

**SUBMISSION BY RESIDENTS OF CAMP ASHRAF AND CAMP LIBERTY
TO THE UNITED NATIONS**

Petition for Relief

Submitted to:

UN Security Council
UN Secretary-General
UN High Commissioner for Human Rights

Submitted By:

Jared Genser¹ and Chris Fletcher



Counsel to Residents of Camp Ashraf and Camp Liberty, Iraq²

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¹ For further information, contact Jared Genser at info@perseus-strategies.com or +1 (202) 466-3069.

² The Residents of Camp Ashraf and Camp Liberty, Iraq, authorized Perseus Strategies to make this submission to the United Nations on their behalf.

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Executive Summary

For over a quarter century, the Iranian pro-democracy organization known as the People's Mojahedin Organization of Iran (PMOI), also known as the Mujahedin-e Khalq (MEK), has legally lived in Iraq in accordance with Iraq's laws at Camp Ashraf. In 2003, as part of Operation Iraqi Freedom, Coalition Forces took control of Camp Ashraf and subsequently designated all the members of the PMOI as protected persons under the Fourth Geneva Convention. On January 1, 2009, control of Camp Ashraf was transferred to the Iraqi Government as part of the U.S.-Iraq Status of Forces Agreement. From this point forward, the Residents at Camp Ashraf began to see a grave deterioration in their safety and well-being.

Once in control of the camp, the Iraqi Government began to restrict the free flow of food, maintenance, and medical supplies, and imposed severe restrictions on the residents in violation of its obligations under international law. In 2009 and 2011, Iraqi security forces carried out two unprovoked attacks on Camp Ashraf, resulting in dozens of deaths and hundreds of injuries among the Camp Residents. The Government of Iraq then declared its intention to close Camp Ashraf by the end of 2011, threatening to *refoul* the Camp Residents to Iran.

Following individual applications submitted by the residents in Ashraf, the UN High Commissioner for Refugees (UNHCR) declared the Camp Residents to be asylum-seekers on September 13, 2011, and it committed to working with the Government of Iraq to extend Iraq's deadline for Camp Ashraf closure. However, in dealing with the Iraqi government, the UN Assistance Mission for Iraq (UNAMI) took the lead. On December 25, 2011, a Memorandum of Understanding signed between the Secretary-General's Special Representative to Iraq Martin Kobler (SRSG) on behalf of the UN and the Iraqi Government (without the knowledge and consent of Camp Ashraf leadership and residents) that provided for the "voluntary" and "safe" transfer of Camp Ashraf Residents to Camp Liberty, at which point their identities would be confirmed, their refugee status would be determined, and then they could voluntarily resettle in third countries. As part of this process, the Memorandum of Understanding states that the Iraqi Government will ensure Camp Liberty meets humanitarian and human rights standards, has proper infrastructure and accommodation facilities, and allows for Camp Residents to work with outside vendors for the provision of life support and utilities. However, despite repeated requests by the Residents to SRSG Kobler, no Residents were allowed to visit the Camp in advance of the relocation.

On February 18, 2012, the first group of Camp Residents was transferred from Camp Ashraf to Camp Liberty. The Residents immediately discovered that the conditions at Camp Liberty fell far short of what they expected and what is required under the Memorandum of Understanding and international law. The Residents lacked prompt access to medical treatment; adequate housing space, water, sanitation, electricity, and cooling mechanisms; proper facilities for the disabled; the opportunity to receive visits from family, friends, and supporters; and the means to communicate regularly and freely with the outside world. In addition, they quickly learned that they would be prohibited from leaving Camp Liberty. These are all in violation of their rights as asylum-seekers. In contrast, while the Residents of Camp Ashraf were also restricted illegally since 2009, they at least lived in a safe environment with proper infrastructure, which they had built in the course of more than a quarter century of living there. In Camp

Liberty, the first group learned to their dismay they had been moved to a small prison under harsh conditions.

Moreover, the Camp Residents found their due process rights being violated because their detention has never been authorized by law; their lawyers are prohibited from entering Camp Liberty and thus are unable to communicate and consult with Camp Residents; there is no grievance mechanism or complaints procedure; and the Residents are unable to challenge their detention in a court of law. UNAMI under SRSG Kobler as the lead UN institution has been silent about these systematic violations.

On May 5, 2012, Tahar Boumedra, former Chief of the Human Rights Office for UNAMI and Adviser to the SRSG resigned in protest over the UN's handling of Camp Ashraf and Liberty. In short, Mr. Boumedra asserted that UNAMI, led SRSG Martin Kobler,³ has undermined the Residents' human rights and facilitated their imprisonment by, *inter alia*, interfering with the official duties of Tahar Boumedra and other UNAMI staff; falsifying UN documents; taking orders from the Iraqi Government; lying to the UN, the Residents, and international community; refusing to urge UNHCR to process the Residents' refugee applications as a group; and refusing to insist that the Iraqi Government abide by UNHCR Guidelines relating to the detention of asylum-seekers. Subsequent to his resignation, Mr. Boumedra immediately warned UNAMI and UNHCR about the potential for attacks against Liberty given its lack of security fortifications. However, his concerns were dismissed and he was told: "not to worry."

