq not currently under KRG

jurisdiction. These areas operate in a very different context to the neighbouring KRG and are particularly vulnerable to the violence and instability that the rest of Iraq has experienced in the past five years. A referendum on the status of Kirkuk, as required by Article 140 of the Iraqi constitution, was due to take place in December 2007 but was postponed to mid-2008. Given their multi-ethnic makeup, the history of Baathist 'Arabisation' policies, and their as yet undecided status, the disputed areas run a high risk of being the focus of future conflict and human rights abuse. Scrutiny of the human rights situation and an equitable resolution of final status for all inhabitants in these areas are essential to ensure human rights and stability in the region.

The year 2007 also witnessed persistent cross-border military operations by both Iran and Turkey in KRG territory. These operations, which included shelling, air raids, and in February 2008, ground incursions, have had an enormously destabilising effect on the region, causing civilian deaths, mass displacement, and the destruction of property, livestock and arable land. KHRP's missions in November/December 2007 and January 2008 sought to analyse the human rights impact of these cross-border operations and their impact on attempts to develop a wider human rights infrastructure. The findings of these missions will be discussed in Section 4. The same section will also look at the Iranian and Turkish incursions through the lens of international humanitarian law and European human rights legislation, and discuss possible recourse available to the civilian victims of military operations in the region.

The report will conclude with a set of recommendations to the government of Iraq, the KRG, civil society organisations, the international community and international NGOs working in the region, which mission members believe will be useful in building a robust human rights infrastructure not only in the Kurdish regions, but in Iraq as whole.

1. BACKGROUND

1.1 The Kurds in Iraq

The question of autonomy

Since its foundation in the aftermath of the collapse of the Ottoman Empire, Iraq has been an extremely diverse country in terms of religions, ethnicities and politics.¹ In many ways it has been the interplay and rivalries between various religious and ethnic groups for political control and influence that has shaped Iraqi politics ever since the state's inception. The Kurds, denied a state in the aftermath of the First World War², have long been central to this interplay.

From the foundation of the Iraqi state, the largely Kurdish north's relationship with Baghdad was characterised by a mixture of revolt and rapprochement, with uprisings occurring against the central government in 1923, 1924, 1930, and 1943.³ The emergence of a political leader in Mullah Mustafa Barzani in the 1950s led to a more organised Kurdish bloc seeking greater autonomy vis-à-vis the central Iraqi government. Throughout the upheavals of the 1958 revolution and the 1963 Baathist coup Barzani's *peshmerga* militia were in de facto control of much of the north of Iraq, attracting a prolonged bombing campaign by the central government which lasted until as late as 1975.⁴

It was under the Baathists that a model for Kurdish autonomy was set out in the March Manifesto of 1970, which provided, amongst other things, for Kurdish as an official language in Kurdish-inhabited regions, Kurdish participation in government and civil service, a Kurd as vice president of the republic, and the unification of

1 Iraq's population is approximately 75 per cent to 80 per cent Arab (of which 60 per cent are Shia and 40 per cent are Sunni), 15 per cent to 20 per cent Kurdish, with Turkmen and others making up around five per cent. These figures are from a 2007 estimate, 'CIA – The World Fact Book', <https://www.cia.gov/library/publications/the-world-factbook/geos/iz.html> (last accessed 30 June 2008).

2 The treaty of Sevres, signed between the allied powers and the Ottoman government in 1920, envisaged an independent Kurdish state but was never implemented.

3 Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007, pp12-17. The earlier of these revolts took place under the British mandate and were suppressed by RAF bombing raids.

4 *Ibid.*, p17.

Kurdish majority areas under one self-governing unit.⁵ Though the Manifesto was never implemented, it was considered by subsequent Kurdish leaders as the basic blueprint of what Kurdish autonomy should largely entail, and many aspects of the Manifesto found their way into Iraq's current federal constitutional arrangement. It has been argued that had the Manifesto been implemented, many subsequent conflicts with the central government may have been avoided.

There was no political will within the Baathist government to implement the Manifesto. Central to this, as today, was the question of the status of the oil-rich city of Kirkuk. The Baathist government was accused of attempting to alter the city's demographics by moving Arab settlers to the region in order for it to retain direct control of the city, and clashes between the central government and the *peshmerga* reignited. The Baathist Arabisation policy in the region would accelerate in the coming years, particularly during the mass displacements of the Anfal campaign. In the end, the Manifesto was scrapped and Saddam Hussein imposed an autonomy agreement on Barzani in 1974, which provided an extremely limited autonomy under direct control of the president of Iraq.⁶ This autonomy arrangement did not include the city of Kirkuk. In all, it covered only half of Iraq's Kurdish-inhabited regions and was rejected by Barzani. The question of the status of Kirkuk in a Kurdish autonomous region remains a central concern for those seeking stability, democracy and human rights in the region, and will be discussed in more detail later in this report.

The Anfal campaigns

Throughout the 1970s, conflict continued between the Iraqi central government and various groups in Kurdistan, Iraq. However, it was the 1980s that would see the most violent campaign against the Kurds by Baghdad, a campaign whose legacy is still felt today, two decades later. The 'Anfal'⁷ campaigns, which were conducted between February and August 1988, took place in the context of the devastating Iran-Iraq war and a rapprochement between the Kurdish PUK and KDP factions.⁸

5 *Ibid.*, p18.

6 Tripp, Charles, *A History of Iraq*, Cambridge University Press, 2002, p212.

7 The code name is derived from the name of the 8th verse of the Koran, meaning 'spoils of war'.

8 Barzani's KDP was founded in 1945. The organisation split in 1975, with Jalal Talabani (now Iraqi president) founding the PUK. The groups have a history of conflict and fought a civil war in the mid-1990s but today jointly administer the KRG.

The Iraqi government was concerned that a united Kurdish front in the north would provide the Iranians with an advantage in the ongoing war.

In order to neutralise this perceived threat, Saddam Hussein gave his cousin Ali Hassan al-Majjid⁹ full control of the Kurdistan region in 1987. Al-Majjid sought to attack, clear and raze villages in order to ensure that civilians could not support *peshmerga* forces. His opening campaign of bombings, gassings, village clearances and mass imprisonment in resettlement camps became the established pattern of the Anfal campaigns of the following year.

The Anfal campaigns of 1988 are particularly infamous since they involved the systematic deployment of chemical weapons on civilian targets. The most famous target was perhaps the town of Halabja, where an estimated 5,000-7,000 civilians were killed in poison gas attacks. The town has rightly become a symbol of the ills of the Baathist regime in Iraq and of the suffering of Iraq's Kurds. However, far more bloody was the use of conventional warfare and the rounding up of thousands of civilians for mass execution or 'disappearance' to break support for the Kurdish resistance. In all, an estimated 3,000 villages were razed, 1.5 million civilians displaced and an estimated 180,000 people killed or 'disappeared'.

The legacy of the genocidal Anfal campaigns lives on today and has had an enormous impact on the politics and society of Kurdistan, Iraq. Thousands suffer from the after-effects of chemical attacks, which have caused blindness, respiratory problems, skin diseases, psychiatric disorders, birth defects and stillbirths. The mothers and widows of the tens of thousands of men 'disappeared' by Iraqi forces have often needed to deal not only with the loss of loved ones, but also with the responsibility of becoming the head of a household in a cultural context where full independence for women is often seen as shameful. Displacement also remains a problem, while the political and social effects of Baathist policies continue to be a potential focus of future conflict in cities like Kirkuk and Mosul. Many of the ongoing problems faced by the region today, as discussed in this report, can be traced back to the legacy of

⁹ Commonly referred to as 'Chemical Ali', al-Majjid is currently under sentence of death in Iraq for his role in the Anfal campaign.

the Anfal campaigns, and indeed to the decades of sporadic conflict that preceded them.

1.2 The Kurdistan Regional Government

Foundation and civil war

The KRG was founded in the aftermath of the 1990 - 1991 Gulf War and the failed uprising against the Baathist government carried out by the mostly Sunni Kurds in the north and mostly Arab Shi'ites in the south. The failure of the uprising and the rapid recapture of major Kurdish population centres by the Iraqi army precipitated a mass exodus of over half a million refugees to the mountainous Turkish and Iranian border areas. This humanitarian crisis led to the adoption of UN Security Council Resolution 688 condemning the repression of Kurdish civilians, and eventually to the establishment of a 'safe haven' in the north of Iraq, enforced by a 36 by 63-mile cordon free of Iraqi forces, and a 'no-fly zone' north of the 36th Parallel.¹⁰ This safe haven, which was to expand and form the basis of the KRG's future jurisdiction, did not comprise all of Iraq's Kurdish-inhabited areas and did not include the key city of Kirkuk, instead roughly matching the area proposed by Saddam Hussein in the 1974 Autonomy Agreement.¹¹

Elections for a new 105-seat National Assembly took place on 19 May 1992 between the different parties of the Kurdistan Front, a bloc of major regional parties which formed in 1989 in the aftermath of the Anfal campaigns. The creation of the KRG and the elections were treated with ambivalence by the international community. While there were positive statements about the attempt being made to establish a democratic process, the international community was at pains not to say anything that would compromise Iraqi sovereignty and territorial integrity. The election returned a 50-50 split in seats between the PUK and KDP, the two main Kurdish political parties, with several other seats going to minority parties such as the Assyrian Democratic Movement.¹²

From the beginning, the newly-created entity was fraught with difficulty from both outside and within. The region found itself the victim of both the UN embargo on Iraq and of an internal economic blockade from Baghdad, which prevented imports and the payment of salaries. Food shortages became widespread, causing instability and worsening existing rivalries between the two main parties.¹³ The

10 Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007, p40.

11 Tripp, Charles, *A History of Iraq*, Cambridge University Press, 2002, p273.

12 Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007, p45.

13 Tripp, Charles, *A History of Iraq*, Cambridge University Press, 2002, p272.

KDP and PUK leaderships stepped back from direct involvement in the new KRG, instead building support for their respective parties. This caused the development of two administrations based on local party ties, with one based in the north of the region (the KDP) and the other in the south (the PUK). Distrust and disputes over jurisdiction eventually erupted into all-out armed conflict in late 1993, with the death toll reaching thousands by 1995.¹⁴ The conflict also drew in regional actors, with the KDP seeking military assistance from the Turkish government and later from Baghdad, and the PUK seeking help from the Iranians.¹⁵ All three governments had an interest in perpetuating instability in the region and obstructing the development of a strong regional administration, and in this they succeeded, allowing not only Baghdad but also Ankara and Tehran to gain a presence and control in the region.¹⁶

In the context of the weapons inspections crisis of 1997 and 1998, the US government became increasingly alarmed at the disunity in northern Iraq and the increasing influence of Saddam Hussein and the Iranians in the region.

Under intense US mediation, in September 1998 the KDP leader Masoud Barzani and the PUK leader Jalal Talabani eventually came to a power-sharing agreement in what was termed the Washington Agreement/Final Statement of the Leaders Meeting. The leaders rejected internal conflict, agreed to refrain from seeking outside intervention, agreed to comply with the human rights provisions of UN Security Council Resolution 688 and agreed to the free movement of citizens.¹⁷ Nonetheless, the divisions between the two factions remained pronounced and

14 *Ibid.*

15 *Ibid.* It was in the context of this KDP-PUK civil war that the major Turkish incursions into the KRG in the 1990s took place.

16 The ongoing regional interest in and hostility towards Kurdish autonomy in northern Iraq will be dealt with later in this report, in the section dealing with the 2007 - 2008 incursions into the territory.

17 Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007, p50.

although the Washington Agreement brought an end to the civil war, the Kurdish region remained under two parallel administrations.

The divisions and allegiances created in this civil war period in Kurdistan, Iraq, remain important to this day and have an enormous impact on the dynamics of government and administration in the region.

1.3 The KRG Post-2003 and the New Iraqi Constitution

Elections and the Unification Agreement

The truce between the Kurdish parties became stronger in the aftermath of the US-led invasion of Iraq in 2003, and steps were taken during the build-up to the Iraqi elections of January and December 2005 to further unify the KDP-led and PUK-led administrations of Kurdistan, Iraq. A Democratic Patriotic Alliance, later renamed the Kurdistan Alliance, was put forward as a united electoral coalition for both elections, comprising the KDP, PUK and several smaller parties such as the Chaldean Democratic Union, the Iraqi Turcoman Brotherhood Party and the Kurdistan Toilers' party.¹⁸

By January 2006, the new Iraqi constitution having been approved, the KDP and PUK came to a settlement on the joint administration of the KRG in the Kurdistan Regional Government Unification Agreement.¹⁹ The agreement, co-signed by Masoud Barzani and Jalal Talabani, provides for the appointment of a KDP prime minister and a PUK speaker of the Kurdistan National Assembly (KNA). These posts are then to be alternated in subsequent elections. The agreement further arranges for the sharing of several ministries to be headed-up by one or the other of the main parties:

- a) The Ministers of Interior, Justice, Education, Health, Social Affairs, Religious Affairs, Water Resources, Transportation, Reconstruction, Planning, and Human Rights will be from the PUK.
- b) The Ministers of Finance, Peshmerga Affairs, Higher Education, Agriculture, Martyrs, Culture, Electricity, Natural Resources, Municipalities, Sports

18 *Ibid.*, p126. The election for the Kurdistan Regional Assembly ran concurrently with the Iraqi national election of 2005. KRG voters voted to appoint representatives in both the Iraqi and the Kurdish assemblies.

19 The agreement, dated 21 January 2006, can be found on the KRG's website at <http://www.krg.org/articles/detail.asp?rnr=24&lngnr=12&anr=8891&smap> (last accessed 30 June 2008).

and Youth, and Minister of Region for the affairs of areas outside the Region will be from the KDP.

- c) The remaining ministries will be assigned to other parties of the Kurdistan Region.²⁰

As an interim measure, the arrangement allowed for the retention of one minister per party in the sensitive areas of Peshmerga Affairs, Finance, Justice and Interior. However, the missions heard that these ministries are meant to eventually be headed by one minister. Since 2007, there have been public statements about the expected date for their unification. Given the legacy of the civil war, the Peshmerga Affairs Ministry, which controls over 160,000 fighters loyal to their own party leaders, may be the most difficult to effectively unite in the future. The united KRG could be considered unwieldy by international standards, with 27 ministers representing a region of 5 million inhabitants,²¹ but in an interview with Kerim Yildiz, author of *The Kurds in Iraq* and Executive Director of KHRP, he explained:

The unification of the KRG is crucial to the credibility of Kurdish authority in Iraq. A strong government and parliament are necessary in order to pursue one of the Kurds' key demands; the expansion of the Kurdish autonomous region.

The current KRG, led by Prime Minister Nechirvan Barzani of the KDP, is largely based on the parties which ran in the Kurdistan Alliance list in the 30 January 2005 election, and was formed according to the stipulations of the Unification Agreement.

*The Iraqi constitution*²²

The Iraqi constitution was approved by referendum in October 2005 by approximately 78 per cent of Iraqi voters, and by over 98 per cent of voters in Erbil, Dohuk and Sulaymanya in the Kurdish regions.²³ The constitution provides for a decentralised, federal and democratic republic. Throughout, the constitution attempts to underline Iraq's multi-ethnic and multi-religious makeup while also tying it firmly to the Arab

20 Kurdistan Regional Government Unification Agreement, paragraph 5, at <http://www.krg.org/articles/detail.asp?rnr=24&lngnr=12&anr=8891&smap> (last accessed 30 June 2008).

21 Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007, p126.

22 For a full translation of the constitution please visit http://www.uniraq.org/documents/iraqi_constitution.pdf (last accessed 30 June 2008). This is an unofficial English translation by the Associated Press of the final approved text of the constitution. All English quotations from the constitution contained in this report are taken from this translation.

23 Home Office Border and Immigration Agency (UK), 'Country of Origin Information Report: Iraq', April 2007, p238.

world, the Kurdish experience and the Islamic faith. Article 2 declares Islam as the official state religion and a ‘foundation source of legislation’, but also guarantees full religious rights and full freedom of belief and practice. The mission learned that these types of compromises are found throughout the constitution and are the source of ongoing arguments between the regional and central governments, as well as between secularists and fundamentalists. Article 3 states that Iraq is made up of multiple nationalities, religions and sects, while also reaffirming its commitment to the charter of the Arab League and its place within ‘the Islamic world’. Article 4 lists Arabic and Kurdish as the official languages but provides for the use of other languages in an official capacity locally, according to population density.

The constitution contains the requisite basic provisions for religious, ethnic and gender equality (Article 14). Judicial independence is provided for in Article 88 and freedom of movement, privacy, conscience and expression are also provided for (Articles 24, 17, 42 and 38). However, many such provisions have points of concern regarding the potential impact on human rights. Chief amongst these is the personal status (family) provision (Article 41), which provides that ‘Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices’ but states that this will be ‘regulated by law’. In the context of Islam’s constitutional status as a ‘foundation source of legislation’, leaving the mechanism of the personal status law to the legislature may have the potential to affect the personal status rights of women. The missions learned that this is of serious concern for human rights advocates who ‘maintain that women should have the right to choose a civil court in matters of personal status constitutionally enshrined.’²⁴

Furthermore, while there may be positive provisions for human rights within the Iraqi constitution, these provisions require implementation in order to be of any real benefit. Implementation in turn requires the provision of a system of public recourse to law, a well-trained judiciary and an administration with full knowledge of its human rights obligations. Also essential is proper public awareness of what human rights are, and what public recourse to law is available. As this report will demonstrate, none of these things is a certainty in Iraq, and very little has been done strategically to provide Iraq and the KRG with these basic necessities for the effective implementation of the constitution.

The constitutional status of the KRG

Article 117 of the constitution recognises the ‘region of Kurdistan, along with its existing authorities, as a federal region.’ This article gives the KRG a recognised legal and constitutional existence in the context of the Iraqi republic, something

24 Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007, p138.

it had not enjoyed since its de facto establishment in 1992. Article 141 establishes that, 'Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid... provided that they do not contradict with the Constitution.'

One of the central aspects of the Iraqi constitution with regard to the KRG is Article 140 (2), which deals with the as yet undecided status of Kirkuk and other 'disputed areas'.²⁵ The article requires that the final status of Kirkuk and other 'disputed areas' be decided by a referendum 'to determine the will of their citizens' following the conclusion of 'normalisation and census'. As explained above, Kirkuk has long been a bone of contention in the relationship between Iraq's Kurds and Baghdad, and this article, at least on paper, is an attempt to reach a fair agreement on the question. The constitution stipulates in the same article that the referendum should take place no later than 31 December 2007. However, in the absence of any census or 'normalisation' efforts in the city, and due to delays in the elections and constitutional drafting process, the referendum has little realistic chance of occurring even by the slated new deadline of mid-2008. The question of the constitutional status of Kirkuk, and the demographic and human rights concerns in the city, will be dealt with later in this report.

25 The term 'disputed areas' refers to Kurdish majority areas in the north-west of Iraq, many of which are under KRG control, if not within the legal boundaries of the KRG.

2. HUMAN RIGHTS IN KURDISTAN, IRAQ, AND OBSTACLES TO DEVELOPMENT

2.1 Democratic Institutions, Corruption and the Effect on Wider Human Rights Issues

As noted in the previous section, the political unity achieved since 2003 between the two major parties in Kurdistan, Iraq, within the framework of the KRG has heralded an unprecedented opportunity to replace the partisan and fractured governance of the Saddam era with genuine rule of law, robust institutions and the safeguarding of human rights. However, KHRP's findings in the region have demonstrated that despite the undoubted changes in the political situation, movement towards this end has been unsatisfactory, and the opportunity to support the solid foundation of relative stability and economic development is being missed. The missions all found that at the heart of the issue is the lack of effective use of the existing infrastructure and any strategic plan for developing it. The mechanisms that would provide for the effective application of law and procedure and development of a human rights culture appear to be often non-existent or consistently bypassed. KHRP observed that many of the dynamics of state-society relations characteristic of the region prior to 2003 remained in place and continued to thrive. In particular, informal ties — from personal connections to partisan patronage networks — extended across all aspects of life in the region, mediating the access of individuals to government representation, employment, healthcare and other basic resources and rights. Whilst these dynamics are by no means exclusive to Kurdistan, Iraq, it is clear that wherever they are found to dominate government/public sector interaction without appropriate checks and balances, human rights abuse prevails.