On May 4 and August 30, 2012, the UN Working Group on Arbitrary Detention issued two separate opinions regarding Camp Liberty. Due to a lack of due process protections and proper living conditions, the Working Group found the camp conditions at Liberty to be "synonymous with that of a detention center," and thus the Government of Iraq in breach of its international legal obligations.

Despite the Working Group opinions, the behavior of the Iraqi Government and UNAMI did not change. And while UNHCR publicly called for freedom of movement of the Residents, it did not go further to use its leverage in securing the rights of the Residents. The living conditions in Liberty remain intolerable and the camp lacks security protections. As a result, Camp Liberty was attacked by rockets on three occasions this year.

On February 9, at least 38 rockets were fired at the camp resulting in the death of eight individuals and some 100 injured; claiming responsibility for the attack was *Jaish al-Mukhtar*, a

³ Despite the Secretary-General's discomfort with the focus on his Special-Representative, Martin Kobler, this petition is being submitted based on conclusions of fact and law, which should be assessed on their own merits. Like the Secretary-General, we too seek a durable solution for the Residents of Camp Ashraf and Liberty in which their human rights are promoted and protected. See Security Council, *Second report of the Secretary-General pursuant to paragraph 6 of resolution 2061 (2012)*, UN Doc. S/2013/154 (March 12, 2003) ¶ 89, <http://unami.unmissions.org/LinkClick.aspx?fileticket=W28uahSVLLk%3d&tabid=2837&language=en-US> [hereinafter *Second report of the Secretary-General*] (in which the Secretary-General states, "I am deeply concerned about the unwarranted focus on my Special Representative by those who express support for the residents of Camp Hurriya and the remaining residents of Camp New Iraq. I would urge them to cease spreading insults and falsehoods about the Special Representative and instead help to promote a durable solution").

pro-Iraqi government militant wing of Hizbullah in Iraq, whose leader has also publicly declared his allegiance to the Supreme Leader in Iran. On April 29, Liberty again was attacked, this time with at least 20 rockets being fired on the camp. Fortunately, no residents were killed or injured, as the missiles landed just next to the Camp. However, on June 15, Liberty was attacked again with at least 36 missiles resulting in at least 3 deaths and 50 wounded. In the past 6 months, these attacks have left 11 Residents dead and over 150 wounded. The safety of the Residents is more precarious than ever. Yet, all three attacks occurred despite the fact that the UN has known of Liberty's ongoing security vulnerabilities. Despite clear guidance in the UNHCR's *Manual on Security of Persons of Concern* that "attacks on camps and settlements represent a serious crisis" and if such attacks occur UNHCR "consider the merits of relocating the camp or settlement population," there is no indication any such consideration has taken place.

To date, verification of the identities of almost 2,600 residents has been completed while some 2,000 have been interviewed by UNHCR as part of the Refugee Status Determination process. Since their arrival at Camp Liberty on February 18, 2012, only a small handful has left for third countries. Albania has offered to take 210 residents; the Camp leadership has provided 500 names to UNHCR from which to select the 210. As the Residents of both Camps Ashraf and Liberty enter their 54th month of detention, they face a bleak future unless the UN works to alleviate their suffering.

Given the ongoing violations of international human rights law described in this petition, along with the Resident's lack of safety and security, we respectfully request UN take the following measures:

- Operating under its Chapter VII authority as it renews UNAMI's mandate, the Security Council should require the immediate return of Camp Liberty Residents to Camp Ashraf and designate Camp Ashraf as a UN-Flagged Refugee Camp under UNHCR control;
- Secretary-General Ban Ki-moon should initiate a thorough personnel investigation into SRSG Kobler's alleged misconduct;
- Given the emergency situation, UNCHR should grant refugee status to all Residents through a group determination; and in accordance with its mandate take full responsibility for the Residents in Ashraf and Liberty, and provide them international protection;
- The UN High Commissioner for Human Rights should initiate an independent and impartial investigation into the United Nation's handling of the situation of Camp Liberty and Camp Ashraf Residents, ensuring to focus in particular on the Residents' repeated complaints about UNAMI's actions;
- UNAMI and UNHCR should insist that the Government of Iraq abide by the *UN Principles on House and Property Restitution for Refugees and Displaced Persons*, which require that displaced persons be compensated for any housing, land, and/or property that is impossible to restore; and
- Upon completion of relevant investigation(s), the United Nations should provide just compensation to those killed or injured as a result of any misconduct by UN personnel; those individuals found responsible of any misconduct must be held personally accountable.

I. Situation of the Residents of Camp Ashraf and Camp Liberty, Iraq

A. Origins of Mujahedin-e Khalq (PMOI) and its Early Years

The People's Mujahedin Organization of Iran (PMOI/MEK) is an Iranian resistance organization devoted to replacing the current Iranian regime with a secular democratic system of government that respects equally the human rights of all people.⁴ It is part of a larger coalition, the National Council of Resistance of Iran (NCRI), which also works toward this goal. In the last few decades, PMOI members have primarily resided in Ashraf City, Iraq. The city, also known as Camp Ashraf, is situated northeast of the Iraqi town of al-Khlais, approximately 50 miles from Baghdad and 40 miles west of the Iran-Iraq border. The city covers an area of approximately 14 square miles.⁵ Until recently, as will be explained, there were approximately 3,400 Residents in Camp Ashraf, of whom 1,000 were women. Most of the Residents of Camp Ashraf are Iranian citizens. One-third of Camp Ashraf resident were former political prisoners during the reign of Shah and current regime in Iran. There are also a large number of Iranian ex-patriots, educated in universities of the western countries, who joined the resistance movement.