Although in theory, federal Iraqi law is supreme in Kurdistan, Iraq, KHRP heard that in practice several competing systems mediate government-society relations, including the state legal codes, regional legal codes, old Baathist law, religious law and local custom. On the one hand this results in considerable inconsistency in the application of law and the access of individuals to justice, resulting in loss of public confidence in government and the law. On the other hand, the missions learnt that this also resulted — in rural areas in particular— in considerable deference towards the interpretation and application of these systems by village, religious and community leaders. In practice this has particularly dire consequences for women,

detainees and minority groups, which are addressed specifically below. Moreover, KHRP encountered anecdotal examples of personal ties being used more generally to circumvent the justice system. For example, one mission member heard a story about a man who had used his brother-in-law inside the police force to have another individual arrested as a prank. The mission was told that he was meant to be held overnight but that due to the competing systems, once he was officially in the prison - although arrested and held on no basis other than nepotism - the police could not release him because according to procedure he had to be seen by a judge. The individual subsequently had no way of challenging this and was imprisoned for six months.²⁶

It is important to note that KHRP's missions did not find conclusive evidence of corruption in Kurdistan, Iraq, as concrete examples were rarely discussed or encountered. Nonetheless, a multitude of stories of systems being circumvented by the use of informal ties and networks were heard, giving the impression that opportunities for corruption were manifold. In any case, KHRP gathered a wealth of anecdotal testimony indicating, at least, that the *perception* of corruption was widespread and a number of organisations and individuals interviewed identified corruption as being a big problem.²⁷ Indeed, such a perception can be just as destructive within society as the practice itself in destroying public trust in the meaning and purpose of government.

According to a UK Foreign Office letter dated 12 April 2005, 'As in much of the Middle East, corruption is a feature of life in the Kurdish Region. Tribal and family dynasties underpin much of this, as well as the problem caused by poor access to a range of services. The KRG has declared its determination to address this and is engaged in anti-corruption work in cooperation with the UK Defence Academy.'²⁸ Since 2005 there have been growing signs of public discontent with the KRG's ability to deliver basic services and commodities such as water, fuel and power, resulting in a number of protests throughout the region, particularly in Sulaymanya governorate.²⁹ Public anger and confusion is perhaps inevitable at a time when the KRG is publicly advertising itself as a hub for economic development and is cementing ties with international investors in its energy, media and other sectors. Mission members heard frequent questions being raised with regards to uneven

26 FFM interview with representatives of Civil Development Organisation, 12 January 2007, Sulaymanya.

27 FFM interviews with: Ali Mustafa, PUK representative in Amedie and Dohuk, 29 November 2007, Dohuk; KRG Human Rights Committee, 22 January 2007, Erbil; representatives of Civil Development Organisation, 12 January 2007, Sulaymanya; Soran Qadir Saeed, Norwegian People's Aid, 16 January 2007, Sulaymanya.

28 FCO letter dated 12 April 2005, quoted in Home Office, 'Iraq: Country of Origin Information Report', 30 April 2007, p.67.

29 Iraq Crisis Report No.246, 'Kurds' Frustration with Leaders Grows', 21 December 2007.

allocation of government resources. KHRP noted that petrol shortages were rife in the region, with reports of five-day queues for fuel being common. However, without an effective public information system in place to explain why shortages would occur in an area reported to have an abundance of oil reserves, the mission heard from numerous sources ranging from public servants to NGO workers and taxi cab drivers that they suspected corruption and misallocation of resources. Thus even if accusations of corruption were unfounded, a lack of transparency in government procedure was creating a negative impression. This was indicative of a much broader problem, in that in instances where there was adequate provision of resources and access to rights, people were confused as to how to access them.³⁰

The lack of coherency evident in the region appears to be in part related to the history of rivalry between the two major political groupings. As noted earlier, the role of the PUK and KDP in governing the affairs of the region was especially pronounced during the 1990s when they each stepped back from direct involvement in the fledgling KRG to focus on building exclusive support for their respective parties. Yet despite the signing of a Unification Agreement between the parties in 2006, providing a strategy for power-sharing and the foundations for unified government, this mentality continues to survive today. In 2007, for example, the KRG retained two party-based Ministries of the Interior, the PUK with jurisdiction over Sulaymanya and the KDP with control over Erbil and Dohuk, and failed to meet two self-imposed deadlines for unification during the year.³¹ Further, KHRP found that some ministries which supposedly had already undergone unification in practice still operated along partisan lines. For example, Mr Bakhtyar Ahmed from KHRP's local partner the Civil Development Organisation (CDO) told KHRP that when he followed up in Sulaymanya on our meeting with the Minister of Human Rights in Erbil, where we had been promised a copy of a human rights report by the Ministry of Human Rights in Erbil, he was told that the report 'had nothing to do with them' and that it was only available in Erbil where it had been prepared and written.³²

KHRP also heard questions being raised as to why areas under KDP administration had electricity and other areas did not, or why members of a particular party had access to a certain hospital while others did not. Additionally, many NGOs were concerned with a failure to institutionalise government, arguing that the rule of law was being dictated according to party dogma and was therefore inconsistent and opaque. It was further suggested that the deference towards personalities of major leaders within the parties over systems was a legacy of the Baathist political

30 FFM roundtable discussion with Erbil NGOs, 20 January 2007, Erbil.

31 US Department of State Iraq Report 2007, <http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm>, (last accessed 30 June 2008).

32 Email from Bakhtyar Ahmed, 13 February 2008.

culture.³³ Further, and most concerning to mission members, it was discovered that both political parties have their own illegal, private prisons.³⁴

During the January 2007 visit to Kurdistan, Iraq, a KHRP mission member accompanied by Mr Bakhtyar Ahmed visited a post office in order to buy some stamps. On arrival there were eight or nine people sitting in a circle behind the desk having tea and chatting. Having been questioned by a staff member as to why they would want to purchase stamps, they were informed half an hour later by the manager that the post office did not actually sell stamps or distribute mail. Both the mission member and Mr Ahmed were incredulous. When the mission member asked Mr Ahmed about whether in his experience this was normal at the post office, he said that it was not, and was as surprised as her, laughing in disbelief. He went on to question what the jobs could be of the nine people sitting behind the counter. KHRP subsequently learned that there is no formal postal service in Iraq, but rather several private courier companies, and that Mr Ahmed was accustomed to using those in Sulemanya. However, he knew that a public post office did exist and indeed the mission did find one. Though it occurred by happenstance, this incident was important to the mission because it was a simple example that demonstrated all of its concerns around the visible lack of a sustainable plan in developing Kurdistan. In the view of the mission, not only would such a practice constitute economic mismanagement and waste of resources, it also creates a misleading impression of government as a provider for rather than as an instrument of the people. Furthermore, mission members gained the impression in some areas that public awareness as to the nature and workings of corruption was particularly lacking, indicating that many corrupt practices may have been regarded as legitimate methods of interaction. According to the UK Foreign Office, 'criminality in Kurdistan is endemic by western terms. However, much of the activity is considered by the population to be simply a way of earning their crust.'³⁵ Ali Mustafa, a PUK official, highlighted the need for transparency, training and education in this regard.³⁶

Representatives of the KRG Parliamentary Human Rights Committee acknowledged that whilst some efforts had been made to monitor corruption, these had been ad hoc rather than systematic.³⁷ During at least two discussions on the problem with two different reputable NGOs in Sulemanya, KHRP noted reluctance on the representatives' parts to give details on the ways in which corruption manifested

33 FFM roundtable discussion with Erbil NGOs, 20 January 2007, Erbil.

34 FFM interview with Dr Yousif Aziz, KRG Minister of Human Rights, 21 January 2007, Erbil.

35 FCO letter dated 12 April 2005, quoted in Home Office, 'Iraq: Country of Origin Information Report', 30 April 2007, p.67.

36 FFM interview with Ali Mustafa, PUK representative in Amedie and Dohuk, 29 November 2007, Dohuk

37 FFM interview with KRG Human Rights Committee, 22 January 2007, Erbil.

itself.³⁸ The whispered suggestion by one of the representatives was that it was dangerous to talk about such things. This concern was echoed at a roundtable meeting where several NGOs cited the inability of journalists to report on corruption.³⁹ Indeed, this is where the mission first learned of the ‘private prisons’ of the political parties, the existence of which was later confirmed by the Minister of Human Rights in Kurdistan.

During KHRP’s discussion with the KRG Human Rights Committee, representatives said they felt that corruption and human rights violations both stemmed from inadequate procedures and education through genuine democratic institutions.⁴⁰ Yet it was also evident that the prevalence of corruption and deference towards informal social ties themselves were leading to a widespread misconception of the nature and purpose of government and the individual’s relation to it. Mission members noted, for example, that the idea that the government was unresponsive and lacked appropriate mechanisms for engaging with people was common. This situation was undoubtedly exacerbated by the absence of any independent or government body which regularly consults with NGOs and civil society organisations, which could create a link between the individual and politics and help to keep a check on the actions of government. A number of NGOs in Erbil, for example, complained that although individuals and NGOs were able to express problems to the government, they did not see how such complaints were acted upon.⁴¹ KHRP observed more broadly that this was resulting in a widespread disregard for institutions and the law, and was discouraging public interest in the democratic process and government by isolating citizens from the authorities and promoting apathy and mistrust. At the same time, public trust in the regional government appeared to the mission to be higher than in the UK or indeed any other western country. Mission members noted that where NGOs were in communication with the government, they were generally accepting of the responses they were given on the issues of concern to them. In the view of the mission, it was clear that whilst corruption and graft are very likely serious problems in Kurdistan, one key to uncovering their roots lies in creating effective tools for citizens and governments to use to interact with each other. At present, unrealistic expectations from both sides are leading to unfair expectations of ‘patience on the part of the public’ and ‘miracle cures to societal ailments’ on the part of government.

Mission members were also concerned by a widespread dearth in training programmes for law enforcement officials, prison staff, judges and lawyers. They

38 FFM interview with representatives of Civil Development Organisation and Norwegian People’s Aid, 12 January 2007, Sulamanya.

39 FFM roundtable discussion with Dohuk NGOs, 19 January 2007, Dohuk.

40 FFM interview with KRG Human Rights Committee, 22 January 2007, Erbil.

41 FFM roundtable discussion with Erbil NGOs, 20 January 2007, Erbil.

were told by the KRG's Minister of the Interior, Osman Hadji Mahmut, that the ministry had a training programme for police, whereby officers would go to college and graduate from there.⁴² However, KHRP was told separately by CDO that the ministry's involvement in the programme went no further than permitting officers to attend, and that the burden of organising and funding the training was shouldered by NGOs.⁴³ Mission members were further troubled when the minister was unable to coherently outline what measures the ministry was taking to ensure that officials were performing their duties in line with international human rights standards. Elsewhere, mission members learned from members of the Kurdistan Law Syndicate that lawyers in the region were in desperate need of books and a legal database and that there was no continuing educational development.⁴⁴

The broader issue of resources reflects well one of the most fundamental challenges to human rights in Kurdistan, Iraq. Mission members frequently heard that a fundamental lack of resources was undermining development and human rights in the region. This opinion was reflected particularly during interviews with government officials, many of whom were very open to the idea of outside training and funding programmes by international NGOs.⁴⁵ Crucially, however, without transparency in state institutions, no development can take place in the region, with or without the injection of substantial aid and support from the international community. These observations underpin KHRP's belief that only with the implementation of a coherent long-term strategy that tackles the root causes of human rights abuse and underdevelopment in the region, can progress be made.

NGOs, civil society and human right provisions

Due to its relative autonomy in recent decades, Kurdistan, Iraq, has developed a stronger NGO presence than other parts of the country. Nonetheless, KHRP mission members made several observations highlighting the poor provisions for NGOs and civil society in the region that directly served to compound existing human rights problems, such as lack of public awareness of women's rights, or the problems experienced by people living in Kirkuk and other 'disputed areas', where NGO penetration is especially weak. Many NGOs felt that the government was badly organised and failed to recognise the importance of the role played by NGOs. This was partly indicative of the fact that those in power were unaware of

42 FFM interview with Osman Hadji Mahmut, KRG Minister of the Interior, 29 November 2007, Sulemanya.

43 FFM interview with Civil Development Organisation, 29 November 2007, Sulemanya.

44 FFM interview with Bangeen Nuri Yaba and Sarab K. Hassan, Nuri Yaba Law Office, 1 December 2007, Erbil.

45 FFM interview with Osman Hadji Mahmut, KRG Minister of the Interior, 29 November 2007, Sulemanya.

their responsibility to serve the people and to be held accountable.⁴⁶ Further, the mission gained the impression that NGOs found it difficult to remain independent and that many had ties to the PUK and KDP. The fact that civil society operates along the same lines of patronage and informal networks seen across the region is greatly concerning, and is likely to limit public faith in the independence and purpose of NGOs. For example, mission members were aware of allegations that one of the organisations which it interviewed was affiliated with the PUK. These claims may have been linked to the fact that the building in which the organisation's headquarters were based had been given to it by the party.⁴⁷ KHRP also learned that coordination between NGOs was limited, particularly in terms of data collection and pooling.

It is important to recognise and commend the steps that the KRG has taken to institutionalise its government and support human rights and civil society, particularly the establishment of its Human Rights and Civil Society ministries. However, it is also the case that a failure to establish a clear mandate for ministries and shortages in resources and adequately-trained staff continue to undermine their effectiveness. Many organisations, for example, noted a host of bureaucratic obstacles to NGOs and felt that current laws were reflective of a mentality indisposed to civil society development. For example, a prospective NGO has to apply separately to four different ministries to become accredited.⁴⁸ Moreover, during a discussion with representatives of several NGOs, KHRP found that many lacked adequate, long-term fundraising strategies and were dependent on international aid funds.⁴⁹ Indeed, KHRP is concerned not only that these funds are irregular, but that this is also serving to sustain the culture of dependency that was found to exist at the expense of individual enterprise across the region. NGOs in Dohuk added that specific problems relating to their work included lack of NGO structure, lack of funds to pay staff and a dearth in awareness as to what an NGO is or should be.⁵⁰

The authors assert that the challenges faced by NGOs reflect not only failures at a local level, but also the failure of international NGOs and the international community to develop a sustainable and long-term strategy for civil society development. Again, the issue of resource allocation emerged. For example, NGOs in Erbil told KHRP that they could not depend on organised funding by the government, and that international funding was irregular, usually limited to

46 FFM roundtable discussion with Dohuk NGOs, 19 January 2007, Dohuk.

47 FFM interview representatives of Civil Development Organisation, 12 January 2007, Sulemyanya.

48 FFM roundtable discussion with Dohuk NGOs, 19 January 2007, Dohuk.

49 *Ibid.*

50 *Ibid.*

one-off projects.⁵¹ Mission members felt that this was encouraging NGOs to invent short-term projects for the purposes of securing funds. Moreover, KHRP gained the impression that whilst international aid agencies had invested significant sums of money in projects in Kurdistan, Iraq, the lack of a formal economic structure in the region and the prevalence of corruption meant that funds were not spent in the desired way, or ended up in the wrong hands. Indeed, it appeared that some organisations were milking such avenues primarily as a way of making money, a practice which can only damage the reputation of NGO work in the eyes of the public. More broadly, the mission learned that some NGOs faced problems of trust within the communities they operated, especially when attempting to challenge widely-held beliefs and practices, such as those relating to gender.⁵²

At the level of regional government, KHRP observed similar obstacles to human rights protection. During its interviews, mission members gained the impression that there was no active, systematic collaboration between the KRG Human Rights Committee, Human Rights Ministry and other MPs. This was apparent when representatives of the Human Rights Committee and the Human Rights Ministry respectively denied and acknowledged the existence of secret prisons.⁵³ It also appeared to be the case that while particular human rights issues, such as women's rights or the Anfal campaigns, might be pushed according to the agendas of individual members of the Human Rights Committee, there was very little emphasis on awareness-raising on human rights in general. Similarly, fundraising efforts were limited to ad hoc conferences and seminars, rather than taking place as part of a holistic strategy to raise and effectively allocate funds. When mission members asked the Human Rights Committee what measures the international community had taken to initiate training programmes for officials in the region, it was told that such measures usually took place outside of Iraq, and were generally not followed up by subsequent events.

Beyond the practical obstacles faced by NGOs and government offices, mission members also noted that public understanding of the nature and purpose of civil society as an essential link between the individual and government was still in its infancy, most likely because of the traditional dominance of the parties as the ultimate spokespeople of the people. This underscores the need for reform on a conceptual level, through education programmes. Ultimately, poor collective understanding of civil society and the undeveloped nature of civil society itself are

51 FFM roundtable discussion with Erbil NGOs, 20 January 2007, Erbil.

52 FFM roundtable discussion with Erbil NGOs, 20 January 2007, Erbil.

53 FFM interview with KRG Human Rights Committee, 22 January 2007, Erbil; FFM interview with Dr Yousif Aziz, KRG Minister of Human Rights, 21 January 2007, Erbil.

mutually reinforcing, limiting opportunities for dialogue between the government, civil society and the general population.

2.2 Women's Rights

Due to the realities of the changing political and social environment and security landscape, it is difficult to make a definitive assessment as to whether the lives of women in Kurdistan, Iraq, have changed in any one particular direction in recent years. However, throughout KHRP's interviews in Kurdistan, Iraq, the broad area of women's rights was highlighted by many interviewees as one of the most pressing human rights issues in the region. More specifically, there was broad consensus that domestic violence was pervasive in all its forms throughout the region, affecting women of all social and educational levels. It is of primary concern to KHRP that a detailed analysis of the issues negatively affecting the daily lives of Kurdish women should be brought to light, not least because the mission members learnt not only that women routinely suffer the most significant human rights abuse, but that those abuses are often seen as specific to women and separate from human rights campaigns. In addition, the missions found that the violations suffered by women often demonstrate more graphically the gaps in infrastructure and strategic planning.

Both the KRG and civil society representatives have acknowledged that patriarchal tribal traditions, a chauvinistic religious interpretation and unreasonable societal expectations of women are among the root causes of violence and discrimination against women.⁵⁴ To a certain extent, the rights of women with regards to marriage, divorce, custody and inheritance are subordinate to a complex web of cultural and religious values, and nationalist practices. As a result, women suffer substantial pressure to maintain socially-prescribed roles and considerable limits on their personal freedom. Moreover, when these gender roles are enforced, or where women transgress them, domestic violence - including forced marriage and 'honour' crimes - is observed. Given the closed nature of society in the region, avenues of redress for female victims of such abuse are extremely limited.

However, throughout its visits to Kurdistan, Iraq, KHRP found that whilst these structures did indeed exist to varying degrees, they were being sustained by economic and institutional underdevelopment and the failure to systematically implement one coherent rule of law across the region. The contradictions and political compromises in the Iraqi constitution mentioned in Section 1 of this report, combined with the competing social and legal structures in Kurdistan,

54 FFM interview with Ali Mustafa, PUK representative in Amedie and Dohuk, 29 November 2007, Dohuk.

have made access to justice and escape from abuse almost impossible for women.⁵⁵ In this respect, the missions found that discussion of Kurdish society as being fundamentally resistant to change, or ignoring issues such as ‘honour’ crimes that are deemed to be culturally or politically ‘sensitive’ does nothing to improve the situation of women. Such societal structures are by no means inherent or exclusive to Kurdish society; as with discrimination and violence against women, they are endemic in many other parts of the world. Moreover, acknowledging that practices that circumscribe the rights of women have roots in a ‘mentality’ is not to say that these are fundamental or resistant to change, but rather entails the recognition of the importance of education and public awareness in addressing these.⁵⁶ Indeed, KHRP routinely encountered hope that change on the ground could be achieved through such a strategy. Additionally, such a strategy is needed to correct the dangerous misconception, held by many in the Kurdish regions, that women’s rights exclusively concern the need to protect women from violence. This obscures the bigger picture, namely, the need for equality in all domains of life, including access to education, employment, justice and political representation.

In addition, many of the observations made by the KHRP missions regarding the situation of women in the region typify the specific challenges faced by women living in conflict or post-conflict environments.⁵⁷ In such contexts, women bear a disproportionate share of the societal consequences of war, conflict and instability. Kurdish women in Iraq are no exception in this respect. In recent decades they have lived with a legacy of trauma from the Iran-Iraq war, the Baathist regime’s Anfal campaigns and other repressions, displacements, mass killings and torture, as well as the ongoing cross-border military campaigns by Iran and Turkey. These have created demographic shifts, internal displacement and familial deaths which have served to radically alter the role of women. In certain respects, cultural norms as described above can become accentuated by the onset of military conflict. In post-conflict environments as well, women often occupy key roles as widows and lone heads of households, often finding that societal expectations of them shift radically. Indeed the correlation between conflict and instability and human rights protection is especially pronounced in the context of women. In this respect, KHRP found that the situation of women was particularly dire in those areas where the daily incidence of violence was exceptional, such as in Kirkuk, Mosul and other ‘disputed areas’. It is of paramount importance for this project, and indeed other such initiatives directed

55 FFM meeting with women’s Organisations of the Halwest Group, 17 January 2007, Sulemanya.

56 FFM interview with Mullah Dr Omar Ghazni, Islamic Union, 3 March 2007, Erbil.

57 FFM roundtable discussion with Erbil NGOs, 20 January 2007, Erbil.

towards studying the culture of human rights in war zones, that the experiences of women be documented and analysed.⁵⁸

Protective legislation

Iraq is party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which defines such abuse as ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’. Iraq did however cite reservations in relation to the following provisions:

- Article 2 (f) on the liability to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- Article 2 (g) on the liability to repeal all national penal provisions which constitute discrimination against women;
- Article 9 (1) and (2) on granting women equal rights with men to acquire, change or retain their or their children’s nationality;
- Article 16 on taking all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and on the minimum age and registration of marriages.

In addition, Iraq also made reservations in respect of Article 29 (1) indicating that it did not accept the jurisdiction of the International Court of Justice (ICJ) in relation to disputes between state parties as to the interpretation or application of CEDAW. The volume and nature of the reservations clearly demonstrates a strong reluctance on the part of the Iraqi authorities to bring issues concerning women, children and the institution of marriage beneath the formalities of legal redress.

The Iraqi constitution prohibits all forms of violence and abuse within the family, school and society. Yet fundamental deficiencies effectively perpetuate violence in the family by allowing husbands to use violence against their wives with impunity. At the time of writing, according to the Iraqi Penal Code, the ‘exercise of a legal

58 FFM meeting with Sarah Keeler, University of Kurdistan, Hawler, 2 December 2007, Erbil.

right' to exemption from criminal liability is permitted in cases of: 'The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom' (Article 41(1)). Whilst the mission was left unclear as to whether honour killings are legally meant to be tolerated, it learned in no uncertain terms that Article 111 of either the former or the current Iraqi Penal Code - according to which 'honour' killings are tolerated when committed with 'honourable motives' - remained in use. This sets the maximum jail sentence at two years, with this sentence to be commuted if the defendant has no criminal history. The KRG has, however, passed several laws providing safeguards for women's rights, including prohibiting domestic violence and polygamy except in cases of infidelity. Reform in this area predated the fall of Saddam; in 2000 (in PUK-controlled areas) and 2002 (in KDP-controlled areas) the region's penal code was amended so as to render 'honour' an aggravating rather than extenuating factor. Prior to the enactment of this legislation, the perpetrators of these crimes were either never tried or were given lenient sentences.

Domestic violence, 'honour' killings, suicide and 'accidental deaths'

Despite moves towards greater legislative protection of women, failure to implement the rule of law on a systematic basis has meant that tribal custom continues to be the de facto regulator of familial relations. The issue of 'honour' crimes has attracted a great deal of attention from activists and commentators. In April 2007, international human rights groups condemned the failure of local authorities to intervene to prevent the stoning to death of Du'a Khalil Aswad, a 17-year-old Yezidi girl, by an angry mob in Bashiqa, near Mosul. Footage of the killing was distributed on the internet. However, documentation of the issue as a whole remains extremely lacking, as is broad public discussion. It is currently unclear whether a significant increase in the rate of reported crimes in recent years reflects a genuine increase in the practice or an improvement in recording. Following the shocking episode in Bashiqa, the KRG's Ministry of the Interior established departments in Sulaymanya and Erbil to tackle violence against women, which has improved recording. It is nonetheless possible to conclude, at the least, that 'honour' killings are widespread in Kurdistan, Iraq.

The United Nations Assistance Mission for Iraq (UNAMI) reports that police continue to receive reports of domestic violence, 'honour' crimes and female suicide on a daily basis. According to the KRG Human Rights Ministry, 'honour' killings rose by 150% from 106 in 2005 to 266 the next year.⁵⁹ The figures available for 2007 are not comprehensive but are nonetheless severely damning, suggesting that such incidents were widespread throughout the year. According to official statistics, 255

59 UNAMI Human Rights Report 1 July – 31 December 2007, p. 20.

'honour' killings were perpetrated in the first half of the year, including 195 burns cases.⁶⁰ According to official sources, the Erbil Police Directorate registered 19 cases involving 'honour' killings and 262 cases of domestic violence in 2007. Some 30 women were killed in the first half of 2007 in Sulemanya alone.⁶¹ The KRG's Sulemanya branch said it had investigated 110 cases involving serious threats to women, and had successfully intervened in 70 of them. Moreover, it was reported to UNAMI that 596 rape cases were recorded in Erbil governorate in 2006, compared with 150 in 2003.⁶² In any case, the real incidence of domestic violence is likely to be much higher due to the level of fear amongst women of retributive violence, divorce or murder if they report such abuse. Many cases were also likely to have gone unreported due to the absence of a police presence and the dominance of tribal authority and customs in rural areas, with abuses largely dealt with within familial or tribal structures. Mission members also came across much evidence pertaining to a worrying trend of 'suicides', 'attempted suicides' and self-immolation amongst women in the region. KHRP was told by UNAMI that a total of 421 cases of 'abnormal deaths' were recorded across the three KRG governorates in 2006.⁶³ Indeed, one official was of the opinion that suicides and 'honour' killings were on the increase as a result of the prevalence of conflict in the region, a situation which meant that societies turned inward on themselves and victimised the weakest members.⁶⁴ Many women's rights activists, civil society organisations and members of the KNA have reported to UNAMI that on numerous occasions, such 'suicides' were in fact an attempt to conceal what were in fact 'honour' crimes. A parallel issue of great concern was the increase in reported incidents of 'fire accidents' involving women. According to KRG authorities, 149 burns cases involving 53 fatalities were recorded in Dohuk and Erbil governorates in 2007.⁶⁵ Again, KHRP gained the impression that a great proportion of such incidents were in fact 'honour' crimes in disguise. UNAMI officials told KHRP that the greatest number of accidental deaths occurred in summer months and were classified as women being killed by burns from the water heater whilst bathing, despite the fact that people were unaccustomed to using water heaters at this time of year. Accordingly, it appeared to be the case that women were being forced into the bath, having oil poured over

60 US Department of State Iraq Report 2007, <http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm>, (last accessed 30 June 2008).

61 Iraq Crisis Report No.246, 'Honour Killing Outcry', 26 February 2008.

62 UNAMI Human Rights Report 1 January - 31 March 2007, p.17.

63 These included 111 in Dohuk, 119 in Erbil and 191 in Sulemanya. FFM interview with Dhafer al-Hussini, Human Rights Officer, UNAMI Human Rights Office in Erbil, 24 January 2007, Erbil.

64 FFM interview with Dhafer al-Hussini, Human Rights Officer, UNAMI Human Rights Office in Erbil, 24 January 2007, Erbil.

65 UNAMI Human Rights Report 1 July - 31 December 2007, p.15.

them and then set alight. Another source reports that between 200 and 250 women practice self-immolation in the region each year.⁶⁶

In February 2007, KHRP gathered considerable anecdotal evidence of the above phenomena. Mission members found that the fact that women are routinely being driven to suicide, regardless of how this occurs, is indicative of the miserable conditions they encounter in their daily lives in the region. In this way, the issue of female suicide is not exclusively concerned with domestic violence, but touches on the broader constraints experienced by women and the day-to-day societal and familial pressures they face. For example, KHRP learned of a disabled girl who had been forced by her husband to beg on the streets to earn money. Each day when she returned from begging she was subjected to ridicule and beatings by her husband. Despite complaining of her situation, she found little support from within her own family and was repeatedly forced to go back to live with husband. She eventually committed suicide by burning herself. Soran Qadir Saeed of Norwegian People's Aid reported that women working outside the home were often shunned or treated as a class apart, and that their contribution to domestic life was not respected. Between 7 and 11 per cent were active in public life, with others being reluctant to get involved. Lack of childcare was also reported to be a problem.⁶⁷

Mission members found that the practice of 'forced marriage' was widespread in Kurdistan, Iraq, including the practice of 'jin be jin', which involves the exchange of girls between families, with the girl of one family marrying the son of another, and with his sister being given in return. According to Mullah Mohammed Chamchamal, child and forced marriage was a big factor in the 'suicide' problem, meaning that women were not free and were 'commodified', resulting in extreme pressure on them. He asserted that women should have the freedom of choice with regards to marriage, and that he had been active in trying to promote this, adding that having all marriages go through a court before the performance of a religious ceremony would help address the problem.⁶⁸ Recently, over 20 women's rights

66 US Department of State Iraq Report 2007, <http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm> (last accessed 30 June 2008).

67 FFM interview with Soran Qadir Saeed, Norwegian People's Aid, 16 January 2007, Sulemanya.

68 FFM interview with Mullah Mohammed Chamchamal, 2 and 3 March 2007, Sulemanya.

groups called for legislative changes to ban polygamy and forced marriage and to promote equality between the sexes with respect to inheritance law.⁶⁹

Investigation and accountability

Ali Mustafa, a PUK official, pointed out that new legislation designed to protect women was being rendered ineffective by a failure in implementation. Accordingly, it was being bypassed by the use of Sharia law.⁷⁰ KHRP learned that there is repeated confusion as to which laws are applicable and how they should be interpreted. The mission, for example, heard several accounts of old Baathist law being referred to in court with regards to domestic violence disputes, and confusion regarding what have been interpreted as contradictions between regional and federal law.⁷¹ For example, KHRP was told that outdated legislation dating back to the penal codes of the Baathist regime was being used in courts as justification for violence against women, in spite of the fact that the current Iraqi constitution and KRG law should have been applied.⁷² These include provisions allowing for men to avoid convictions for violent acts committed against their wives for 'educational' purposes. Moreover, it was reported that Sharia was being applied instead of the Iraqi Personal Status Law for Muslims appearing in the Sulemanya Governorate Courts.⁷³ Again, KHRP found that the root of the problem was not the absence of appropriate legislation to protect the rights of women, even if this was also the case, but rather a wholesale dearth in training mechanisms to educate judges as to how or when to apply new laws.⁷⁴ In practice, considerable latitude is afforded to judges and law enforcement agents continue to exercise personal knowledge and preferences for interpretation.⁷⁵ Given the survival of an 'honour' mentality, this was having a particularly negative impact for women, resulting in a number of lenient sentences for perpetrators of 'honour' crimes. According to Nazand Begikhani, a women's rights activist, 'the change to the law that started in 2000 has made a difference, but there is resistance

69 Iraq Crisis Report No.246, 'Honour Killing Outcry,' 26 February 2008.

70 FFM interview with Ali Mustafa, PUK representative in Amedie and Dohuk, 29 November 2007, Dohuk.

71 FFM interview with Sarteeep Ali Jaf, Civil Development Organisation, 15 January 2007, Sulemanya; FFM Interview with Abdulrehman A. Kurde, 18 January 2007, Erbil.

72 FFM meeting with Halwest Group, 17 January 2007, Sulemanya.

73 UNHCR Sulemanya Governorate Assessment Report, August 2006, p.16.

74 European Parliament Report, 'The increase in Kurdish women committing suicide,' June 2007, p.51.

75 FFM interview with prison officials, Social Reform Prison, Sulemanya, 15 January 2007.

to the reform from some inside the judiciary and many cases do not reach the courts.⁷⁶

KHRP was told that a large proportion of 'abnormal' deaths among women were not investigated properly due to a culture of impunity. Most police recruits were uneducated and low-ranking, often themselves from tribal backgrounds, and therefore tacitly approved of the practice. Many saw 'honour' killings as an appropriate practice and therefore would not report them as such in order not to create difficulties for the male family members of the victims. According to UNAMI, rape allegations were generally addressed through community mediation, rather than through courts.⁷⁷ Reports also indicate that harassment of legal personnel working on domestic violence cases continues to inhibit efforts to bring perpetrators to justice.⁷⁸ Similarly, such attitudes and practices affect NGOs campaigning on women's rights. For example, in early 2007 Houzan Mahmoud of the Organization for Women's Freedom in Iraq received a death threat from an Islamist group following a campaign she led against Article 7 of the KRG constitution, which provides for Sharia to be used as a source of legislation.

During discussions with the KRG Minister of the Interior, KHRP was told that the ministry participated in a committee designed to reduce violence against women and has its own programme and activities towards the same end.⁷⁹ A number of interviewees were encouraged by signs that the government was beginning to take steps to talk about the issue.⁸⁰ Despite this, a unified and coherent plan has yet to be implemented. Shelters in Erbil and Sulemanya have reportedly opened with the assistance of the regional government, but most have closed primarily because of a deficit in strategic planning and awareness of women's rights. According to Soran Qadir Saeed, only 15 per cent of women threatened with 'honour' killings had access to shelters.⁸¹ KHRP learned from discussion with several women's NGOs that women were made to leave shelters after one to two years to return to their abusive families or parents. Thus the lack of planning for the long-term resettlement of abused women in other locations rendered much of this work ineffective. Moreover KHRP observed that public discussion on the subject remains restricted to preventing violence against women and takes little account of what happens when

76 'Nazand Begikhani: A women's rights activist discusses honour-based crimes', 12 March 2008, <http://www.krg.org/articles/print.asp?anr=23266&lngnr=12&rn=223>, (last accessed 30 June 2008).

77 UNAMI Human Rights Report 1 January - 31 March 2007, p.17.

78 US Department of State Iraq Report 2007, <http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm>, (last accessed 30 June 2008).

79 FFM interview with Osman Hadji Mahmut, KRG Minister of the Interior, 29 November 2007, Sulemanya.

80 FFM interview with Mullah Dr Omar Ghazni, Islamic Union, 3 March 2007, Erbil.

81 FFM interview with Soran Qadir Saeed of Norwegian People's Aid, 16 January 2007, Sulemanya.

violence ceases. According to all NGOs interviewed, lack of funding, training and qualified staff rendered progress on this front extremely limited.

According to Mullah Mohammed Chamchamal, mullahs have a significant role to play in raising public awareness on the issue of female suicide. As suicide is forbidden in Islam he asserted that mullahs could take responsibility in addressing the issue, for example, during Friday prayers and whilst working within the community generally.⁸² Mullah Dr Omar Ghazni, Leader of the Islamic Union Erbil, took a different view on the issue. He argued that religious leaders were not positioned to affect change with regards to this issue, as their mandate extended only to advising their communities on correct practice. Accordingly, a much broader strategy was required, involving NGOs, civil society and media in addressing the issue. Moreover, it was not only men who had a misconceived notion of 'honour', but many women also shared it. Thus women themselves would believe that they had committed 'honour' crimes and would become hopeless or commit suicide. Likewise, such is the prevalence of these beliefs that no support mechanisms exist among female family members, increasing the pressure on individual women.⁸³ KHRP was told that many political leaders were reluctant to address the issue because they had a tribal power base. Ali Mustafa, a PUK official, said the KRG law prohibiting 'honour' killings was ineffective because the practice is so closely associated with tribalism. What was truly needed was more education and public awareness to initiate a shift in mentality.⁸⁴

Women in the 'disputed areas'

During its visits to Kurdistan, Iraq, KHRP found that that the situation of women was particularly bleak in the 'disputed areas' beyond the jurisdiction of the KRG. Mission members noted that, given the excessive levels of violence and the political vacuum in these areas (see Section 3), the need for public awareness efforts and implementation of the rule of law was particularly pronounced. In November 2007 KHRP met with civil society activists from the Shekhan Region, near Mosul, in Ninewa Governorate. This area, which has a predominantly Yezidi Kurdish population, along with other Kurdish and Chaldean communities, was where the aforementioned 'honour' killing of Du'a Khalil Aswad occurred. During its visit, KHRP spoke to a local NGO director who explained that a pervasive culture of violence against women existed in the community, though limited improvement had been achieved since 2003. He explained that 'honour thinking' was extremely

82 FFM interview with Mullah Mohammed Chamchamal, 2 and 3 March 2007, Sulemanya.

83 FFM interview with Mullah Dr Omar Ghazni, Islamic Union, 3 March 2007, Erbil.

84 FFM interview with Ali Mustafa, PUK representative in Amedie and Dohuk, 29 November 2007, Dohuk.

widespread in the area, and therefore domestic violence was considered to be appropriate behaviour. For example, if a woman was considered to have transgressed social norms, such as by exercising personal choice in marrying outside the Yezidi religion, she would be ostracised and possibly killed as punishment. This was reflected in attitudes towards the killing of Du'a Khalil Aswad; although some local people were saddened by her death, the majority belief was that her punishment was deserved. Some exercised concern with regards to the way in which Du'a was killed, as opposed to the act itself, arguing that the proper way to have killed her would have been with a gun.⁸⁵

Since the killing of Du'a Khalil Aswad, women and girls had faced additional restrictions to their freedom of movement. Such restrictions, along with the experience of domestic violence, had taken a high psychological toll on local women, resulting in several reported cases of depression and suicide. According to one interviewee, the plight of local women was indicative of a broader lack of government and rule of law in the area, as well as education about human rights. Because the region is beyond KRG jurisdiction, it was often unclear what authority was in charge and therefore responsible for the situation. Quoting the opinion of the Mir, the local Yezidi religious leader, the interviewee said that reform was possible, but dependent on widespread public-awareness efforts.⁸⁶

This assessment was complemented by KHRP's interview with a women's rights activist in Baeshige, also in the Shekhan district. Because of the particularly bad security situation in the area, women were dependent on their families for safety, and often this was not guaranteed. Life for women in these areas was particularly difficult and there was a very high level of depression among women and girls. This had resulted in at least ten girls committing suicide in the summer of 2007. This was not only due to domestic violence, but also to the general inability of women to lead a full and free life. Forced marriage was cited as a major problem. As women in the area were denied inheritance unless they married, there was huge pressure on women to do so. Further, if a woman's husband died, she was not allowed to re-marry - a woman who did so was shunned by the community. Because the family was the primary tie in the area (and indeed the source of many women's problems), no support network existed. In addition, the interviewee asserted that

85 FFM interview with NGO director, 28 November 2007, Shekhan, Ninewa.

86 *Ibid.*

underlying cultural norms were exacerbated by the high level of importance placed on maintaining the distinct Yezidi culture.⁸⁷

During a visit to a United Nations High Commissioner for Refugees (UNHCR) refugee camp, mission members asked residents whether they felt that their situation had improved since 2003 and were struck by the disparity in response between men and women. Men on the whole, whilst acknowledging the difficult economic situation in the region, generally felt that life had improved due to increased access to human rights and fundamental freedoms. However, female interviewees told the mission that the quality of life had deteriorated and that things were better during the Baathist era. They explained that this was because they now had less access to water and food and other basic resources. The mission understood that this differing view relates to the social roles and expectations of women, especially those in the direst of circumstances. Although on paper they may have the same freedoms as their male counterparts, in reality they do not, so for them, the changes in terms of freedom of movement and association meant nothing. Their lives working in their homes were simply harder. This served to reinforce the impression of women being disproportionately affected by violence and instability.⁸⁸

2.3 Minorities

The issue of minorities has been deeply embedded in the modern state of Iraq since its creation after the fall of the Ottoman Empire. As a multiethnic entity, Iraq has witnessed sustained cycles of violence between various ethnic and religious groups throughout its modern history. As a home to Arabs, Kurds and several minority groups, including Turkomans, Chaldeans, Yezidis, Faili Kurds, Shabaks and Mandaeans, the Kurdistan region of Iraq is no exception in this regard. It too has historically experienced severe ethnic cleansing and population exchanges through the Anfal campaigns and Arabisation policies.