PMOI has suffered sustained persecution since it was formed in 1965. First, PMOI was targeted and brutally suppressed by Mohammad Reza Shah Pahlavi (the Shah) in the 1970s. Then, while attempting to establish democracy in Iran following the 1979 revolution, the organization was again decimated by Ayatollah Ruhollah Khomeini's regime. Despite these attacks, PMOI has since continued in its pursuit of establishing democracy in Iran.

In 1965, PMOI was formed by a group of Iranian college students as a political movement. Grounded in the democratic tradition of Iran's Constitutional Revolution, the ideals of Premier Mohammed Mossadeq, and the pro-democracy protests of the 1960s, the organization held a tolerant and modern interpretation of Islam.⁶ PMOI originally supported the overthrow of the Shah, objecting to his suppression of freedoms and to the persecution faced by many Iranians under his totalitarian rule.⁷ Consequently, the Shah specifically targeted PMOI members.⁸ Over 95 percent of its members, including its founders and its entire leadership tier, were executed, imprisoned, or killed.⁹ As a result of this crushing repression, PMOI virtually ceased to exist as an active organization outside prison. During this period some attempted to take advantage of the PMOI's popularity to pursue their own objective for which they even killed some of the remaining members of the organization.

⁴ See Remarks by Prominent Lawyers, Iran Experts and Dignitaries, Washington Seminar, May 4, 2004 [hereinafter Washington Seminar]. In a speech regarding the status of PMOI, Jean Yves de Cara, director of the Institute for International Law, University of Paris, stated the aim of PMOI "is purely political, they are human rights defenders and they want to see democracy and free elections re-established in Iran."

⁵ After the April 8, 2011 attack, Iraqi forces occupied and separated the northern third of Ashraf.

⁶ See *Islamic Republican Party, Iran: Country Study*, Federal Research Division, Library of Congress, <http://lcweb2.loc.gov/frd/cs/irtoc.html> [hereinafter IRP – Library of Congress].

⁷ See Ervand Abrahamian, Yale University Press, *The Iranian Mojahedin*, 128, 135-136, 1989. The author, Abrahamian, is the CUNY Distinguished Professor of History at Baruch College. Abrahamian received a B.A. and M.A. from Oxford University and his Ph.D. from Columbia University. He has taught at Oxford, NYU, and Princeton. Abrahamian is an independent follower of Iranian history and politics and has no affiliation with PMOI.

⁸ See *id.*

⁹ See *id.*

Upon his release from prison, Massoud Rajavi assumed leadership of the PMOI and reclaimed the name PMOI from those who perused other objectives.¹⁰ This was the beginning of the PMOI as it exists today.¹¹ Following the revolution in 1979 and the removal of the Shah, PMOI vigorously pursued its objective of establishing democracy in Iran.¹²

Although Khomeini and PMOI shared the common goal of removing the Shah, they differed greatly in their notions of Islam and the role it should play in the new Government of Iran.¹³ PMOI's interpretation of Islam was a democratic and tolerant one that greatly conflicted with Khomeini's fundamentalist and repressive interpretation.¹⁴ PMOI was in favor of a democratic state with separation of religion and state.¹⁵ Subsequently, the clerics drafted a new constitution, based on Khomeini's doctrine of the *velayat-e faqih* (absolute supremacy of clerical rule). Rajavi and PMOI rejected the doctrine and boycotted the popular vote on the constitution because its tenets were based on absolute rule of clergy and were contrary to the democratic ideals of the 1979 revolution.¹⁶

When it became clear that Khomeini had no intention of offering a true democracy to the people of Iran, PMOI, like many other opposition groups, began to object publicly.¹⁷ As a result of mounting opposition, the Islamic Republican Party (IRP), a party loyal to Khomeini, began encouraging its members to harass and attack other parties.¹⁸ PMOI was targeted more than any other organization since it was the only other party capable of "seriously challenging the IRP."¹⁹

PMOI's popularity grew and by 1981, Rajavi was able to command increasingly large audiences, despite the dangers to those openly supporting him or PMOI.²⁰ Khomeini soon branded PMOI the regime's biggest opponent and initiated the Reign of Terror.²¹ He then called for a nationwide manhunt to purge Iran of PMOI members, whom he called "American

¹⁰ See *id.* at 146-147, 183. Rajavi remained the secretary general until 1989. The position now is an elected two-year position. Currently, the position is held by Ms. Zohreh Akhyani.

¹¹ See Abrahamian, *supra* note 7, at 184.

¹² *Id.*

¹³ See IRP – Library of Congress, *supra* note 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Abrahamian, *supra* note 7, at 184.

¹⁷ See Mohammed Mehdi Khorrami, *The Islamic Revolution*, PBS, Jun. 2, 2005. Currently, Khorrami is a professor of Persian language and literature at NYU Khorrami.

¹⁸ See IRP – Library of Congress, *supra* note 6.