KHRP mission members were, to a certain extent, encouraged by the situation of minorities within the KRG-administered region, which has been regarded as a relative safe haven for internally displaced persons (IDPs) and minorities fleeing persecution elsewhere in the country in recent years. Nonetheless, in 'disputed areas' outside the KRG's jurisdiction, the mission registered specific fears that the rights of minorities were being severely undermined by the ongoing violence, putting small minority groups at particular risk. This raises wider issues of responsibility, extending to the Iraqi government and international community to provide stability in these areas. The broader knock-on effects of this, such as the political vacuum and

87 FFM interview with representative of women's rights NGO, 28 November 2007, Sulemanya.

88 FFM interviews with refugees at Barkya UNHCR refugee camp, 18 January 2007, Sulemanya.

lack of basic infrastructure and public services, are addressed specifically in Section 3 of this report. These concerns have been greatly exacerbated by the activity of Kurdish security forces in these areas, which have a particularly negative effect on the lives of minority groups.

The Iraqi constitution recognises the multi-ethnic and multi-religious nature of Iraq and as such guarantees ‘the full religious rights of all individuals to freedom of religious belief and practice such as Christians, Yazedis, and Mandi Sabeans’, as well as ‘the right of Iraqis to educate their children in their mother tongue, such as Turkmen, Syriac and Armenian.’⁸⁹ As a party to the International Convention on the Elimination of All Forms of Racial Discrimination, Iraq is bound by international law to respect, and to provide protection for, its minority communities. The Convention obliges Iraq to ‘prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law’ (Article 5).⁹⁰ It further compels Iraq to ‘adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups’ (Article 7). Iraq has not, however, made the declaration under Article 14 of the Convention recognising the competence of the Committee on the Elimination of Racial Discrimination to consider complaints of violations submitted by individuals. It also has a reservation to Article 22 indicating that it does not accept the jurisdiction of the ICJ over disputes between state parties as to the interpretation or application of the Convention.

KHRP’s missions were unable to make a conclusive assessment of the situation of minorities under the KRG. Representatives of the KRG Human Rights Committee told the KHRP mission that the KRG had good provisions for minorities and that minority groups were happy to live under its jurisdiction, noting the presence of at least one Arab school in the region and stating that there were several schools in Erbil for speakers of the Turkoman language, along with newspapers and radio. Turkoman MPs on the committee added that under the KRG, Turkomans were able to express and take pride in their identity, and that they were happy to be part of the KRG.⁹¹

During its December 2007 visit to a Chaldean village and the neighbouring areas in Dohuk governorate, the KHRP mission was encouraged by the positively

89 The Iraqi Constitution, Section One, Article 2:2.

90 The International Convention on the Elimination of All Forms of Racial Discrimination, http://www.unhcr.ch/html/menu3/b/d_icerd.htm (last accessed 30 June 2008).

91 FFM interview with KRG Human Rights Committee, 22 January 2007, Erbil.

harmonious co-existence it observed between the local Chaldean Christians and Muslim Kurds. The mission noted that there was no explicit tension and that relations between neighbours were generally good, with substantial communication between the different ethnic and religious communities. Moreover, the interviewees in the Chaldean village stated that they had experienced no officially-imposed discrimination and that the only problems they were experiencing were those caused by Turkish military raids.⁹² Several Kurdish officials interviewed by the mission stated that in the three KRG governorates the relations between different communities are indeed generally trouble-free, notwithstanding disagreements which occur from time to time. According to these sources, any tensions that do occur are mostly linked to the tense political situation in the 'disputed areas'.⁹³

Nonetheless, the KRG's image as a sanctuary for minority groups has been undermined by reports of discrimination against minority ethnic groups in the three northern governorates and of an emerging tendency towards a rigid, homogenous ethnic outlook in Kurdistan, Iraq. The mission gained the impression from anecdotal evidence that in outlying areas, some in the KRG were discriminating against minorities by forcibly trying to assimilate them into the mainstream population. Some reports suggested that Christians were receiving favourable treatment at the expense of Muslim Arabs. According to a spokesperson for the Iraqi Minority Council, 'The Kurds are causing rifts between minority groups for their own purposes. They treat Christians better than Arabs. Kurds are financing churches in order to corrupt priests, and are also corrupting through charity work. They are buying people and doing the same thing to Yezidis and Shabaks.'⁹⁴ Nonetheless, the issue of discrimination is a contentious one. Sartep Ali of the CDO reported that allegations were being manipulated as political propaganda and that any discrimination was linked to social problems rather than ethnic prejudice. Accordingly, strict controls on the movement of minority groups and IDPs entering and travelling within the region were conducted for purely security purposes, not to single out ethnic minorities.⁹⁵

The most acute situation in terms of minority rights currently exists in the 'disputed areas' of Kirkuk and Mosul, where Kurds and Arabs are in the majority and where land issues are a particular source of conflict. Moves by both to claim sole authority or to compensate or seek revenge for past grievances have created concomitant problems for minority groups. As the following section details, many Arabs and

92 FFM interviews, 30 November 2007, Enshke, Dohuk.

93 FFM interview with KRG Human Rights Committee, 22 January 2007, Erbil.

94 Minority Rights Group International, 'Assimilation, Exodus, Eradication: Iraq's Minority Communities Since 2003', February 2007, p17.

95 FFM interview with Sartep Ali, Programme Director, Civil Development Organisation, 28 November 2007, Sulemanya.

Turkomans oppose Kurdish plans to control Kirkuk, and tensions have been greatly exacerbated by allegations that KRG forces and Kurdish militias have targeted Turkomans and Arabs, including through the use of intimidation, abduction and torture.

Similarly, addressing the dual burden of an influx of IDPs from other parts of Iraq since 2003 and the fallout from past and present displacements in the region itself now constitutes an enormous challenge for the authorities in Kurdistan, Iraq. To a certain extent, the IDP crisis is an issue of resources, since the influx has greatly exacerbated pre-existing problems such as chronic under-development, lack of infrastructure, shelter and basic services. However, KHRP's research found that effective planning was notably lacking in efforts to address these issues. In January 2007, when mission members questioned several people in government about IDPs, the overriding answer was that 'there were not very many, so it is not a problem.' Some interviewed by mission members observed that it is a politically complex issue. On the one hand, it was explained, the KRG wants to do what it can to accommodate those coming from the south; on the other, by creating semi-permanent camps for them, it feels that it would risk its internal security, as such camps often become incubators for a sense of hopelessness that can lead to anger and terrorism.⁹⁶ In this respect, the authors understand the competing demands made on the KRG and the government of Iraq in combating terror, but also emphasise that all IDPs arriving to, or seeking shelter in Kurdistan must be treated in accordance with fundamental human rights standards, regardless of their ethnic/religious backgrounds. The missions were concerned to learn that IDPs who could not prove familial ties in the region or were not sponsored by a resident would not be admitted into the region.⁹⁷ Through its policies, the KRG should minimise the suffering of such displaced people, individuals who are often already severely traumatised and residing in a fragile societal position. It is the view of the missions that the international community must also do more to ensure that the KRG has all the relevant knowledge and power required in order to ensure such implementation.

The authors wish to highlight the importance of minority rights in Kurdistan in realising greater respect for universal human rights and in bringing an end to the vicious cycle of ethnic violence in the region. Iraqi law provides protection for ethnic and religious minorities and as such, is a fundamental basis for creating a democratic, stable Kurdistan with equality for all its citizens regardless of their ethnic or religious origins. Today, the extent to which the KRG successfully implements these safeguards is a key test of its commitment to protecting human rights standards. Although it is

96 FFM interview with anonymous public servant, January 2007, Erbil.

97 FFM interview with Khaled Siddiqi, Head of UNHCR Erbil Office, 24 January 2007, Erbil.

clear that the KRG is being placed under considerable pressure to guarantee security, it is essential that it commits to the fundamental principles of minority rights in practice, both within territories under its jurisdiction and beyond, in its treatment of all peoples regardless of their ethnicity/religious backgrounds. Further, the KRG also has an obligation not only to ensure that minorities are protected, but also to actively embrace and welcome all groups as essential contributors to society. In this respect, mission members gained the impression that minorities were sometimes dismissed as ‘temporary residents’ or ‘guest workers,’ rather than as a fundamental part of the social fabric and the region’s development.

2.4 Freedom of Expression

For those working in the media, Iraq is the most deadly country in the world. According to the Committee to Protect Journalists (CPJ), some 127 journalists and 50 media workers have reportedly been killed there since March 2003. The majority of them were not killed whilst covering armed conflict or sectarian strife, but were deliberately targeted for reasons related to their profession.⁹⁸ In this respect, the relative protection afforded to the media in Kurdistan, Iraq, has been an important aspect of its projected image as the ‘other Iraq’. However, the KRG has a long way to go in terms of realising its obligations to protecting freedom of expression. Despite the flourishing of an independent media in recent years, such gains are being undermined by reactionary sentiments and policies within the KRG authorities. This was manifested both on the ground, through an increase in reported detention and harassment of media workers, and in legislative terms, through attempts to stifle public discussion and criminalise acts that are integral to a healthy democracy. KHRP gained the impression that the KRG authorities have yet to fully embrace the media as a vital instrument of accountability, transparency and the articulation of a plurality of opinions. In any case freedom of expression forms the basis of the right to hold particular beliefs, thoughts or convictions; to adhere to a particular religion; or to associate with others sharing similar beliefs. These rights are at the heart of a healthy, functioning democracy and the extent to which they are provided for may be seen as a key litmus test of any government’s commitment to democracy and human rights.

Print publications and broadcast media are the primary source of news and public discourse in the KRG governorates. After the establishment of Kurdish autonomy in northern Iraq in the early 1990s, the KDP and PUK launched a new media platform for newspapers, radio and television, which broadly promoted Kurdish national interests as a counterweight to Baathist policies. Since then, Kurdish media

98 Committee to Protect Journalists, ‘The Other Iraq’, *Dangerous Assignments*, Spring/Summer 2008, p19.

has largely remained under the control of the two dominant parties, promoting a partisan agenda and refraining from criticising internal policies. The KDP sponsored the Kurdish-language newspaper *Khabat* (Struggle), the Arabic-language version *Attaakhi*, and KTV (Kurdistan Television), whilst KDP-member and current KRG Prime Minister Nerchirvan Barzani funded the popular television station *Zagros*. The PUK sponsored the Kurdish-language newspaper *Kurdistani-Nwe* (New Kurdistan), the Arabic-language newspaper *Al-Ittihad*, and *KurdSat* television.

In the past three years, however, a small but assertive independent media has emerged, resulting in an increase in criticism of government officials and agencies over allegations of corruption, human rights abuse and mismanagement, thus challenging the dominance of the established outlets linked with the major parties in the region. Today, one of the most widely-read newspapers in Kurdistan, Iraq, is *Hawlati*, an independent outlet that adopts a critical view towards the political domination of the parties. Other independent outlets that have emerged in recent years include *Awene* and *Rozhnama* newspapers and New Radio, the region's first semi-independent radio station.⁹⁹ These have provided a limited platform for ordinary citizens to scrutinise politicians in an otherwise party-dominated media environment.

Despite this progress, KHRP found that press freedom continues to be restricted on a number of levels. The majority of media outlets remained the mouthpieces of the dominant political parties, meaning that the media essentially remained a battleground for the KDP and PUK to anonymously criticise one another. According to Hussein Sinjari, the founder of Tolerancy International, those independent newspapers that did exist struggled to compete with the established mainstream due to a lack of resources.¹⁰⁰ CPJ adds that, due to a lack of training within independent outlets, journalists have relatively poor standards of professionalism.¹⁰¹

Across the spectrum, KHRP noted that public discourse continued to be constrained by an understanding that certain subjects were taboo. Indeed, those who openly challenged established views on such issues as Kurdish nationalism, religion and politics would be branded a traitor.¹⁰² Mission members felt that such constraints were indicative of the broader absence of a culture of internal criticism

99 Committee to Protect Journalists, 'The Other Iraq', *Dangerous Assignments*, Spring/Summer 2008, p19.

100 FFM interview with Hussein Sinjari, founder of Tolerancy International, 17 December 2007, Erbil.

101 Committee to Protect Journalists, 'The Other Iraq', *Dangerous Assignments*, Spring/Summer 2008, p20.

102 FFM interview with Hussein Sinjari, founder of Tolerancy International, 17 December 2007, Erbil.

and constructive debate in the region. According to Hussein Sinjari, this culture begins in the education system, in which the expression of different opinions is not encouraged.¹⁰³ However, in many instances these 'red lines' were being used to prevent criticism of political, religious or other public figures, particularly with regards to allegations of corruption, mismanagement of resources or human rights abuses. Although comprehensive figures do not exist, UNAMI reported in early 2007 that the 'KRG authorities continued to subject journalists to harassment, arrest and legal actions for their reporting on government, poor public services or other issues of public interest.' KHRP mission members encountered numerous incidents in which journalists were detained or harassed for investigating or writing about alleged corruption or human rights abuses on the part of KRG ministries, police or members of the *peshmerga* and *asayish* (internal security units linked to the two parties).

It would appear that the most forceful of attacks have targeted those individuals who reported critically on the Barzani and Talabani families, or other high-level officials and their relatives. A particularly high-profile case related to the Austrian-Kurdish writer Kamal Sayed Qadir, who was detained in Erbil in 2005 and jailed for 30 years for articles he wrote accusing the Barzani family of corruption. Qadir was later released under a presidential pardon, having served five months of his sentence.¹⁰⁴

As far as the *peshmerga* and *asayish* were concerned, reports on their misconduct were often treated as criminal according to many NGOs consulted in Sulemanya and Dohuk.¹⁰⁵ For example, Nasser Abdel Raheem Rashid, a contributor to the online magazine *Kurdistanpost*, was reportedly arrested in Halabja in October 2007 by armed men wearing military uniforms, who proceeded to beat him and threaten him at gunpoint before releasing him. The incident followed Rashid's publication of an article criticising the *peshmerga* forces.¹⁰⁶ Similarly, incidents were reported in which the authorities attempted to prevent media coverage of protests or incidents of unrest or ethnic conflict. For example, in February 2007, Garmian Hamakhan, a journalist for the internet portal Kurdistan Online, was detained for a day by Ministry of Interior police and had his photographs destroyed while reporting on a demonstration by taxi drivers in the Kalar district of Sulemanya.¹⁰⁷ The same month,

103 *Ibid.*

104 Committee to Protect Journalists, 'The Other Iraq', *Dangerous Assignments*, Spring/Summer 2008, p22

105 FFM interviews with Dohuk NGOs, 19 January 2007, Dohuk; and with Sulemanya NGOs, January and November 2007.

106 Committee to Protect Journalists, 'The Other Iraq', *Dangerous Assignments*, Spring/Summer 2008, pp18-19.

107 UNAMI Human Rights Report 1 January- 31 March, p12.

a reporter for *Al-Hurra* television network was detained for several hours after covering an incident in Shekhan, Ninewa governorate, in which Kurds reportedly attacked members of the Yezidi community.¹⁰⁸ In many such instances it is impossible to confirm exactly who the perpetrators were, or who they represented. Either way, it is deeply troubling that many journalists see an official hand behind the assaults, indicating a lack of trust in government transparency and accountability. UNAMI was further concerned about the whereabouts of Muhammed Saro Kahya, editor of a Turkoman affairs magazine who had allegedly been detained by the *asayish*. A UNAMI report covering the period up to the end of December 2007 also cited the case of journalist Srood Mukarram Fatih, who had reportedly been in the custody of the *asayish* in Erbil without access to legal counsel since April that year.¹⁰⁹

KHRP's mission was told by Dr Yousif M Aziz, KRG Minister of Human Rights, that anyone arrested on the grounds of their views was assigned a legal representative and faced a fair trial. Whilst the authors anyway strongly question the very practice of arresting citizens for the expression of their views, there is also considerable evidence that these standards are being routinely flouted. CPJ reports that 'critical journalists who have spoken out against Kurdish leaders have been detained by security forces and prosecuted under Baathist-era criminal laws that prescribe steep penalties.'¹¹⁰ Journalists were sometimes imprisoned while police investigated the veracity of information they had published. For example, in July 2007, police detained *Hawlati* journalist Rebaz Ahmed for 24 hours on defamation charges after he wrote an article claiming that park land in Halabja had been illegally allocated for a residence. Ahmed was eventually acquitted.¹¹¹

Parallel to the reported increase in the number of physical attacks on individuals working in the media, there has also been an increase in targeted and politicised lawsuits against outspoken newspapers. Libel remains a criminal offense in the KRG area and judges issued arrest orders for journalists on this basis. In January 2008, Iraqi President and PUK leader Jalal Talabani launched a criminal lawsuit against *Hawlati*, for having published extracts from an article by an American academic

108 UNAMI Human Rights Report 1 January- 31 March, p13.

109 UNAMI Human Rights Report 1 July – 31 December 2007, p19.

110 Committee to Protect Journalists, 'The Other Iraq', Dangerous Assignments, Spring/Summer 2008, p19.

111 US Department of State Iraq Report 2007, <http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm> (last accessed 30 June 2008).

which questioned the strategic alliance of the US with the Kurds, in light of the corrupt nature of their leaders.¹¹²

In an interview with KHRP, Selam Balay, a member of the Union of Kurdish Writers (Dohuk), stated that he had not experienced any obstacles to free expression and that the union was under no political obligations to either of the parties because it was under the authority of the KRG itself.¹¹³ This view was supported by the union's president, Hesam Silevani, who asserted that its members were not bound by publishing restrictions and had published 108 books in Kurdish since 2004 with full government support.¹¹⁴ Representatives of the union did, however, assert that journalists were experiencing problems due to the regional security situation, especially at border crossings with Turkey, Iran and Syria when travelling to conferences in those countries. According to the same source, union members had once been detained at the Syrian border for 12 hours for having copies of their quarterly magazine in their possession. The border authorities suspected them of possessing political materials and confiscated the copies of the magazine prior to their release. Similar episodes had reportedly been encountered at the Turkish border, though the situation there had reportedly improved slightly, apparently as a result of Turkey's accession negotiations with the European Union. In any case, the resumption of Turkish cross-border attacks on northern Iraq in late 2007 and 2008 has significantly worsened the security and freedom of movement of journalists in the area.¹¹⁵ In this context, the KRG was reported in November 2007 to have blocked the access of journalists to the Qandil mountains on the Iraq-Turkey border, thus restricting their ability to report on the fighting between the Kurdistan Workers' Party (PKK) and Turkish military.¹¹⁶

Over the past year, considerable debate has taken place in Kurdistan, Iraq, with regards to legislative reform. Unfortunately, rather than seeking to enshrine the principle of free expression in legislation, official momentum has been towards the opposite outcome. On 11 December 2007, the KNA passed a new Journalism Law, designed to regulate the media and set parameters on public discussion. The law was met with protests and demonstrations in Erbil and Sulemanya by journalists and media workers. It required that all publishers, editors and journalists be members of the Union of Kurdistan Journalists, a stipulation that reportedly contradicts the Iraqi constitution, which states that no individual can be compelled to join any

112 Committee to Protect Journalists, 'The Other Iraq', *Dangerous Assignments*, Spring/Summer 2008, p25.

113 FFM interview with Union of Kurdish Writers (Dohuk), 29 November 2007, Dohuk.

114 *Ibid.*

115 *Ibid.*

116 Committee to Protect Journalists, 'The Other Iraq', *Dangerous Assignments*, Spring/Summer 2008, p23.

society.¹¹⁷ This stipulation was all the more concerning given doubts about the independence of the Union. Hussein Sinjari said that it was closely affiliated with the political parties, and thus functions as a way for the government to exercise further control over journalists. Even more concerning is the fact that the law criminalised the publishing of articles deemed to create instability, to provoke sectarianism or to have insulted Kurdish customs, institutions or traditions. Journalists would face fines of up to 10 million dinars (8,200 US dollars) and newspapers twice that amount for transgressing these limits. Similarly, journalists could be imprisoned for up to 15 years and newspapers face closure for breaking the law. These penalties were, in fact, more severe than those proposed in an earlier press bill published in 2007.¹¹⁸ That the law should impose such constraints on public debate is itself deeply troubling. However, the legislation also offered no details as to what exactly would constitute such offences; suggesting that, in practice, it would be used to block criticism of the authorities. This view was expressed by Hussein Sinjari, who asserted that anyone in a position of authority could be seen as a representative of Kurdish culture, so that criticism of them would be a criminal offence.¹¹⁹ At present, the enactment of the legislation remains in limbo, after KRG President Masoud Barzani refused to authorise the law, condemning it as an affront to freedom of expression. The legislation will now likely undergo amendments before being re-submitted.¹²⁰ Whilst this in itself is encouraging, indicating a level of support within the government for freedom of expression, as well as the functioning of a democratic system, it is extremely concerning that such a law should have been proposed in the first place.