¹⁹ IRP - Library of Congress, *supra* note 6; see also Patrick Clawson, *The Paradox of Anti-Americanism in Iran*, MIDDLE EAST REVIEW OF INTERNATIONAL AFFAIRS JOURNAL, Vol. 8, No. 1, Mar. 2004. PMOI's newspaper was the most widely read at this time and PMOI rallies regularly attracted tens of thousands of supporters.

²⁰ See Eric Rouleau, *Iranian Left and Right Slugging It Out in Chaotic Fighting*, N.Y. TIMES, Jun. 14, 1981, discussing a demonstration held where Rajavi spoke to a crowd of 150,000 at a stadium in Tehran. In addition, there were "tens of thousands" of other PMOI supporters standing outside who remained completely unfettered by the attacks against them from Khomeini supporters who were throwing bricks and stones at them. Police at the scene did nothing to help the PMOI supporters being attacked but aided Khomeini supporters if a struggle began between sides. The number killed was unknown. See Abrahamian, *supra* note 7, at 218. Less than a week later, demonstrators poured into the streets all over the country demanding democracy. There were over 500,000 people marching in Tehran alone.

²¹ See *The Reign of Terror, Iran: Country Study*, Federal Research Division, Library of Congress, <http://lcweb2.loc.gov/frd/cs/irtoc.html>.

agents.”²² In 1980 and 1981, the assault on PMOI was unprecedented.²³ For example, it was not uncommon to have an average of 50, sometimes 100, people executed on a daily basis.²⁴

As a result of Khomeini’s all-out war on PMOI and its leadership, Rajavi left Iran for Paris in 1981.²⁵ Before leaving Iran, however, he initiated the formation of the National Council of Resistance of Iran (NCRI), which brought together a wide spectrum of Iranian political groups and activists from diverse political orientations. In Paris, Rajavi began a more active engagement and collaboration with other non-PMOI opposition organizations and individuals who had joined NCRI.²⁶ Rajavi, along with many other PMOI members, remained in France until 1986, when the French government forced out many PMOI members in an attempt to improve diplomatic relations with Iran.²⁷ Indeed, the French had reached an agreement with the Iranian regime to get in return the release of their hostages in Lebanon.

In the 1990s and beginning of 2000s, at the behest of the Iranian regime, the PMOI was designated as a terrorist organization first by the US and then followed by UK, EU and Canada. However, following several legal proceedings taken by the PMOI, or in the case of UK by 35 Members of Parliament, this designation has since been lifted, first by the UK on June 24, 2008, the EU on January 26, 2009,²⁸ the US on September 28, 2012,²⁹ and lastly by Canada on December 20, 2012.³⁰

B. *Move to Iraq*

Rajavi and PMOI next settled at Camp Ashraf in Iraq where the organization continued its campaign for freedom and democracy in Iran.³¹ PMOI decided to base itself in Iraq for two reasons: because of the camp’s strategic location and because of a harsh political reality; no other country was willing to accept PMOI for fear of reprisal from Iran.³² As part of its agreement with Saddam Hussein, PMOI led a life along the Iranian border that was independent from Iraqi politics, largely removed from the surrounding environment, and isolated from Hussein’s policies and activities.³³ To this effect, on June 15, 1986, Saddam Hussein stated:

The Iraqi leadership respects the Iranian Resistance and its political and ideological independence and freedom of action of this resistance in its actions and movements to achieve its objectives. . . . The relations between Iraq and the

²² *Iranian Lawmaker Says Alliance of Left and Right Opposes Regime*, BOSTON GLOBE, Jul. 4, 1981.

²³ See *The Reign of Terror*, *supra* note 21.

²⁴ *Id.*

²⁵ See *2 More of Tehran’s Leaders Die as Challenge to Revolution Grows*, NEW YORK TIMES, Sept. 6, 1981.

²⁶ See *Iran Islamic Groups, Iran: Country Study*, Federal Research Division, Library of Congress, <http://lcweb2.loc.gov/frd/cs/irtoc.html>. Rajavi had created the NCRI and invited all democratic organizations and individuals who opposed the newly established theocracy to join the coalition.

²⁷ See *Concept of Neither East Nor West, Iran: Country Study*, Federal Research Division, Library of Congress, <http://lcweb2.loc.gov/frd/cs/irtoc.html>.

²⁸ See Philippa Runner, *EU Ministers Drop Iran Group From Terror List*, EU OBSERVER, Jan. 29, 2009.

²⁹ See Scott Shane, *Iranian Dissidents Convince U.S. to Drop Terror Label*, NEW YORK TIMES, Sep. 21, 2012.

³⁰ See *Canada drops Iranian group MEK from terror list*, CBC News, Dec. 20, 2012.

³¹ See Mohammed Mohaddessin, *Enemies of the Ayatollah*, Zed Books Ltd., 2004.