Although KHRP was encouraged by some aspects of government-media relations in Kurdistan, Iraq, it is concerned that the KRG is failing to provide adequate protection for people who challenge notions that fall outside accepted cultural norms, such as offering police protection for those working in women's rights. The curtailment of open and public discussion of matters of public interest not only results in abuses against journalists and media workers, but also contributes to a lack of government accountability and transparency, limiting the likelihood that these will be adequately addressed. It is worth noting that many of the most pressing human rights issues affecting the region, including abuses stemming from 'honour thinking', could be perceived to fall under the umbrella of 'Kurdish culture', and that

117 FFM interview with Hussein Sinjari, founder of Tolerancy International, 17 December 2007, Erbil.

118 Iraq Crisis Report No.241, 'President to Reject New Press Law', 21 December 2007.

119 FFM interview with Hussein Sinjari, founder of Tolerancy International, 17 December 2007, Erbil.

120 Iraq Crisis Report No.259, 'KRG Press Law Proposal Causes Concern', 23 May 2008.

public discussion of these issues is therefore vulnerable to moves to limit freedom of expression.

2.5 Prison and Detention

As mandated by the Iraqi constitution, the KRG maintains its own regional *peshmerga* security forces. Given limitations in progress towards implementing the Unification Agreement for the KRG, the KDP and PUK also continue to operate regional guards, intelligence units and *asayish* internal security units beyond the control of the KRG Ministry of Interior. A broad lack of coherency and transparency within the detention process and the security forces paves the way for widespread abuses, often with impunity. As subsequent sections detail, this can have particularly dire consequences for journalists, media workers, activists and opposition figures, as well as for minority groups, in areas both within and beyond official KRG administration. Reports pertaining specifically to the activity of Kurdish security forces in Kirkuk and other ‘disputed areas’ are addressed in Section 3.

Mission members registered a number of general concerns regarding the detention and prison system in Kurdistan, Iraq, during interviews with KRG officials. Other concerns stemmed from observations made during a visit in January 2007 to the Social Reform Prison in Sulemanya. The mission was, for example, particularly alarmed by reports regarding illegal and/or private prisons run by the major parties and the KRG intelligence services, reflecting a more fundamental lack of long-term planning by the regional authority in its management of the prison system. In this regard, KHRP made several other damning observations, detecting for example a lack of coordination between law-enforcement agencies and the judicial service in the detention process, and noting that imprisonment remains the only possible punishment in the region, regardless of the severity of the crime committed. No system exists for those convicted of minor crimes to perform community service. During its visit to the Sulemanya prison, KHRP saw first-hand how these issues were serving to undermine the rights of prisoners and detainees, registering a number of concerns regarding the conditions of detention there. Indeed, during its discussion with Osman Hadji Mahmut, KRG Minister of the Interior, KHRP was told that there was substantial desire on the part of the KRG Prime Minister, the Ministry of the Interior, the Ministry of Human Rights, the General Directorate of Security and the Ministry of Justice to see an improvement in the state of the regional prison system, especially in terms of the buildings and services available and in terms of coordination between the police and courts. With this end in mind, he also spoke of the need to cooperate with human rights organisations.¹²¹ This latter point was

121 FFM interview with Osman Hadji Mahmut, KRG Minister of the Interior, 29 November 2007, Sulemanya.

reflected at the Social Reform Prison, where officials said they had attempted to overcome the problem of lack of resources by getting NGOs involved.¹²²

In December 2007, the KRG Ministry of Human Rights estimated that there were some 2,556 prisoners in KRG prisons, 826 of whom were in *asayish* jails. These figures did not include prisoners held by the KRG intelligence services, who do not release information on detainees or allow outside access to their facilities, except to the International Committee of the Red Cross (ICRC), which does not publish or publicly communicate its findings.¹²³ During an interview with representatives of the KRG Human Rights Committee, KHRP was told that secret prisons did not exist and that reports of false imprisonment were exaggerated. However, the representatives added that 'security' prisons did exist, stating that these were where 'terrorists' were held.¹²⁴ This most likely reflects a much more systematic problem, namely, the creation of a 'two-tier' system, whereby custodial and procedural safeguards are denied to those held under security-related charges. In any case, this message was contradicted by the KRG's Minister of Human Rights, who acknowledged the existence of secret prisons and told KHRP that he wanted to speak to party leaders on the subject.¹²⁵ UNAMI reports that it is 'concerned that the practice of indefinite detention without trial, particularly of persons suspected of terror offences, remains a matter of policy.'¹²⁶ Quoting *asayish* sources, it adds that individuals thought to be affiliated with Islamist groups could be held in administrative detention for one to seven years and that a group of 20 people had indeed been detained without a judicial order for three to four years. In the absence of systematic legal proceedings, terror suspects arrested on account of undisclosed information from the KRG intelligence agencies would reportedly undergo 'rehabilitation' programmes for an indefinite period of time.¹²⁷

Beyond issues deemed as 'terror cases', KHRP observed at the Social Reform Prison in Sulemanya a broad failure to implement due process of law within the detention process. The mission was told, for example, that there were big delays in court hearings, meaning that administrative detentions would stretch to six months despite there being an official limit of 40 days. When asked what recourse prisoners had to attain their rights, Sardar Faqi, the Prison Director, told KHRP that a lawyer visited the prison on a part-time basis, but that there were no provisions

122 FFM interview with Sardar Faqi, Prison Director, Social Reform Prison, 15 January 2007, Sulemanya.

123 US Department of State Iraq Report 2007, <http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm> (last accessed 30 June 2008).

124 FFM interview with KRG Human Rights Committee, 22 January 2007, Erbil.

125 FFM interview with Dr Yousif Aziz, KRG Human Rights Minister, 21 January 2007, Erbil.

126 UNAMI Human Rights Report 1 July – 31 December 2007, p29.

127 *Ibid.*

for prisoners to access external legal aid.¹²⁸ According to UNAMI sources, some 3,781 individuals were deprived of their rights in prison and detention centres in Kurdistan, Iraq during June 2007. These included substantial numbers of pre-trial detainees, many of whom were detained by *asayish* forces without judicial order.¹²⁹ According to a report commissioned by the KRG President Masoud Barzani, this failure was partly related to poor coordination between detention personnel and judicial investigators. Similarly, UNAMI asserts that the ‘failure to intervene by officials mandated to provide judicial oversight contributes to the pervasiveness of abuse of authority by law enforcement personnel’.¹³⁰

Sardar Faqi also complained about the lack of services in the Sulemanya Social Reform prison, adding that there was no system in place to separate inmates from different ethnic groups and criminals serving time for petty and serious crimes. He also stated that a zero-tolerance policy towards torture and ill-treatment had been adopted, but admitted that violations occurred occasionally as a result of ignorance on the part of officers. He explained that to date only he had received professional human rights training, but said he would very much welcome a training programme for his guards and other subordinates. However, UNAMI reports that allegations of torture of detainees by security and intelligence forces, particularly relating to periods of incommunicado interrogation before detainees are transported to official detention centres, were widespread.¹³¹ Between April and June 2007, 48 out of 66 detainees and prisoners interviewed by UNAMI said they had been tortured by officials, including through the application of electric shocks, suspension in stress positions, and severe beatings.¹³² Although unable to independently verify the cases cited by UNAMI, KHRP mission members were left with the impression that people arrested on suspicion of terror-related offences or taken to the ‘security prisons’ were at much higher risk of ill-treatment and torture than those taken to the prison it visited.

KHRP was also told that overcrowding was a problem at the Sulemanya Social Reform Prison, resulting in a problem of bed shortages for prisoners. This was because promised funds had yet to materialise. Accordingly, the prison was made very accessible to visitors and international observers, in the hope that this would generate funding. Moreover, the prison director believed that mental health was a big issue amongst prisoners, with a psychologist present on-site only one to two

128 FFM interview with Sardar Faqi, Prison Director, Social Reform Prison, 15 January 2007, Sulemanya.

129 UNAMI Human Rights Report 1 July – 31 December 2007, p30.

130 UNAMI Human Rights Report 1 April – 30 June 2007, p30.

131 UNAMI Human Rights Report 1 July – 31 December 2007, p31.

132 UNAMI Human Rights Report 1 April – 30 June 2007, p30.

days per week. Again, lack of resources was cited as a fundamental problem, with the prison suffering from drug shortages.¹³³

KHRP also spoke to the head of the women's section of the prison, which housed 16 inmates, most of whom were in prison for prostitution, corruption and murder (often in the context of domestic violence). KHRP observed that conditions were generally better than those in the men's sections with regards to overcrowding. An international NGO had apparently paid for improvements to this part of the prison. However, KHRP was extremely concerned with conditions in the juvenile section of the prison. Inmates there, who were aged between 11 and 18 years old, were in prison for a range of crimes, ranging from petty theft and traffic violations to murder and kidnapping. KHRP learned that two inmates, aged 11 and 12 years old, were there for homosexuality, serving sentences of 6-12 months and four years respectively. When KHRP enquired as to why they should be imprisoned for this, the prison head explained that they were relying upon Baathist legislation and that there was therefore 'no choice' but to incarcerate them. According to the same source, this was a recurring problem. Moreover, the mission was told that these young boys faced threats and abuse from other inmates, and that it was unlikely their families would take them back after they were released.¹³⁴ Reports further indicate that facilities for women and juvenile detainees at prisons across the three KRG governorates were lacking in vocational, recreational and other rehabilitation programmes.¹³⁵ However, the Social Reform Prison did have regular weekly visits from NGOs for social and educational programmes.

2.6 Summary

The missions learned of a similar lack of trainings, misapplications, contradictions and dual systems of law in the areas of arrest, pre-trial detention, conditions of detention and judicial proceedings. In all of its missions over the past year, KHRP found two consistent themes: firstly, a deep desire to build a democratic Iraq with Kurdistan as a healthy part of the country; and secondly, a fundamental lack of the mechanisms and means necessary to achieve this. The missions saw repeated and consistent violations of Iraqi, regional and international law in most facets of daily life but chose to highlight a number of specific areas: government institutions and corruption; women's rights; internal displacement; minority rights; and freedom of expression. At the same time, mission members also observed several meaningful steps, particularly on the part of the regional government, the central government

133 FFM interview with Sardar Faqi, Prison Director, Social Reform Prison, 15 January 2007, Sulemanya.

134 FFM interviews with officials at Social Reform Prison, 15 January 2007, Sulemanya.

135 UNAMI Human Rights Report 1 July – 31 December 2007, p32.

and civil society organisations in northern Iraq, to implement human rights norms. The overarching concern was not that the will was not there in the government or in society as a whole, although this could turn out to be true. Rather, the missions believe that the fundamental problem lies with the lack of necessary support and training from the international community. Mission members are concerned that there has been no initiative by the international community to lead a consistent, long-term programme for government and to assist the government in transitioning from a country in turmoil to a vibrant democracy. Neither international governments nor international NGOs appear to have the will to support this semi-stable area of Iraq. In interviews with several international agencies, the missions heard concerns about 'political considerations' concerning the provision of support to Kurdistan, Iraq. Mission members were of the view that by focusing on such considerations, the international community is not only buying into an illogical argument that inflames political and ethnic tensions, but is also contributing to instability in the country as a whole. If it supported a healthy, democratic structure in Kurdistan, as part of Iraq, it would include people of all ethnic and religious backgrounds. This would mean that one part of the country would begin to function as an enduring democracy, rather than as a government in transition or in a permanent state of flux. The idea that supporting a federally-recognised, relatively stable region is somehow at odds with supporting democracy throughout Iraq appears to the mission as out of tune with international principles against discrimination and in support of local autonomy for national ethnic and religious groups. The mission urges all of those who are active in supporting a vibrant Iraq to have the courage to uphold human rights in the face of political considerations. It is only through a strategic partnership and training programme that the KRG and indeed the central government will actually be able to arrive at a position where they can demonstrate their will or lack thereof to achieve a healthy democracy. Currently, the piecemeal approach to development and human rights is instead creating a perpetual cycle of abuse, frustration and dependence.

3. KIRKUK AND OTHER 'DISPUTED AREAS'

3.1 Introduction

Section 1 of this report introduced the issue of Kirkuk and its historical role as a bone of contention between Baghdad and the KRG, owing particularly to its economic, strategic and political significance. In the 20th century, with the added discovery of oil in the region, Kirkuk found itself at the centre of successive Iraqi governments' Arabisation policies. As part of Saddam Hussein's plan to extend Baghdad's control over the area, some 200,000 Kurds and Turkomans were displaced from the area in the 1980s and replaced mainly by poor Shia Arabs from southern Iraq. Kirkuk's status has likewise proved to be a defining focus of political dispute and armed conflict in Iraq since the invasion of 2003, and its troubled legacy of politically-charged displacement and conflict now constitutes a particularly complex challenge for modern Iraqis to address. Indeed, the Kirkuk issue is regarded as being integral not only to stability in Iraq as a whole, but is also perceived as being intimately connected to the development of Kurdish autonomy in the wider region. During KHRP's mission to Kurdistan, Iraq, an NGO representative described the potential volatility of Kirkuk's sectarian make-up as being far more dangerous than external threats, such as that of Turkish military action.¹³⁶

Kirkuk's constitutional status is only one of Iraq's many outstanding territorial issues, the resolution of which are integral to the long-term provision of stability in the region. 'Disputed areas' form an arc of roughly 450km running from Sinjar in Ninewa province, north-west Iraq, to Diyala province along the Iranian border.¹³⁷ Just as Kirkuk is home to substantial numbers of Kurds, Arabs and Turkomans, many of these areas are also home to substantial minority populations, such as Chaldeans, Yezidi Kurds and Shabaks. It has already been observed that whilst the areas under KRG jurisdiction have enjoyed relative stability since 2003, this has not been translated into adequate human rights protection through the advancement of the rule of law, institutional development and civil society growth. In Kirkuk and Iraq's other 'disputed areas' the situation is exacerbated by the wholesale absence of effective government. More specifically, due to the failure to implement Article

136 FFM interview with Sartep Ali, Programme Director, Civil Development Organisation, 28 November 2007, Sulemanya.

137 'A Kurdish Conundrum', *The Economist*, 17 April 2008.

140 of the Iraqi constitution, which lays out how their status should be resolved, these areas have essentially been left in limbo, deprived of basic services, rule of law and human rights protection. As a result, they have been especially vulnerable to the violence and instability that has plagued other parts of Iraq since 2003. This in turn hinders the provision of services, application of government and long-term planning for the future. Therefore, whilst issues such as the rights of women and minorities have been addressed in the previous section of this report, these merit further discussion in the context of Kirkuk and other ‘disputed areas’ because of the very specific conditions that apply there. Broadly speaking, the example of these areas serves to reinforce the strong link between political instability and human rights abuse.

Given the effect that violence and instability are having on the inhabitants of these areas, it is clear that the status quo is unsustainable and that extensive resources must be allocated to provide momentum towards a lasting resolution of the core issues involved. In February 2008, a UN envoy described the Kirkuk issue as being like a ‘ticking time bomb’.¹³⁸ On the other hand, recent publications and statements by KHRP have asserted that any unilateral attempt by any party to impose a solution will simply fuel existing resentments amongst the region’s inhabitants, impeding the long-term realisation of peace. In this respect, mission members were extremely concerned by Kurdish attempts to ‘force’ the issue of the ‘disputed areas’, especially in Kirkuk, either by going ahead with the ‘normalisation’ process before consensus is achieved, or through alleged discriminatory or abusive practices on the part of Kurdish officials and security forces operating in these areas. From the mission members’ observations, it is clear that any lasting resolution – especially if this is to entail substantial transformation of the areas’ demographic makeup and land-ownership – will need to equally represent the wishes of all the former and current inhabitants of the ‘disputed areas’.

3.2 Article 140 and the ‘Normalisation’ Process

Article 140 of the Iraqi constitution establishes a three-step process for resolving the status of all of Iraq’s ‘disputed areas’: ‘normalisation’, census and referendum. ‘Normalisation’ is essentially understood as a framework for resolving the complex demographic issues in Kirkuk and elsewhere. For Kirkuk, this would in principle involve the resettlement of mostly Kurdish (and to a lesser extent Turkoman) inhabitants who were displaced from the region, and the voluntary departure of so-called *Wafidin* (predominantly Arab inhabitants who settled there under previous administrations’ Arabisation policies) with due process of law and full compensation. Though the constitution does not explicitly state the possible

138 International Crisis Group, ‘Iraq and the Kurds: Resolving the Kirkuk Crisis’, 19 April 2007.

outcomes of the concluding stage of this process, it is broadly understood that a referendum will determine whether Kirkuk will join the KRG-administered region, remain under the jurisdiction of the central Iraqi government or be granted special status as a self-ruling entity.¹³⁹ Although theoretically the same process would be applied to all 'disputed areas', in practice public discussion has so far largely centred on Kirkuk.

Although Iraq's constitution mandates that this sequential process should have been completed by 30 November 2007, the referendum was postponed until the end of June 2008 due to the absence of progress towards census or normalisation in Kirkuk. This failure reflects above all the extreme dearth of consensus on the issue among both the various communities in the 'disputed areas' themselves and the major factions in Iraqi politics, reflecting the particularly divisive and inflammatory nature of the referendum issue. It also resulted, in May 2008, in the advancement of a UNAMI-led initiative designed to resolve the status of other areas deemed to have less complex demographic or territorial issues, in lieu of progress on the Kirkuk front. Nonetheless, at the time of writing, the passing of yet another deadline, coupled with the lack of progress in implementing the normalisation process and resolving other core issues associated specifically with Kirkuk indicated that a final resolution of the issue was not on the immediate horizon.¹⁴⁰

According to the UNHCR, 'The debate [over Kirkuk] is highly charged both economically and ethnically, as both the Kurds and the Turkmen feel they have been historically wronged regarding their claims to Kirkuk.'¹⁴¹ For the Kurds, the city has long been considered an integral part of Iraq's Kurdish regions and its annexation is identified as a crucial step in the realisation of Kurdish autonomy in northern Iraq. In this regard, Kurdish leaders have been under strong public pressure to 'deliver' Kirkuk, a situation that has likely been exacerbated by the ongoing rivalry between the dominant parties in the KRG.¹⁴² Turkomans on the other hand assert their own historic presence in the city, highlighting Kurdish migrations there after 1927 and alongside Arabs in the 1950s and 1960s.¹⁴³ Although no reliable statistics exist to confirm the exact ethnic and religious constitution of Kirkuk province, Kurds are understood to be the largest group and hold the most seats on the provisional council as a result of elections in December 2005. This partly explains Kurdish moves to push for a referendum over Kirkuk. However, where the Kurds have articulated

139 FFM interview with Sarteep Ali, Programme Director, Civil Development Organisation, 28 November 2007, Sulemanya.

140 'Can the UN avert a Kirkuk border war?' Christian Science Monitor, 25 April 2008.