³² *Id.*

³³ *Id.*

Iranian Resistance are based on peace, mutual respect to national sovereignty and respect for each nation's ideological and political choice.³⁴

On December 9, 2002, Colonel Mohandes Hesam Mohammad Amin, Iraq's then Director of the Office of National Investigation, reaffirmed the Resident's legal status in Iraq. In a letter to the Residents he wrote, "[Ashraf is] given to [PMOI] by the Iraqi Government to be used without any interference of the Government of Iraq."³⁵

Notwithstanding the hardship of living in seclusion, PMOI emerged as a powerful force against the current Iranian regime. Consequently, Iran's Revolutionary Guard is reported to have entered Iraq to launch attacks against PMOI.³⁶ The U.S. Central Intelligence Agency chronicled four large-scale attacks by the Iranian regime against PMOI in Iraq between 1994 and 2001.³⁷ In 2001, PMOI made the unilateral organizational decision to cease all military action.³⁸ Since then, it has not been engaged in any military activity.³⁹ The presence of the PMOI in Iraq was in agreement with the then-lawful government of Iraq who *de facto* recognized them in accordance to the Iraqi law. Several respectable international jurists as well as Iraqi jurists have confirmed the legal status of the PMOI members in Iraq both prior to the 2003 invasion and after.

C. *PMOI's Interaction with Coalition Forces in Iraq Beginning in March 2003*

After Operation Iraqi Freedom began in March 2003, Coalition Forces took control of Camp Ashraf following the Coalition Forces' severe bombing of the camp.⁴⁰ Ashraf residents, following the orders of their leaders,⁴¹ did not fire a single shot at Coalition Forces, nor did they resist in any way.⁴² News reports indicate that Coalition attacks had been planned well in advance as part of a purported agreement whereby Iran agreed to support U.S. efforts as long as

³⁴ BAGHDAD OBSERVER, June 15-16 1986, (Summary of Legal Opinion by Lord Slynn, Status of the People's Mujahedin Organization of Iran as a Resistance Movement).

³⁵ Colonel Mohandes Hesam Mohammad Amin, *Letter # 2823*, Dec. 9, 2002 (on file with authors).

³⁶ *See Iran: Exiled Opposition Group Claim Destroying Security HQ South of Tehran*, BBC, Aug. 17, 2001. The last attack was reportedly in 2001 when Iran launched a missile against a PMOI camp. *See also* Statement by Saffi Yasseri, Writer/Journalist in Baghdad, May 27, 2005, detailing a grisly attack by Iranian forces on PMOI's camp in 1991.

³⁷ *Regime Strategy and WMD Timeline Events: Comprehensive Report*, Special Advisor to the Director of Central Intelligence on Iraq's WMD, Sept. 30, 2004, available at http://www.cia.gov/cia/reports/iraq_wmd_2004/WMD_Timeline_Events.html. Those attacks occurred November 1994, September 1997 (air-strike), June 1999, and April 2001.

³⁸ *See Iran: Exiled Opposition Group Claim Destroying Security HQ South of Tehran*, BBC, *supra* note 36, providing details of the last PMOI attack where a State Security Forces building was attacked. This security headquarters is well known in the area for some of the strongest harassment and suppression of the people. It should also be noted that this attack followed an attack by the Revolutionary Guard against PMOI in Iraq, which resulted in primarily the killing of civilians in nearby villages. *See also MKO Claims Attack by Combined IRGC, Army Force Repulsed*, BBC, Jun. 8, 2001. The last of these attacks was in August 2001.

³⁹ *See MKO Claims Attack by Combined IRGC, Army Force Repulsed*, BBC, *supra* note 38; *see also The Case for Removal of People's Mojahedin of Iran (PMOI) from Terrorism List*, Symposium of Parliamentarians and Jurists, Westminster, Mar. 2005.

⁴⁰ *See* Karl Vick, *In a Delicate Balancing Act, U.S. Woos Iranian Group in Iraq*, WASHINGTON POST, Nov. 9, 2003.

⁴¹ *See Patterns of Global Terrorism 2004*, U.S. Department of State, Apr. 2005 [hereinafter *Patterns – 2004*].

⁴² *See* Vick, *supra* note 40.

the U.S. supported Iran's desire to destroy Camp Ashraf and all PMOI members.⁴³ Notwithstanding any such agreement, Coalition Forces reached a ceasefire with PMOI in April 2003, and then on May 10 an agreement was made for the voluntary hand over of their weaponry to the Americans in return for protection.

Subsequently, seven different U.S. agencies, including the State, Defense, Justice, Treasury and Homeland Security Departments as well as the CIA, the FBI and the DIA, investigated the Camp Ashraf residents. The 16-month investigation included exhaustive interviews with each PMOI member. American investigators concluded there was no evidence that any of the PMOI members had ever committed an act of terrorism.⁴⁴ Based on the results of the investigation, Coalition Forces granted Residents of Camp Ashraf, which includes many women,⁴⁵ protected status as civilians under the Fourth Geneva Convention.⁴⁶ In a letter dated July 21, 2004, by the U.S. Deputy Commander in Iraq to the people of Ashraf, Major General Geoffrey Miller stated that the decision to recognize Camp Ashraf Residents as protected persons "sends a strong signal and is a powerful first step on the road to [their] final individual disposition."⁴⁷

In a letter to Camp Ashraf Residents on October 7, 2005, Major General William Brandenburg, on behalf of Multi-National Force-Iraq (MNF-I), reaffirmed the "protected persons" status of the Residents and reviewed in detail their rights and protections under international law, including that "they have the right to refuse to return to their country of nationality, regardless of their legal status in the country in which they are protected." Major General Brandenburg went on to reaffirm that these rights "cannot be renounced, either by the Residents of Camp Ashraf or by Coalition Forces."⁴⁸ This restatement of their rights was drawn from the Fourth Geneva Convention.