141 UNHCR Country of Origin Information: Iraq, October 2005, p76.

142 International Crisis Group, 'Iraq and the Kurds: Resolving the Kirkuk Crisis', 19 April 2007, p13.

143 Minority Rights Group International, 'Assimilation, Exodus, Eradication: Iraq's Minority Communities Since 2003', 2007, p18.

Article 140's implementation as a free, democratic exercise designed to address past injustices, many Arabs and Turkomans view the process as a manipulated process expounded unilaterally by the Kurds to resolve the issue in their favour. This tension has been exacerbated by allegations of ill-treatment by Kurdish forces in the city since 2003, and the uneven implementation of the normalisation process (detailed below). Further, the issue has not been aided by febrile media coverage on all sides. According to Hussein Sinjari, founder of Tolerancy International, the Kurdish media was encouraging overtly myopic sentiments over Kirkuk. As the International Crisis Group (ICG) reports, 'Kurdish papers dedicate at least a full page every day to the implementation of Article 140.'¹⁴⁴

The failure to implement Article 140 has also exposed what many perceive to be the fundamental weakness of the Iraqi political system and the prevailing impasse between Iraq's major political factions. Across the political spectrum, Kirkuk is not seen as an isolated issue but is entangled with – and is even arguably at the heart of – the broad political dispute over the structure of Iraq's state system. This overarching dispute encompasses such interconnected issues as the debate over the extent of federalism and power devolution, the ownership, management and distribution of oil and gas wealth, and mechanisms for resolving relations between Iraq's communities in the post-2003 era. Thus with the process for reconciling all these major issues stalled, movement over the Kirkuk issue has also stalled. According to Sartep Ali of CDO, normalisation had been delayed due to hold-ups in the formation of a united government in Baghdad, and therefore in the formation of a committee on Kirkuk.¹⁴⁵ The lack of progress over Article 140 has been a continual source of frustration for the Kurdish leadership, which has repeatedly accused other political forces in Iraq of deliberately refusing to invest political capital in the normalisation process in order to thwart their ambitions. In any case there is little doubt that the implementation of Article 140 has suffered from a lack of integrity in the eyes of other major political factions in Iraq. This broadly reflects a sense amongst Arab Iraqis that the Kurds have benefited disproportionately within Iraq's political system since the fall of Saddam Hussein. In this regard, the Kurdish leadership has been accused of sustaining the problem by adopting an uncompromising and dogmatic stance over Kirkuk.¹⁴⁶

The absence of consensus over Kirkuk has been further exacerbated by the highly ambiguous nature of Article 140 with regards to procedural issues, allowing political wrangling over the finer details of the process to overshadow progress towards its

144 International Crisis Group, 'Iraq and the Kurds: Resolving the Kirkuk Crisis', 19 April 2007, p1.

145 FFM interview with Sartep Ali, Programme Director, Civil Development Organisation, 28 November 2007, Sulaymanya.

146 FFM with Hussein Sinjari, Tolerancy International, 17 December 2007, Erbil.

implementation.¹⁴⁷ In theory, the implementation of Article 140 is to be administered by a central committee which was set up in August 2006. However, this committee did not achieve a resolution on the fundamental issue of compensation until early 2007¹⁴⁸ and other major issues remain outstanding. The constitution does not, for example, specify which areas constitute ‘disputed areas’ and how their borders will be delineated, an issue that rouses considerable disagreements amongst the various factions. Sarteep Ali highlighted the Baathist regime’s policy of isolating parts of Kirkuk by affiliating them with neighbouring Arab provinces, which means that the Kirkuk currently under discussion is a smaller geographical unit than it was before the Arabisation process.¹⁴⁹ Ambiguities also persist with regards to how a future referendum would be carried out, who will be eligible to vote and what exactly the vote will determine.¹⁵⁰

To further exacerbate matters, the issue of Kirkuk has attracted a great deal of attention from Iraq’s neighbours, especially Turkey, who have attempted to influence the future constitutional status of the city. Turkey has repeatedly expressed concerns that Kurdish control of Kirkuk would strengthen Kurdish nationalism across the wider Kurdish regions and would also compromise the rights of Turkoman Kirkukis. This has resulted in public calls for the postponement of the referendum and support for the Iraqi Turkoman Front, which has voiced its support for Kirkuk to become a self-governing entity.¹⁵¹ Such policies are closely linked to Turkish concerns over Kurdish autonomy in northern Iraq and its military incursions into the region in the past year, as discussed in Section 4. In any case, without cooperation from regional actors, progress will be inhibited as disaffected groups seek the interference of neighbouring states to further their own goals.

3.3 Insurgency and Violence: The Post-2003 Situation

Whilst the status of the ‘disputed areas’ has remained in doubt, violence has proliferated, greatly hindering reconstruction efforts. Although sectarian conflict amongst Kirkuk’s communities has yet to erupt in the manner predicted by many in recent years, these areas have been greatly affected by the insurgency. The severe risk

147 International Crisis Group, ‘Iraq and the Kurds: Resolving the Kirkuk Crisis’, 19 April 2007, p8.

148 According to International Crisis Group, displaced former residents returning to the city of Kirkuk are to receive roughly US\$7,800 and a plot of land in compensation, and half that if they settle elsewhere in the province. Arab residents who voluntarily leave should receive US\$15,600 and a plot of land elsewhere as compensation. The committee has a budget of \$200m. International Crisis Group, ‘Iraq and the Kurds: Resolving the Kirkuk Crisis’, 19 April 2007, p. 5.

149 FFM interview with Sarteep Ali, Programme Director, Civil Development Organisation, 28 November 2007, Sulemanya.

150 International Crisis Group, ‘Iraq and the Kurds: Resolving the Kirkuk Crisis,’ 19 April 2007 p.8.

151 Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007 p.208.

posed to the many minority communities living in these areas has been addressed in the previous section. According to UNAMI, 'even though violence is not on the same level as in Baghdad, on-going human rights violations and the surge of violent acts which have significantly increased since 2003 are widely believed to be the doing of perpetrators and instigators from inside and outside Iraq and Kirkuk'.¹⁵² Reports indicate that Shia militias began operating in Kirkuk in substantial numbers in April 2006. These include the Badr Organisation and the Mahdi Army loyal to Moqtada as-Sadr, which reportedly deployed some 240 men, prompting the movement of some 100 *peshmerga* to the area.¹⁵³ Later in 2006, following the death of al-Qaeda in Iraq leader Abu Mus'ab al-Zarqawi, Sunni *ihadis* also increased their operations around Kirkuk. Insurgent groups have seemingly deliberately sought to exploit the ethnic tensions and lack of security in Kirkuk to further destabilise the area. UNAMI reports that in the latter half of 2007 the inhabitants of Kirkuk continued to be affected by general violence, suicide bombings, abductions, and targeted assassinations leading to the abandonment of homes and seeking of shelter. In some cases, attacks inflicted massive devastation on the civilian population. On 16 July 2007, some 85 people were killed and many others injured in Tuz Khormatu, Kirkuk governorate, when three vehicle bombs were detonated in separate locations in an apparently coordinated attack.¹⁵⁴

Other 'disputed areas' have similarly suffered disproportionate violence since 2003 compared with the KRG governorates. The district of Mosul, Ninewa governorate, which has a Sunni Arab and Kurdish majority and minority populations of Chaldean Christian and Turkomans, has been particularly affected. This included a period in November 2004 when insurgents launched a sustained campaign of violence against Iraqi police stations and security forces in the city of Mosul.¹⁵⁵ Mosul has also reportedly witnessed an exodus of inhabitants of different ethnicities to the KRG region. Likewise violence and social unrest have reached exceptional levels in the neighbouring district of Talafar, a mixed Turkoman, Kurdish and Sunni Arab area.¹⁵⁶

KHRP mission members were particularly concerned with the knock-on effects of the security situation. According to one NGO worker in Kirkuk, access to basic services such as water supply is extremely limited.¹⁵⁷ Attacks on oil infrastructure by insurgents are reported frequently, with 3 million litres of oil reportedly lost

152 UNAMI Human Rights Report, 1 November - 31 December 2006, p.24.

153 Center for Strategic and International Studies, Iraqi Force Development 2006, 19 June 2006.

154 UNAMI Human Rights Report 1 July – 31 December 2007, p.8.

155 UNHCR Country of Origin Information: Iraq, October 2005, p.79.

156 UNAMI Human Rights Report 1 November - 31 December 2006, p.25.

157 FFM interview with Nibras Faris Karim, Iraqi Youth Organisation, 8 and 9 January 2007, Kirkuk.

every month from Kirkuk as a result of sabotage. More broadly, the overall security situation in the area means that Kirkuk currently produces around 180,000 barrels per day, compared to a total capacity of 580,000, severely inhibiting the provision of fuel and subsequent development in the surrounding area and elsewhere in northern Iraq.¹⁵⁸ Similarly, oil company workers have reportedly been intimidated or attacked by insurgents. In Mosul and Talafar, medical facilities and healthcare had reportedly deteriorated sharply due to a lack of medicine, medical equipment and security for medical workers.¹⁵⁹

Parallel to the appalling security situation in the 'disputed areas', KHRP also observed a breakdown in the rule of law. The Iraqi Youth Organisation in Kirkuk reported that this constituted the most serious obstacle to the protection of human rights, and that a breakdown in trust between the government and the people had occurred.¹⁶⁰ This view was echoed by an NGO director in Shekhan district near Mosul, who told KHRP that because the region was beyond KRG jurisdiction, areas of authority remained a cause of widespread confusion and concern with respect of the jurisdiction of courts and security.¹⁶¹ KHRP also observed a widespread feeling of abandonment stemming from the lack of effective government and stability, leading to a sense of despair and pessimism regarding the future amongst inhabitants.¹⁶² When the KHRP mission arrived in Kirkuk, groups there expressed both surprise and gratitude, stating that they are rarely able to interact with international NGOs. At one NGO office, a security guard pointed to a mission member and said to the mission's driver, 'I see you have brought a bomb', a reference to the fact that international visitors are seen as targets by the several armed militias operating in Kirkuk.¹⁶³

Several NGOs told mission members that daily life was hindered by restrictions to freedom of movement caused by the risk of violence. This was reportedly having a particularly negative effect on women in Kirkuk, with many suffering at home in abusive relationships.¹⁶⁴ The situation was similar in Shekhan. According to an NGO, the plight of local women was indicative of a broader lack of government and rule of law in the area, as well as a lack of education about human rights. A local women's rights activist told KHRP that because life was so insecure, the family remained the primary social tie, meaning that women were deprived of independent support

158 Iraq Crisis Report No.232, 'Tribes Sabotage Kirkuk Pipelines', 10 September 2007.

159 UNAMI Human Rights Report 1 November - 31 December 2006, p.25.

160 FFM interview with Nibras Faris Karim, Iraqi Youth Organisation, 18 January 2007, Kirkuk.

161 FFM interview with NGO director, 28 November 2007, Sulemanya.

162 *Ibid.*

163 FFM roundtable discussion with NGOs in Kirkuk, 18 January 2007, Kirkuk.

164 FFM interview with Nibras Faris Karim, Iraqi Youth Organisation, 8 and 9 January 2007, Kirkuk. See Section 2.2 for further details.

networks.¹⁶⁵ According to one NGO in Kirkuk, no civil dialogue was taking place between ethnic groups and no attempts were being made by authorities to remedy this.¹⁶⁶ Indeed, UNAMI reported that different ethnic groups were increasingly withdrawing within their neighbourhoods for protection, because of the incidence of violence.¹⁶⁷ Substantial obstacles were likewise reported to the work of NGOs, indicating a dearth in means through which people could learn about human rights and democracy. An NGO worker in Kirkuk complained to KHRP of the lack of an international NGO presence in the city due to a lack of resources and the fact that the security situation rendered access to funds difficult.¹⁶⁸

3.4 Kurdish Activity in the ‘Disputed Areas’ and Allegations of Abuse

As established above, successful implementation of the normalisation process under Article 140 necessitates careful coordination and planning to settle issues of settlement, compensation, and changes in demography and land-ownership, as well as the active involvement of all parties affected. Given the backdrop of violence, human rights abuse and government failure in Kirkuk, and the vehement opposition to normalisation itself amongst many Iraqis, it is extremely concerning that unilateral attempts are being made to implement resettlement programmes in the Kirkuk area. According to the KRG’s Office for Settlement and Compensation, which is coordinating the return of Kurds to Kirkuk, between 25,000 and 30,000 Kurdish families had returned in several waves of resettlement since 2003. However, reports in December 2007 indicated that few Arabs had left the city and that only 2,000 land disputes had been settled.¹⁶⁹ According to one report, ‘almost daily, hundreds of people come to the provincial council office in the hopes of receiving payment from the national committee tasked with implementing Article 140.’¹⁷⁰ In this context, accusations have proliferated that the KRG has been deliberately seeking to raise the Kurdish majority in the area by providing incentives to encourage displaced Kurds to return. This process has, however, been extremely haphazard and has ignored the reality of the security situation in Kirkuk. One report, for example, claimed that thousands of poor returnees were languishing in camps inside and outside the city, including some 500 families living in the city’s football stadium.

165 FFM interview with representative of women’s rights NGO, 28 November 2007, Sulemanya.

166 FFM interview with Nibras Faris Karim, Iraqi Youth Organisation, 8 and 9 January 2007, Kirkuk.

167 UNAMI Human Rights Report 1 November-31 December 2006, p24.

168 FFM interview with Nibras Faris Karim, Iraqi Youth Organisation, 8 and 9 January 2007, Kirkuk.

169 Iraq Crisis Report No.239, ‘Bleak Prospects for Kurdish Returnees’, 5 December 2007.

170 ‘Can the UN avert a Kirkuk border war?’ Christian Science Monitor, 25 April 2008.

These camps reportedly lacked basic infrastructure, including schools, healthcare, sanitation and utilities.¹⁷¹

Suggestions that the KRG is forcing displaced Kurds to return to Kirkuk against their will were underscored in KHRP's interview with a displaced person from Kirkuk.¹⁷² The interviewee, who was living with eight families, each with four to five members, in the Aacehinar IDP settlement in Sulemanya, had left Kirkuk in the 1990s due to the Arabisation policy. She had been involved in an ongoing dispute regarding the land where the IDP settlement was located, which had previously been sold to a developer, Nokan Co., by the PUK. Nokan Co. had opened a case for eviction against the residents, accusing them of illegally squatting on prime development land. They had been offered compensation of 3,500 dollars, an amount that she said was inadequate to buy a house.¹⁷³ According to this account, the PUK had acted illegally by giving the land away in the first place, since Iraqi land law stipulates that residents who have lived on land for ten years, as they had done, gain ownership rights. The interviewee was therefore seeking a practical solution to the problem – either land or enough compensation to buy an apartment – but felt that the land issue was being manipulated by the authorities to encourage the IDPs to return to Kirkuk. Were this the case, this would likely contradict the responsibilities that the government has for IDPs. As the mission was interviewing this individual, there were noticeable sounds of demolition in the background. She informed the KHRP representatives that these noises came from the house next door, which was being demolished in connection with an order from Nokan Co.. Alan Ibrahim of CDO told the mission that the Sulemanya Governorate council had agreed to investigate whether the individuals concerned had received any compensation, and whether or not they had returned to Kirkuk since leaving in the 1990s. If the finding is that they did not receive any compensation and did not return, it may be ruled that the families should stay within the settlement, or should be entitled to additional compensation. Alternatively, they could be afforded a plot of land elsewhere in Sulemanya.¹⁷⁴

Related to the issue of forced normalisation is that of the alleged mistreatment of non-Kurdish groups by the Kurdish authorities in Kirkuk and elsewhere. Although Iraq's 'disputed areas' officially lie beyond the borders of the KRG, many of these areas have in practice been under Kurdish security control before and/or since 2003. *Peshmerga* forces and Kurdish security forces entered Kirkuk following the demise of the Baathist regime in 2003 and it has remained under de facto Kurdish control

171 Iraq Crisis Report No.239, 'Bleak Prospects for Kurdish Returnees,' 5 December 2007.

172 FFM phone interview, 30 November 2007, name withheld for security purposes.

173 The KHRP mission spoke to another person who claimed that even £10,000, the amount our interviewee suggested would be sufficient for a house in Sulemanya, would not suffice.

174 FFM Interview, 30 November 2007, Sulemanya.

ever since.¹⁷⁵ Allegations that Kurdish militants were pressuring Arab residents to leave the city have proliferated since that time. According to Minority Rights Group International, in April 2003 *peshmerga* forces entered the Turkoman district of Tal Afar, appointed a Kurdish local governor and committed numerous violent acts whilst doing so, including looting, insulting and provocative actions.¹⁷⁶ In 2005, UNHCR noted that *peshmerga* forces had angered Sunni Arab residents in villages around Mosul by conducting security operations before a decision had been made regarding property claims that would reverse the effect of Arabisation.¹⁷⁷ At the close of 2006, UNAMI reported that, 'key concerns include the rights of minorities living in Kirkuk and their ability to effectively participate in its political, economic and social development. Additional concerns relate to the use of security forces and the power of detention, including in KRG facilities by the authorities so as to intimidate and prevent minority groups from playing a significant role in the city's affairs.'¹⁷⁸

The most contentious issue is the alleged systematic abduction and detention of hundreds of Arabs and Turkomans from Kirkuk by Kurdish *peshmerga* or PUK and KDP *asayish* forces in Ninewa and Kirkuk governorates, and their transferral to secret prisons inside KRG territory.¹⁷⁹ Such claims are difficult to substantiate and it remains unclear how widespread the abuse of minorities is in Kirkuk and elsewhere. The picture has undoubtedly been obscured by media coverage. For example, ICG refers to a 'hyperactive rumour mill that, for example, has the Kurds infiltrating 10,000 security men into Kirkuk ostensibly to protect the Kurdish community but who are in reality said to be primed to force out the Arabs.'¹⁸⁰ Turkoman members of the KRG Human Rights Committee expressed the view that specific challenges persisted in Kirkuk due to its multi-ethnic population, but that these were primarily being exacerbated by the infiltration of insurgents and the interference of Turkey.¹⁸¹ Equally, a Kurdish NGO worker told KHRP's mission that these issues were related to security and social issues, and that allegations of discrimination were being manipulated as political propaganda. According to this account, strict border control

175 This was not a new phenomenon. Over the previous three decades, Kurdish forces had made a number of attempts to seize control of Kirkuk, with occasional success. For example, during the Kurdish uprising of 1991, *peshmerga* briefly took control of the city, before being repelled by the Iraqi army. Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007, p208.

176 Minority Rights Group International, 'Assimilation, Exodus, Eradication: Iraq's Minority Communities Since 2003', February 2007.

177 UNHCR Country of Origin Information: Iraq, October 2005, p79.

178 UNAMI Human Rights Report, 1 November - 31 December 2006, p23.

179 Center for Strategic and International Studies, 'Iraq's Evolving Insurgency and the Risk of Civil War', 22 June 2006, pp.279-280; US Department of State Iraq Report 2007, <http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm> (last accessed 30 June 2008).