In addition to the views of senior Coalition commanders, the international human rights community actively asserted that Ashraf Residents are protected by international law. In 2006, the then UN Special Rapporteur on the Right to Food, Jean Ziegler, reported that, although under the protection of Coalition Forces, the Residents of Camp Ashraf were being subjected to discrimination by the Government of Iraq. Relevant portions of his report state:

⁴³ *Id.* (noting "Iran agreed to passively support the U.S. campaign against Hussein – a sworn enemy of Iran – but asked that the Mujahedin [PMOI] be disposed of").

⁴⁴ See Douglas Jehl, *People's Mujahedin: U.S. Sees No Basis to Prosecute Iranian Opposition "Terror" Group Being Held in Iraq*, N.Y. TIMES, Jul. 27, 2004.

⁴⁵ See *Camp Ashraf, Iraq*, L.A. TIMES, Mar. 19, 2005.

⁴⁶ See *Proclamation by the Commander, Multi-National Forces – Iraq, on the Signing of the "Agreement for the Individuals of the People's Mujahedin Organization of Iran (PMOI)" at Ashraf, Iraq*, (Jul. 2, 2004) (copy on file with the authors) [hereinafter Proclamation]; Letter from Geoffrey D. Miller, Major General, U.S. Army, to People of Ashraf, Jul. 21, 2004 [hereinafter Miller Letter]. Note, however, that while all Residents of Camp Ashraf were cleared for security purposes, individuals holding nationalities of countries other than Iran may not technically be considered "protected persons" because they have the ability to return to their own countries, rather than be deported to Iran.

⁴⁷ *Id.*

⁴⁸ Ted Loud, *DLA White Paper: Obligations of the U.S. Government and the Government of Iraq to the Residents of Ashraf City, Iraq, Under International Law*, Apr. 28, 2009, at ¶ 7 (citing to General Brandenburg's letter).

On 17 October 2006, the Special Rapporteur wrote to the Government [of Iraq] about allegations that access to subsidized food is no longer available . . . more than a year ago the relevant authorities introduced the practice of denying on a discriminatory basis to current and former family members and associates of the [PMOI] Residents at Camp Ashraf food allocations at a level and price commensurate with what is supplied to other citizens living in Diyala Province, to which they were formerly entitled . . . On 17 July 2006 the water pipeline that stretches 26 km from the pumping station near the Tigris River to Camp Ashraf was damaged by a series of explosions . . . affect[ing] access of Residents . . . to water for drinking, cooking, and hygiene purposes for around two weeks . . . On 22 July 2006 the relevant authorities decided to suspend all fuel and oil supplies to Camp Ashraf, including hospitals, which could potentially affect the diet of its Residents due to limited fuel for cooking and access to water.⁴⁹

On March 6, 2007, UNHCR acknowledged, “there will be bodies of international law, other than refugee law, particularly international humanitarian and human rights law, that will have a positive relevance to the Ashraf situation.” It emphasized that it had “repeatedly appealed to the competent Iraqi authorities and to MNF-I to refrain from any action that could endanger the life or security of these individuals, such as their forcible deportation from Iraq or their forced displacement inside Iraq.”⁵⁰

On a number of occasions the International Committee of the Red Cross emphasized that the principle of *non-refoulement*⁵¹ must be applied to PMOI members in Ashraf City: “The ICRC has made clear that the Residents of Camp Ashraf must not be deported, expelled, or repatriated in violation of the above-mentioned principle or displaced inside Iraq in violation of the relevant provisions of International Humanitarian Law (IHL).”⁵² On March 20, 2007, the ICRC stated it had been in communication with relevant Iraqi authorities and “repeatedly” reminded them of these international law obligations.

The UN Assistance Mission for Iraq (UNAMI) visited Camp Ashraf in June 2007 and stated unequivocally, that it “takes the view that the Residents must . . . not be deported, expelled or repatriated in violation of the principle of non-refoulement or displaced inside Iraq in violation of the relevant provisions of international humanitarian law.”⁵³ It reaffirmed this view in its report issued for the January-June 2008 timeframe.⁵⁴

On July 12, 2007, the European Parliament adopted a resolution emphasizing the refugee rights of the Camp Ashraf Residents and called “on the Iraqi Government, as well as local regional and religious authorities and the Multi-National Coalition Forces in Iraq to take

⁴⁹ Jean Ziegler, *Report of the Special Rapporteur on the Right to Food*, Implementation of General Assembly Resolution 60/251/ of March 2006 Entitled “Human Rights Council,” Addendum, A/HRC/4/30/Add.1, May 18, 2007, at ¶ 36.

⁵⁰ Ted Loud, *DLA White Paper*, *supra* note 48, at ¶ 10 (emphasis added) (citing to UNHCR’s letter).

⁵¹ Non-refoulement is a principle in international law, specifically refugee law, which concerns the protection of refugees from being returned to places where their lives or freedoms could be threatened.

⁵² Ted Loud, *DLA White Paper*, *supra* note 48, at ¶ 11 (emphasis added) (citing to ICRC’s letter).

⁵³ *Human Rights Report, UN Assistance Mission for Iraq, April 1 – June 30, 2007*, at ¶ 45 (emphasis added).

⁵⁴ *Human Rights Report, UN Assistance Mission for Iraq, January 1 – June 30, 2008*, at ¶ 78.

immediate steps to improve security for all the refugees and Internally Displaced Persons (IDPs) in Iraq and end discriminatory practices.”⁵⁵ On April 24, 2009, the European Parliament adopted a resolution stating that the Residents of Camp Ashraf must be treated in accordance with the Geneva Conventions and not forced to go back to Iran, where they would run the risk of ill-treatment.⁵⁶

On August 28, 2008, Amnesty International sent letters to the governments of the United States and Iraq expressing deep concern over the situation of the Camp Ashraf Residents and reminding both governments of their obligations under international humanitarian law. The organization issued a public statement concerning the situation: “Amnesty International considers that those living in Camp Ashraf would be at great risk of torture or other serious human rights violations if they were to be returned involuntarily to Iran.”⁵⁷ These concerns were echoed by Souhayr Belhassen, President of the French International Human Rights League (FIDH): “In case of expulsion to the Islamic Republic of Iran, those persons would evidently face the risk of being tortured, condemned to death and even executed. A long term solution must be found to ensure their protection.”⁵⁸ On April 20, 2009, Amnesty International announced that it had sent a letter to the Iraqi Prime Minister and issued a public statement reaffirming the organization’s position that the Ashraf Residents must not be forcibly returned to Iran in view of fears that they would be at risk of torture or other serious human rights violations there.⁵⁹

The above parties made these statements because the Government of Iran had actively pressured the Government of Iraq to take over Ashraf from Coalition Forces, as a prelude to deporting its Residents to Iran. Statements from the Iranian regime include:

- Iranian Ambassador to Iraq Hassan Kazemi Qomi said, “[w]e had asked the Iraqi Governing Council in 2003 to expel the terrorist Mojehadin from that country. We are insisting on that demand.” He later added, “an Iraqi committee has been formed to expel the . . . [PMOI] from the country.”⁶⁰
- A top Majlis deputy, Moussa Ghorbani, told Fars news agency, “[i]n light of the groundwork that has been laid, the least the Iraqi Government must do is turn over the Monafequin (PMOI) leaders to the Islamic Republic.”⁶¹
- Parviz Sarvari, a member of Iran’s National Security Commission, emphasized that Tehran must make every effort “for the extradition of these leaders,” adding, “[w]e must

⁵⁵ European Parliament, *Resolution of 12 July 2007 on the Humanitarian Situation of Iraqi Refugees*, at 6.

⁵⁶ European Parliament, *Resolution of 24 April 2009 on the Humanitarian Situation of Camp Ashraf Residents* [hereinafter European Parliament Resolution of 24 April 2009].

⁵⁷ *Iraq: No Iranians in Need of Protection Should be Sent to Iran Against Their Will*, Amnesty International, AI Index MDE 14/023/2008, Aug. 28, 2008.

⁵⁸ Call on Iraqi Authorities and USA, French International Human Rights League, Sept. 12, 2008.

⁵⁹ Ted Loud, *DLA White Paper*, *supra* note 48, at ¶ 14.

⁶⁰ These comments were reported on Jul. 10, 2008, on Press TV, an English-language news agency of the Iranian regime.

⁶¹ *Islamic Republic Sharpens Its Fangs for Slaughter and Torture of Members of Ashraf Base*, ROSHANGARI, Sept. 5, 2008.

insist from the Government of Iraq that this action be taken [and] they be turned over to Iran for prosecution.”⁶²

- Nabi Rudaki, another Majlis deputy, called on the Iraqi Government to “reduce the six-month time period [in which they may leave] and order the Iraqi judicial system to clarify the situation of those remaining, so that the people of Iraq might once again see calm and such groups be wiped off the face of the earth.”⁶³
- Javad Karimi, a Majlis representative who serves on the National Security and Foreign Policy Committee, said that Iran and Iraq have agreed on the expulsion of the PMOI from Iraq; “The Iraqi president, prime minister, and parliament have repeatedly insisted on this point.”⁶⁴

Such pressure from Iran to the Iraqi Government was affirmed by the U.S. Department of Defense in its quarterly report to the U.S. Congress: “There are reports of Tehran pressuring [Iraqi] government officials privately to adopt pro-Iranian positions on such matters as . . . the disposition of the Mujahedin-e Khalq.”⁶⁵

Similarly, Iraqi Government officials have publicly and repeatedly indicated their desire and intent to expel the Residents of Camp Ashraf from Iraq. For example, in a press conference on January 23, 2009, with the Secretary of Iran’s Supreme National Security Council Saeed Jalili in Tehran, the Iraqi National Security Advisor announced Camp Ashraf will be “closed forever” in two months, that the decision of the Iraqi Government is “irreversible” and Residents must return to Iran or go to other countries.⁶⁶ On March 27, 2009, the Iraqi National Security Advisor stated that the Government of Iraq planned to move the Residents of Camp Ashraf to remote areas in the country and added, “The Residents should understand . . . that their days in Iraq are numbered and we are literally counting down.”⁶⁷