180 International Crisis Group, 'Iraq and the Kurds: Resolving the Kirkuk Crisis', 19 April 2007, p1.

181 FFM interview with KRG Human Rights Committee, 22 January 2007, Erbil.

was conducted purely for security purposes, not to single out ethnic minorities.¹⁸² In the view of ICG, a more likely scenario is that ‘the Kurdish approach has been to nudge out the *Wafidin* by making them feel unwelcome and depriving them of jobs, while plying them with offers of money and gifts of land elsewhere in Iraq.’¹⁸³ Indeed, this would likely have been exacerbated by the fact that most senior official positions in Kirkuk are occupied by Kurds.¹⁸⁴

3.5 Summary

It was clear to KHRP mission members that violence, rumour, meddling from regional actors and government failure to adhere to a strong human rights baseline have formed a vicious cycle in Iraq’s ‘disputed areas’ that is proving to be exceptionally detrimental to the human rights situation there. These areas highlight, in the starkest of terms, the dire consequences that follow where there is failure to implement a coherent, effective and long-term plan to implement stability, rule of law and the protection of human rights. Regardless of the validity of claims of abuse in these areas, it is clear that unilateral attempts to push ahead with the normalisation process have created problems in their own right, particularly mistrust and resentments between local communities. In this respect, the KRG must initiate dialogue with all groups living in these areas and adopt a consensual approach to determining their status with all other interested parties. Likewise, international actors in Iraq must help to mediate, rather than simply focusing on the issue of security. Nonetheless, the failure to find a resolution is just as much a symptom of the broader lack of political consensus over the issue between Iraq’s major political forces, and indeed the impasse that continues to afflict Iraqi politics as a whole. The international community has an obligation to facilitate a peaceful and transparent resolution of the issue that accommodates all of the city’s inhabitants and displaced former inhabitants. Moreover, it is essential that any plans to alter the situation on the ground, either through resettlement programmes or through border realignments, comprehensively account for the rights of all residents to security, basic services and justice. Further, it is imperative that Iraq’s neighbours, particularly Turkey, end all attempts to influence the settlement of Kirkuk’s status, and allow Iraqis to resolve the issue without interference.

182 FFM interview with Sartep Ali, Programme Director, Civil Development Organisation, 28 November 2007, Sulemanya.

183 International Crisis Group, ‘Iraq and the Kurds: Resolving the Kirkuk Crisis’, 19 April 2007, p3.

184 UNAMI Human Rights Report 1 November-31 December 2006, p24.

4. MILITARY INCURSIONS

4.1 Introduction

In the latter half of 2007 and throughout 2008, Turkey and Iran resumed cross-border military operations in northern Iraq. During late 2007 and early 2008, KHRP mission members carried out extensive research in two areas in Kurdistan, Iraq, which had been affected by the incursions. The missions found that shelling and bombing campaigns by Turkish and Iranian forces had caused extensive harm to the civilian populations in those areas and gross violations of their human rights. This section will place the current incursions in their proper historical and regional context, as only the latest manifestations of the deeply suspicious stance held by Iraq's neighbours towards Kurdish autonomy in northern Iraq. In this regard, it will also situate the operations in the context of international law and demonstrate the extent to which Iraq's neighbours are upholding and violating their obligations. Drawing on the statements of villagers interviewed by the mission, as well as the observations of the mission members themselves, this section will detail the precise ways in which ongoing operations have negatively affected the lives of the inhabitants of the region. These range from loss of life, livelihood and property to the destruction of traditional village modes of life and the traumatisation of the affected communities, especially children.

Military interventions by neighbouring countries are having a negative effect on the development of human rights in Kurdistan, Iraq, beyond the direct suffering of civilians. They are entrenching existing problems such as chronic infrastructural underdevelopment and are contributing to a stronger emphasis on security from regional authorities at the expense of human rights issues (an approach that is being actively supported by the international community). Clear outward signs of the effects of this emphasis were the strict restrictions placed on reporting of the effect of the incursions on civilians living in the border regions and the approach of security officials towards minority civilians living or travelling within the region. Furthermore, the displacement of civilians from farming communities in the border regions only serves to exacerbate strain on infrastructure within urban centres, which are already home to a large number of IDPs. Indeed, far from being an isolated issue, cross-border attacks are amongst a number of interconnected principal factors hindering the protection of human rights within Kurdistan, Iraq, as a whole. As such, the question of cross-border attacks relates to wider issues

of responsibility beyond those concerning Iraq and Turkey, raising the obligations of the international community, particularly the US and EU, to support Iraq's territorial integrity and protect human rights there.

4.2 Historical Background and Context of the Attacks

The cross-border attacks that have occurred in the past year are only the latest in a long series of violations of Iraq's sovereignty by neighbouring countries. Ever since the foundation of Kurdish autonomy in northern Iraq in the early 1990s, Turkey has periodically carried out incursions into the region, often with parliamentary approval. In the autumn of 1992, Turkish troops fought alongside PUK and KDP *peshmerga* in a joint operation to expel PKK fighters from the mountains of Kurdistan, Iraq. A much larger operation took place in 1995, when Turkey sent 35,000 troops across the border in a bid to wipe out some 2,500 PKK fighters. In May 1997, some 50,000 troops were again deployed in northern Iraq, with the compliance of the KDP, ostensibly to attack the PKK. Since then, Turkey has, with the full knowledge of the international community, kept an estimated 5,000-strong military force in the border region, regularly making incursions by air into Iraqi territory.¹⁸⁵

Throughout this period, Turkey consistently maintained that the purpose of its operations was exclusively military, namely its struggle to deprive the PKK of a base in northern Iraq. However, such factors only partly explain its policies. Mission members found that the gross negligence associated with the bombardment support the view of KHRP that these operations were largely designed as a show of strength to undermine Kurdish moves towards increased autonomy. This agenda was implicit in their failure to protect the civilian population of the region during incursions. According to Kerim Yildiz, following Turkish operations in 1995 'the UNHCR evacuated several thousand Iraqi Kurds from the conflict area. Human rights groups documented numerous violations of human rights and humanitarian law by invading troops, including torture, killing and the destruction of up to 70 villages.'¹⁸⁶ One landmark case documented by KHRP of such violations is detailed below. Human Rights Watch reported that an attack by 2,000 Turkish troops against the PKK in November 1997 killed over 1,200 people and displaced thousands of civilians. During this period, both Iraq and the PUK claimed that Turkey used

185 Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007, p79-82.

186 Yildiz, Kerim, *The Kurds in Iraq, Revised Edition*, Pluto, London, 2007, p81.

napalm bombs in indiscriminate attacks on PUK areas during the offensive, resulting in civilian casualties.¹⁸⁷

The authors assert that it is in precisely this context that the latest cross-border campaigns should be understood. As with earlier campaigns in northern Iraq, the Turkish government has sought throughout the past year to link its own domestic security concerns to Kurdish regions beyond its own borders. In both reading statements from the Turkish military and government around the incursions and seeing first-hand the lack of respect for humanitarian law, mission members concluded that Turkey's government line does little to mask its overarching concerns regarding the broader implications of Kurdish autonomy on its own Kurdish population. More broadly, since the invasion of Iraq in 2003, this concern has also been manifested in Turkish moves to influence the outcome of issues at the heart of Iraq's reconciliation process, such as the status of Kirkuk.

The most recent resumption in cross-border activity followed an incident in October 2007 in Hakkari province, south-east Turkey, in which 12 Turkish soldiers were killed. A subsequent majority of Turkish MPs (507 for and 19 against) supported a parliamentary bill authorising the military to attack the PKK in Iraqi locations for a period of up to a year, indicating the broad consensus on the issue amongst several of Turkey's major political forces. Thus the resumption of operations was presented publicly as a defensive response to PKK activity. However, given the considerable precedent of Turkish operations in Iraq, this explanation was lacking. In any case, the incident in Hakkari was by no means a substantial escalation in Turkey's internal conflict with the PKK. Clashes have occurred routinely in recent years (and indeed in the period since October 2007). These are the result of a broad failure on the part of both sides to embrace a non-military solution to Turkey's Kurdish issue.

These developments did, however, reflect the specific circumstances of the build-up to and aftermath of Turkey's elections of mid-2007, which accentuated the ongoing power struggle between Turkey's secular establishment and the ruling *Adalet ve Kalkinma Partisi* (Justice and Development Party, AKP). During the campaigns, the AKP was put under considerable pressure by the principle opposition party *Cumhuriyet Halk Partisi* (Republican People's Party, CHP) and the ultra-nationalist *Milliyetçi Harekat Partisi* (National Action Party, MHP) to adopt a tough stance on PKK activity in south-east Turkey. Likewise, during this period the Turkish military, which continues to wield undue influence within Turkey's political system, adopted an increasingly nationalist discourse which sought particularly to heighten public fear that the development of the KRG in Iraq was a formidable challenge to Turkey's

187 Human Rights Watch World Report, 1999, <http://www.hrw.org/worldreport99/mideast/iraq.html> (last accessed 16 July 2008).

domestic security. This was made explicit in April 2007, when the military's chief of staff General Büyükanıt asserted that 'from the military point of view, an operation in northern Iraq must be made'.¹⁸⁸ Substantial criticism was also levied against the KRG and US for their alleged failure to uproot the PKK's presence in northern Iraq. The message was, however, contradicted by Prime Minister Recep Tayyip Erdoğan, who in the summer of 2007 openly questioned the strategic viability of limiting PKK capability in Iraq where its bases were relatively scarce.

4.3 Chronology of Events in the Past Year

In addition to increasingly hostile language coming from Turkey regarding developments in Iraq, the months prior to the parliamentary authorisation of incursions into northern Iraq were also characterised by an increase in the Turkish military's physical presence along the border. In June 2007, Turkey announced the creation of 'temporary security zones' in Hakkari, Siirt and Şırnak provinces, effectively returning these areas of south-east Turkey to a state of emergency, causing significant disruption to daily civilian life through checkpoints, detentions and military operations. However, with the relocation of an estimated 20,000 troops to the 300km-long border, coupled with the establishment of mobile military response teams and temporary observation posts,¹⁸⁹ the threat of military action was also very much a prevalent feature of life in Kurdistan, Iraq, contributing to the destabilisation of the region prior to the actual initiation of operations. In response, Kurdish troops were reportedly deployed at six outposts in adjacent parts of Dohuk governorate.¹⁹⁰ During this period, local sources reported Turkish shelling campaigns in Kurdish areas in Iraq as part of an apparent effort to drive out their civilian populations ahead of the re-establishment of a buffer zone inside Iraqi territory.¹⁹¹

Cross-border activity, as acknowledged by the Turkish military following parliamentary authorisation, began in earnest in October 2007.¹⁹² Since then, military attacks – including artillery bombardments, air strikes and ground-troop operations – have occurred on a regular basis. In late October and November, an initial phase of operations was launched, beginning with a series of cross-border

188 'Top Turkish commander Büyükanıt: Military operation into northern Iraq necessary', Today's Zaman, 12 April 2007, <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=108160> (last accessed 30 June 2008).

189 Andrew McGregor, 'Turkey's Evolving Anti-Terrorism Measures on the Iraqi Border', Jamestown Terrorism Focus, July 3 2007.

190 *Ibid.*

191 'Turkish artillery hits Kurdish rebel bases in northern Iraq', Daily Star (Beirut), 4 June 2007, http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=2&article_id=82726 (last accessed 3 June 2008).

192 'Turkey tightens control near Iraq', BBC, 7 June 2007, <http://news.bbc.co.uk/1/hi/world/europe/6730215.stm> (last accessed 30 June 2008).

artillery bombardments and troop deployments in Dohuk governorate. On 16 November, Turkey launched a series of air strikes primarily targeting villages near the Iranian border in Sulemanya governorate. Activities flared up again on 11 January 2008, when Kurdish sources reported a two-hour bombing campaign in Dohuk governorate, with further reports of bombing in the region.

These operations were, however, dwarfed by a major eight-day ground operation into northern Iraq by Turkish forces in late February 2008. Involving an estimated 10,000 soldiers, backed by additional artillery and aerial bombardments, the campaigns raised the concerning prospect of fighting between Turkish forces and the KRG's *peshmerga* forces, adding an additional threat to the overall stability of the region. Turkish military sources were characteristically unforthcoming with details of the operations, while PKK sources disputed claims over the extent of its losses. Military authorities also denied that the abrupt withdrawal of its forces on the 29 February was due to US pressure.

In any case, there have since been no indications of an end to the aggression, with further operations occurring throughout March, April and May. PKK and local sources claim that the Turkish military started a further ground operation in the week following the February withdrawal in the areas of Gerdiya and Govende in Zagros. In late March, the Turkish military claimed it had killed 15 PKK members in a two-day campaign of combined air and artillery strikes.¹⁹³ On 25 April Turkish warplanes reportedly bombarded the border areas of Nerwa, Rekan, Zewa and Nhel in Amedi district, Dohuk governorate, and in the Mizory Bala area of Erbil governorate. Local sources and media reported that separate artillery bombardments and air strikes occurred in the villages of Sidakan, sub-district of Soran district, and Erbil province, including Jorjan Tak, Kawer and areas of Synin Mountain, Lolan, and Khnera. On 2 May, around 30 Turkish warplanes reportedly launched intensive bombing raids lasting for three hours in the Qandil region. Strikes were likewise reported on 10 May in the Avashin-Basyan region and on 29 May in the Xinere, Xakurke and Lolan regions.¹⁹⁴

The US military's involvement in the cross-border campaigns has consisted of both passive support through failure to appropriately condemn the attacks as violations of Iraq's territorial sovereignty, and active assistance through the provision of

193 'Military hits PKK in northern Iraq', Turkish Daily News, 31 March 2008.

194 'Turkish warplanes bomb Kurdish rebels in Iraq', AFP, 29 May 2008.

intelligence and airspace clearance. This makes the US complicit in violating the human rights of the inhabitants of Kurdistan, Iraq.

4.4 International Law

As a signatory to a number of pieces of international legislation relating to the protection of civilian persons in time of war, and through customary international law, Turkey has legal obligations to ensure adequate protection for civilians. The Geneva Conventions, for example, stipulate that the conditions of necessity, distinction and proportionality must be met when a belligerent force initiates armed conflict in the name of self-defence. The first of these conditions means that combat forces must only engage in operations that are necessary to ensure military gain. Second, the principle of distinction demands that every effort is expended to distinguish between military and non-military targets, as defined by Article 48 of the First Additional Protocol to the Geneva Conventions. Third, the principle of proportionality prohibits the use of any kind of force that exceeds that which is necessary to accomplish the military goal. In all scenarios, the burden falls upon the belligerent force to ensure that these conditions are satisfied before initiating armed conflict.

Furthermore, as a candidate for accession to the EU, Turkey is obliged to embrace the values of peaceful conflict resolution. It must reject a myopic military approach to the Kurdish issue and instead engage in meaningful reform coupled with dialogue, in order to remove the root causes of conflict in its Kurdish regions. Notwithstanding these obligations, Turkey has over the years been continuously engaged in military activities in its border region that have resulted in severe civilian suffering, and which have demonstrated indifference to fundamental human rights.

Turkey has additional obligations as a member of the Council of Europe and a signatory to the European Convention on Human Rights (ECHR). One of the many documented instances of mutilations and killings committed by Turkish troops in northern Iraq was dealt with in the KHRP-assisted case of *Issa v. Turkey*, heard by the European Court of Human Rights (ECtHR) in 1996.¹⁹⁵ The case marked a significant milestone in international law in that it set a legal precedent affirming that Turkish troops are bound by the ECHR even when operating beyond Turkey's borders. The case has particular significance in light of the ongoing Turkish military operations

195 European Court of Human Rights, CASE OF ISSA AND OTHERS v. TURKEY, Application no. 31821/96, judgement accessible at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=issa%20v%20turkey%2031821/96&sessionid=4817628&skin=hudoc-en> (last accessed 15 July 2008).

in northern Iraq, since the ECtHR offers a strong mechanism for preventing human rights violations and ensuring justice and legality.

The case of *Issa v. Turkey* concerned an incident that took place in April 1995 when seven Kurdish shepherds bumped into Turkish soldiers who had crossed the border into Iraq. After abusing and beating them, the Turkish soldiers took the males into custody where they were abused further and tortured. The corpses of the deceased shepherds were later found near the area where they had last been seen with the Turkish soldiers. The bodies had been severely mutilated. In its final judgment, the ECtHR noted that it is undisputed between the parties that the Turkish armed forces carried out military operations in northern Iraq over a six-week period between 19 March and 16 April 1995. It further stated that Turkey 'could be considered to have exercised, temporarily, effective overall control of a particular portion of the territory of northern Iraq. Accordingly, if there is a sufficient factual basis for holding that, at the relevant time, the victims were within that specific area, it would follow logically that they were within the jurisdiction of Turkey (and not that of Iraq, which is not a Contracting State and clearly does not fall within the legal space (*espace juridique*) of the Contracting States).'¹⁹⁶

The ECtHR finally considered 'that it has not been established to the required standard of proof that the Turkish armed forces conducted operations in the area in question, and, more precisely, in the hills above the village of Azadi where, according to the applicants' statements, the victims were at that time.' Nonetheless, the case is highly relevant in the face of the intensified raids by the Turkish military into Kurdistan, Iraq, insofar as it recognises that Turkish forces are subject to the ECHR even when operating beyond its borders.

4.5 Civilian Impact

In seeking to justify its recent cross-border operations into northern Iraq, Turkey has repeatedly emphasised its right to defend itself and has claimed that attacks have been limited to military targets. The validity of these claims is, of course, undermined by its failure in recent decades to fulfil its obligations under international law and human rights norms both on home soil and across the Iraqi border. In any case, independent verification as to the occurrence and impact of the incursions which began in late 2007 has been lacking. In reporting on the operations, most international media sources have drawn verbatim on the limited and ambiguous statements of the Turkish military. In almost all cases, these establish nothing beyond the alleged figures of PKK fighters killed and the apparent achievement of military objectives. Moreover, these reports tend to be disputed by PKK or Kurdish

196 *Ibid.*

media sources, which generally attest to the overwhelming futility of the incursions in reducing the PKK's operational capability, and highlight the alleged impact of the incursions on the local civilian populations. In this regard, whilst KHRP's own observations relate only to two specific areas affected by the cross-border military operations, they represent an invaluable contribution to the broader discussion on the nature and impact of Turkey's military policy in Iraq.

On 29 November 2007, mission members visited the Christian village of Enshke and the neighbouring Muslim village of Aradina in Dohuk governorate. Both villages had suffered during the initial shelling campaign by Turkish forces in mid-October 2007.

The mission was deeply concerned by its findings with regard to the effects of the Turkish bombardment. Both villages had suffered significant losses of farmland and property, resulting in many losing their livelihood and means to adequately support themselves and their families. In Enshke, a village of some 90 families and 450 individuals, all inhabitants had been affected by shelling which began at around 10.50pm on 13 October 2007. Interviewees described in various ways their confusion and terror as the events unfolded. One villager, for example, said that he had seen multiple objects, which he took to be missiles, being projected towards the village, causing explosions and setting fire to farmland. Another resident told mission members of how he ran back to his house when the attacks began to find his wife and disabled son in a state of visible shock, with his son subsequently requiring hospital treatment.¹⁹⁷

In the aftermath of the attacks, KHRP found that one of the most acute issues concerned the villagers' future means to support themselves without farmland and property. The mission observed large areas of farmland scorched by Turkish bombardment in an area which relies heavily on harvests. Mission members also observed that much of the surrounding countryside had been blackened, indicating the possible use of chemical weapons by the Turkish forces, a tactic that has precedent within the history of Turkish military operations in Iraq. A 72-year-old man described how he found that almost of all his land, which consisted of hundreds of trees and different crops, had been blackened. Those parts which had not been affected were insufficient to support his family, rendering economic self-sufficiency unviable in the future. In addition to his material loss, he said that discovering the effects of the attack on his farmland, which he had worked on for his entire life, was emotionally devastating. Another villager described how all the windows, crockery, doors and furniture in his restaurant had been destroyed by missiles that landed 200-300 metres away. Despite investing 2,000 dollars in repairing the property,

197 FFM interviews carried out in Enshke and Aradina, Dohuk, 29 November 2007.

business had subsequently stalled due to customers no longer being able to afford to eat there and losing the desire to venture outside. This had accordingly resulted in the restaurant's closure and the loss of his family's income. Interviewees also found that the assistance provided to them by the local authorities was inadequate. One interviewee said that no officials had come to evaluate the damage done to his property, despite the fact that both of his houses had been shattered, forcing his family to relocate to Dohuk.¹⁹⁸

KHRP also found that the new economic, physical and psychological conditions were very difficult for many of the villagers to adapt to, making everyday life a completely new terrain. Children in particular were severely traumatised by the shelling, suffering from recurring nightmares and fear, and reportedly no longer inclined to play outside. More broadly, the mission observed that the attacks had bred considerable doubt, uncertainty and despair in the minds of villagers as to their future livelihood, safety and ability to plan for the future. For many, village life was no longer feasible. Nonetheless, interviewees were confused by the occurrence of such operations in a region where, to their knowledge, the PKK has no camps and in villages with no links to regional politics. In the face of the civilian targeting, many questioned Turkey's true intentions, reflecting considerable doubts with regard to Turkey's claim to be operating a counter-terrorism campaign, especially one that meets its fundamental obligations under international law.¹⁹⁹

Ali Mustafa, a local PUK representative, said he was extremely concerned by the cross-border campaigns, adding that the broader geopolitical situation was extremely complex, involving the US, NATO and other international institutions. Whilst he felt that there was a real desire on the part of Turkish politicians to hunt PKK militants, he argued that Turkey does not want to see further development in Kurdistan, Iraq, seeing this as a threat to the regional balance of power. Speaking two months prior to Turkey's eight-day ground operation in February 2008, he did not think that a wide-scale invasion was likely due to the region's economic ties with Turkey, the potential reaction of the international community, and the infeasibility of actually countering the PKK.²⁰⁰

On 10 to 11 January 2008, KHRP spoke to villagers and local officials in the Rania region of Sulemanya province, which had been targeted both by Iranian artillery

198 FFM interviews carried out in Enshke and Aradina, Dohuk, 29 November 2007.

199 *Ibid.*

200 FFM interview with Ali Mustafa, PUK representative in Amedie and Dohuk, 29 November 2007, Dohuk.

bombardments in the summer of 2007 and by a particularly devastating Turkish air raid on 16 December 2007. All of their testimonies revealed a similar story.

At around 2am on 16 December, without any prior warning, villagers awoke to the sound of fighter jets, after which around eight warplanes launched a three-hour assault on villages in the area, involving large missiles and cluster bombs. Many villagers described the ensuing chaos and terror, as they attempted to evade falling bombs and splintering shrapnel, in many cases by hiding in nearby ditches and caves until dawn. Schools, mosques, houses, tents, fields and herds were destroyed or damaged. One woman lost her life, and many other civilians were wounded. A young woman spoke of her devastation at losing her left leg below the knee as a result of missile shrapnel, and the ongoing challenges her and her family were likely to face as a result of the ordeal. Others commented on the likely economic fallout from the conflict, ranging from the loss of livelihood to the closure of border posts. In the village of Asterokan, residents lost all of their property, including an entire herd of over 480 sheep, the only source of income supporting 30 people.

Again, mission members observed that the impact of the attacks extended well beyond immediate physical devastation. Children in particular reported extensive traumatising as a result of the attacks. Equally pervasive was a sense of uncertainty regarding the future, and a reluctance to return to village life until there was a guarantee that the attacks would not recur. Even those who did not suffer the direct loss of livestock, fields and property were greatly affected by disruptions to business and farming, the loss of self-sufficiency and their inability to return home. Local officials also highlighted the inadequacy of local infrastructure to cope with the emergency situation. One source estimated that some 600 families had been displaced in the wider Qandil area as a result of the attacks, thus placing an additional burden on resources in the already overcrowded major regional towns and cities. Many people were also angry about the paltry assistance provided by the central and regional government. Yet the greatest anger and frustration was directed towards Turkey. When asked if they knew which bombardments were most devastating to their daily lives and infrastructure, most residents felt that the attacks perpetrated by Turkey were the most broad and punishing. Interviewees stated unanimously that those affected by the campaigns were civilians, contrary to claims by the Turkish military that only PKK bases were targeted. Moreover, many spoke of what they saw as the overwhelming futility of the operations, arguing that they resulted in little or no strategic gain in the fight against the PKK, whilst exacerbating the suffering of

civilian populations. Some added that Turkey was simply manipulating the PKK issue to hinder the development of Kurdish autonomy in Iraq.²⁰¹

4.6 Relations with Iran and Syria

Although Turkey has historically proved to be the prime instigator of violations of Iraq's territorial sovereignty, the mission was also aware that hostility towards the KRG is also shared by Iran and Syria. All three countries have consistently acted in a manner aimed at undermining the stability of the KRG whilst simultaneously denying the rights of their own Kurdish populations. This underpins what appears to be a tripartite strategy of political, and in the case of Iran, military cooperation. In October 2007, Syria, which has experienced an upsurge in civil unrest in its north-eastern Kurdish regions in the past few years, offered public approval of the Turkish parliamentary bill authorising cross-border incursions. Iran, on the other hand, has engaged over the past year in a campaign of sustained bombardment of towns and villages across the Iraqi border, like Turkey, with the ostensible aim of destroying the encampments of Kurdish fighters. In June 2008 the Commander of the Turkish Army, General İlker Başbuğ, made the first public acknowledgement of intelligence-sharing between Turkey and Iran. He was quoted as saying, 'When they start an operation, we do, too. They carry out an operation from the Iranian side of the border, we from the Turkish side.'²⁰² Saeed Abdula, a PUK official, told mission members in January 2008 that some level of aggression occurred at least once a month, either from the Turkish or the Iranian military, and that they often collaborated in the attacks.²⁰³

As with the Turkish strikes, information on the Iranian raids into northern Iraq is limited, and there exist several substantial obstacles in relation to obtaining it. Following the artillery attacks of summer 2007 in the Rania region, bombardments from the Iranian side have been reported routinely. Kurdish officials stated that Iranian forces fired artillery at several Kurdish villages in Sulemanya province for around an hour on 13 March 2008, indicating an increase in the scale of its operations. No injuries were reported, but officials said that villagers in the region were significantly traumatised. The following week, further operations were conducted in the Pishder region, some 160km from Sulemanya. According to local sources, UNHCR and the Red Cross, which visited the area, six villages were evacuated, four houses were burned and hundreds of people fled after the bombings. In mid-May, local sources and Kurdish media said the Iranian artillery had shelled Rizgah, DolaCoka, Maradu, Shinawa, Alyeresh and Besta villages in Zharawa sub-

201 FFM interviews in Rania and Sanga areas, 10-11 January 2008, Sulemanya.

202 'Report: Iran, Turkey coordinate Iraq strikes', Associated Press, 5 June 2008.

203 FFM Interview, Saeed Abdula, Chwar Qurna, 10 January 2008, Sulemanya.

district, Pishder, for several hours. This was followed on 20 May by bombardments of villages in the Pishder and Bradost regions for around four hours. Pecuniary damages occurred, reportedly causing the nomads from the highlands in the Merge Mire region to abandon their locations.

As with the Turkish case, reports coming from the border region indicate a prevalent belief that the Iranian assaults are not negatively impacting upon the capability of Kurdish militants, but are instead having a drastic effect on the civilian population. As a villager displaced during an assault stated in a media interview; ‘We know that the PKK are around here, but they live in the mountains. So these bombs just hurt us poor farmers.’²⁰⁴ Local authorities have also consistently stated that the extent of the damage caused by bombings is unknown, pointing out that many of the residents of the areas were forced to flee from their homes out of fear due to the Iranian artillery shelling. Mr Bhaktiyar, Head of the Municipality of Rania, said that psychological stress due to uncertainty caused by the border conflicts is a major problem in Rania, a city of approximately 70,000 inhabitants.²⁰⁵ Saeed Abdula added that there is a danger of impending economic crisis if the conflict continues as frequent closures of border posts are affecting Rania’s significant trade ties with Iran.²⁰⁶ For example, the 16 August Iranian artillery attacks on Qaladiza, Sulemanya, reportedly displaced 200 families from the area. Later in the same month, further bombardments of villages in Pshdar district displaced 157 families.²⁰⁷ These followed similar events in May 2006 in Sulemanya, when approximately 200 families were said to have fled their shelters after skirmishes between Iranian troops and Iranian Kurdish elements allegedly operating from Iraqi territory.

4.7 Summary

The authors are deeply concerned for the welfare of the civilian population who are bearing the brunt of the hostility shown towards northern Iraq by its neighbours, and thus call on the international community to provide adequate protection for the human rights of civilians affected by the conflict. The testimony of the villagers detailed above is damning evidence of the ways in which these actions have directly compromised the human rights of the inhabitants of the region. Moreover, by routinely threatening Iraq’s borders, Iraq’s neighbours have needlessly heightened the sense of emergency in the region, putting additional pressure on the regional authorities to conduct security operations that infringe on human rights in a number of ways. The KHRP mission strongly condemns this aggression, calling

204 ‘Kurds Flee Homes as Iran Shells Iraq’s Northern Frontier’, *The Guardian*, 18 August 2006.

205 FFM interview with Mr Bhaktiyar, Head of Rania Municipality, 10 January 2008.

206 FFM Interview, Saeed Abdula, Chwar Qurna, 10 January 2008, Sulemanya.

207 UNHCR Governorate Assessment Report: Sulemaniyah Governorate, September 2007, pp8-9.

for a peaceful political dialogue between the parties. With the current increase in hostilities, and with limited international attention, the KRG border situation is in danger of erupting into a full-blown conflict.

5. CONCLUSION

The issues of responsibility associated with the perpetuation of human rights abuse in Kurdistan, Iraq, are manifold. Despite this, the majority of violations that occur on a day-to-day basis in the region are generally the result not of insufficient legislative provisions, though sometimes this is the case, but rather a widespread failure to respect and implement such provisions. This is the case across all walks of life.

At the official level, KHRP found that whilst the KRG had in some cases developed adequate legislation to protect its citizens, this was often not implemented due to a failure to initiate training strategies that would equip judges, police and security forces with the ability to use it. This not only resulted in direct abuses, such as the ill-treatment of minorities or detainees, but also resulted in a failure to provide redress for the victims of human rights violations. Moreover, mission members found that public understanding of the legislative mechanisms available to them was lacking in some areas and that this was having a particularly negative effect on women in rural areas. Further, there continues to be a sense in the region that 'human rights' is a separate animal. The Ministry of Human Rights has no role in training the rest of government in international norms and standards and can do little in the way of monitoring effective implementation. Likewise, the Human Rights Committee does not appear to have this monitoring role in the legislative branch of government. Both are regularly bombarded with single-issue, or worse, single-incident, reports of violations. The situation is much worse for the Women's Ministry and Committee, which often act in complete isolation from the rest of government.

Whilst local NGOs are plentiful, the effectiveness of many of them remains unclear. Because of their ties to political parties, the way international aid has been treated as a mean of income, and the lack of a strong international NGO presence, many NGOs appear to be floundering. Like in much of the world, burn-out levels are high and that opens the way for misuse of funds and resentment. On the other hand, many NGOs continue to strive to build a human rights infrastructure in Kurdistan, Iraq, and are desperate for the technical skills to achieve this.

On a wider regional level, KHRP observed widespread breaches of international law norms and state sovereignty. The authors view the actions taken by Turkey and Iran in Kurdistan, Iraq, as a clear-cut example of the extremely negative impact

that the 'War on Terror' continues to have on the safeguarding of human rights and peace throughout the world. Turkey, in particular, has used the pretext of its own security to justify measures that compromise the rights of the civilian inhabitants of Kurdistan, Iraq. In allowing Turkey to take such measures, the international community has done irreparable damage in legitimising such behaviour, setting a precedent that might be (and in the case of Iran, already has been) used by other states to act in a similar way. Rather than resulting in the long-term and peaceful resolution of the root causes of conflict in the Kurdish regions, military action has only inflamed existing tensions.

In this context, it is essential that all parties in the region, whether at the level of local, regional or federal government, as well as the international community, honour their obligations under international human rights conventions and international law. Moreover, these parties must exert all efforts to develop a coordinated, sustainable and long-term plan for the region's development.

6. RECOMMENDATIONS

This report urges all parties operating in Iraq to:

- Ensure that Common Article 3 of the Geneva Conventions is respected at all times.

This report urges all international governments operating in Iraq to:

- Encourage and support a role for the KRG as a positive facilitator/actor in bringing resolution to the wider Kurdish question.
- Condemn without delay the coordinated tripartite militaristic policy of Iran, Syria and Turkey, and ensure a cessation of incursions into Kurdistan, Iraq, by their respective militaries.
- Insist on respect for the territorial integrity of Iraq, which is not to be violated by neighbouring states.
- Apply an equal amount of pressure on the Government of Iraq and the KRG to invest financial resources in developing a human rights culture by linking investment to human rights standards, by offering long-term technical assistance programmes, and by offering substantial strategic financial support for human rights training programmes for government.
- Support Iraqi lawmakers in the development of an authoritative online resource for law enforcement and legal practitioners.
- Consider supporting the development of working groups comprised of experts in the fields of education and law to identify strategic approaches in legislation and practice in a multi-lingual, multi-cultural state.
- Consider supporting the drawing up of a strategy and action plan that provides for consistent, regular training in human rights

concepts for government ministers, public workers, village leaders and NGOs.

This report urges all international aid agencies and NGOs operating in Iraq to:

- Support a multi-ethnic, multi-lingual, democratic Iraq by reconsidering programmes which are either directed towards or which in practice support only one ethnic or cultural group.
- Dispel the myth that certain human rights violations are cultural, especially regarding the realisation of women's human rights.
- Support efforts to analyse the issues negatively affecting the daily lives of Kurdish women, and particularly their experience of the ongoing conflict, in order to challenge patriarchal tribal traditions, chauvinistic religious interpretation and unreasonable societal expectations of women.
- Take advantage of being an international body by bringing groups from across Iraq to participate in human rights training programmes and professional development programmes.
- Exploit the safety of Kurdistan, Iraq, and the willingness of the KRG to attract international investment by relocating offices and staff for Iraq from satellite locations in Amman and elsewhere to Kurdistan, Iraq, and then insist on multi-lingual and multi-ethnic collaboration.
- Ensure that the KRG has all the relevant knowledge and power required to facilitate implementation of international and domestic legislation in order to promote and protect the human rights of all individuals within society.
- As per the above, insist on having long-term training programmes inside the country.
- Work with local partners to develop an authoritative online resource for law enforcement and legal practitioners.
- Document and highlight the effect of incursions by Turkey, Iran and Syria on the civilian population and the stability of the region.

This report urges Iraq's neighbours to:

- Immediately cease cross-border attacks that violate international humanitarian law.
- Recognise wrongful acts committed by military forces and compensate civilians accordingly.
- Immediately cease activities that undermine the stability of Iraq, particularly those that seek to exploit ethnic and religious tensions in the 'disputed areas'.
- Consider supporting the development of working groups comprised of experts in the fields of education and law to identify strategic approaches in legislation and practice in a multi-lingual, multi-cultural state.
- Consider supporting the drawing up of a strategy and action plan that provides for consistent, regular training in human rights concepts for government ministers, public workers, village leaders and NGOs.

This report urges national and regional NGOs and other civil society leaders to:

- Work with other NGOs wherever common ground can be found, regardless of political, ethnic or religious tensions.
- Resist the temptation to complete ad hoc projects dictated by aid agencies' guidelines, instead focusing on seeking to collaborate with others on strategic development of the local NGO sector.
- Be clear about political affiliations and the mandates of your organisation.
- Seek to develop a partnership with government on rights issues, suggesting concrete proposals for how your organisations can help to implement human rights instruments.
- Engage in efforts to carry out long-term strategic work and eliminate duplication of projects and organisations.

- Demand transparency from government by providing tools to help disseminate information.
- Define your leadership role in society and the importance of respect for human rights by challenging cultural taboos, especially concerning the role of women.
- Undertake efforts to analyse the issues negatively affecting the daily lives of Kurdish women, and particularly their experience of the ongoing conflict, in order to challenge patriarchal tribal traditions, chauvinistic religious interpretation and unreasonable societal expectations of women.
- Lead by example by demonstrating to government that your operations are transparent and rights-based, and that you therefore have the right to expect the same from them.
- Support efforts to engage tribal leaderships in understanding what human rights are and how they apply in day-to-day life.
- With regard to Kurdish NGOs in particular, de-bunk the myth that you are uninterested in working with all political groups by leading multi-party and multi-ethnic seminars, ensuring that proper translation/interpretation is available.

This report urges the Government of Iraq and especially the KRG to:

- Seek technical expertise and financial support for the establishment of a consolidated strategic action plan to instruct law enforcement, village leaders and ordinary citizens about their domestic and international human rights obligations.
- Support programmes of continuing professional development for lawyers, prosecutors and judges, with a particular focus on ensuring conformity of application and implementation of domestic and international legal provisions.
- Provide funding for increased resources for the legal profession, including library facilities and on-line databases.

- Establish clearly-defined mechanisms and avenues of recourse for abuse victims in order to punish and prevent human rights abuses, with special attention paid to women's access.
- Ensure that human rights are at the centre of and integral to all legislation and are not seen as an afterthought in forming policy, especially with regard to women's rights and their inclusion in society.
- Ensure uniform interpretation and effective implementation of provisions of the Iraqi constitution and other legislation which protect human rights, and continue to work towards repealing provisions which are vague or contradictory and which hinder such implementation.
- Ensure effective implementation of international human rights obligations – including CEDAW, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child – including lifting of reservations which undermine the purpose and object of the conventions and engaging with the implementing committees in relation to regular reporting on their implementation.
- Tackle allegations of corruption by ensuring transparency in administrative and political processes and instigate a public awareness campaign to eradicate corrupt practices.
- Institute a zero-tolerance policy on violence against women and secure adequate resources for its enforcement.
- Establish a system for monitoring allegations of corruption or corrupt practices.
- Provide training programmes for law enforcement officials, prison staff, judges and lawyers in order to remove the burden of provision of such training from NGOs and civil society organisations.
- Consider using the Ministry of Civil Society to promote coordination between local NGOs and civil society organisations, particularly in terms of data collection and pooling of information.

- Remove bureaucratic obstacles to civil society development, including the requirement for approval from four ministries in order to establish an NGO.
- Ensure public understanding of the nature and purpose of civil society as an essential link between the individual and government.
- Facilitate analysis of the issues negatively affecting the daily lives of Kurdish women, and particularly their experience of the ongoing conflict, in order to challenge patriarchal tribal traditions, chauvinistic religious interpretation and unreasonable societal expectations of women.
- Review existing and pending legislation and practices which infringe on freedom of expression, and ensure that open and critical debate within the media is welcomed and encouraged.
- Abolish the system of private prisons and implement long-term strategic planning for their management.
- Facilitate coordination between law-enforcement agencies and the judicial service in the detention process and develop alternative methods of punishment, including a system of community service.
- Proactively support peace-building efforts between different ethnic, cultural and religious groups in the 'disputed areas'.
- Adopt a consensual approach in discussions with all groups with vested interests in determining the status of 'disputed areas', especially Kirkuk.
- Promote the learning and use of Iraq's other national languages in Kurdistan, potentially through the introduction of mandatory minimums in primary or secondary education.
- Consider developing working groups comprised of experts in the fields of education and law to identify strategic approaches in legislation and practice in a multi-lingual, multi-cultural state.
- Consider drawing up a strategy and action plan that provides for consistent, regular training in human rights concepts for

government ministers, public workers, village leaders and NGOs, and secure funding and technical expertise from the international community for this.

- Mainstream human rights, including building strong working relationships between the Ministry of Human Rights, the parliamentary Human Rights Committee, the Women's Ministry and Committee, and other branches of government. This should include training programmes (run by these branches of government for officials in other branches of government) and systematic information-sharing.
- Mainstream women's rights and minority rights as an integral part of broader human rights discourses and initiatives.
- Ensure custodial safeguards and respect for procedural rights in cases of detainees currently held without charge or held under security-related charges, with special regard for juveniles.
- End politicised lawsuits and official harassment, detention and prosecution of journalists in relation to their reporting.
- Formally recognise that individual politicians must be willing to accept public criticism, insult and satire as part of a healthy democratic process.

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