The U.S.-Iraq Status of Forces Agreement (SOFA) went into effect on January 1, 2009. Under SOFA, security control over all detainees in Iraq was turned over to the Government of Iraq. The U.S. Government repeatedly said it has received “full assurances” that the people of Camp Ashraf will continue to be protected and will not be deported. In response to a question at the March 30, 2009, news conference, State Department Deputy Spokesman Gordon Duguid stated “the disposition of Camp Ashraf was given a full transfer to the responsibility of the Iraqis on February the 20th. We continue to monitor the situation to ensure that the Residents of Camp Ashraf are treated in accordance with Iraq’s constitution and international obligations.”⁶⁸

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Iran and Iraq Have Diplomatically Agreed on MKO Expulsion: MP*, TEHRAN TIMES, Sep. 9, 2008.

⁶⁵ *Measuring Security and Stability in Iraq*, December 2008, Report to U.S. Congress by U.S. Department of Defense, Jan. 9, 2009, at 5.

⁶⁶ *Iraq Repeats Pledge to Close Iran Opposition Camp*, ASSOCIATED PRESS, Jan. 23, 2009.

⁶⁷ *Iraq to Move Iranian Opposition Group: Official*, ASSOCIATED PRESS, Mar. 27, 2009.

⁶⁸ U.S. Department of Daily Press Briefing, Mar. 30, 2009.

D. Conditions Inside Camp Ashraf from 2009 Onward

Despite the above pronouncement of ensuring proper treatment for Ashraf residents, the Iraqi Government has restricted the free flow of food, maintenance and medical supplies, denied Camp Residents the ability to move without restriction in and out of the camp, and twice carried out attacks on Ashraf.

Beginning with the oversight transfer of Ashraf from the Americans to the Iraqis, the Iraqi Government has intermittently blocked supplies from reaching Ashraf. This blockading of the camp has included actions such as preventing supplies and necessities like food,⁶⁹ drinking water,⁷⁰ fuel, and construction materials⁷¹ from entering Ashraf.

Ashraf Residents have also been denied the ability to seek medical treatment. On April 3, 2009, for example, Iraqi forces prevented Iraqi doctors from entering Ashraf.⁷² The medical personnel had previously secured permission from the government to enter and sought to treat ailing patients, one of whom was suffering from cancer. However, the doctors were denied entry for a full week and allowed in only after many protests from Parliamentarians and NGOs.⁷³ In other instances, due to a heavy Iraqi military presence, Camp Residents have been unable to leave the camp to travel to Baghdad to obtain treatment.⁷⁴ In addition, for nearly two years, the Iraqi forces used powerful loudspeakers to broadcast profanity and threatening messages around the clock into Camp Ashraf, as a way of psychologically torturing them. This inhuman practice continued well into December 2011.

Most concerning, however, were the unprovoked Iraqi army attacks on Ashraf in July 2009 and April 2011, which resulted in numerous deaths and scores of injured Camp Residents. On July 28, 2009, Iraqi security personnel forcibly entered the camp using tear gas, water cannons, batons, guns, and military vehicles.⁷⁵ According to Amnesty International, video of the attack appeared to show Iraqi troops “deliberately driving military vehicles into crowds or protesting Camp Residents.”⁷⁶ The attack resulted in 11 deaths⁷⁷ and the detention of 36 individuals.⁷⁸

⁶⁹ Henrik Hermansson, *Iraq Abuses UN Refugee Process to Imprison Iran Dissidents*, SCOOP INDEPENDENT NEWS NEW ZEALAND, Jan. 25, 2012.

⁷⁰ *With Local Control, New Troubles in Iraq*, N.Y. TIMES, Mar. 15, 2009.

⁷¹ European Parliament Resolution of 24 April 2009, *supra* note 56.

⁷² *Id.* at 5.

⁷³ *Id.*

⁷⁴ Kate Allen, *Camp Ashraf is a Barometer of Iraq's Human Rights*, THE GUARDIAN, Apr. 14, 2011 (noting “A constant military presence has made it difficult for inhabitants to access medical treatment inside and outside the camp. An Iraqi security committee controls what medical supplies go in as well as who can travel outside the camp for specialist treatment”).

⁷⁵ *Iraq Authorities Must Investigate Excessive Use of Force in Camp Ashraf*, Amnesty International, Aug. 13, 2009. See also *Iran exiles 'killed in Iraq raid'*, BBC NEWS, Jul. 20, 2009 (displaying video of the attack).

⁷⁶ *Id.*

⁷⁷ *On the Anniversary of April 8 Camp Ashraf Massacre, ISDCI Calls on the International Community to Protect Members of Iranian Opposition (PMOI) Living in Iraq*, MARKET WATCH – WALL STREET JOURNAL, Apr. 6, 2012. See also *Spain to Investigate Deaths of Iranian Exiles in Iraq*, BBC NEWS, Jan. 4, 2011.

⁷⁸ *Iraq Authorities Must Investigate Excessive Use of Force in Camp Ashraf*, *supra* note 75.

On April 8, 2011, Iraqi security forces again forced their way into Ashraf and attacked Camp Residents,⁷⁹ using armored personnel carriers and Humvees to do so. As with the July 2009 attack, Amnesty International reported seeing video that appeared to “show Iraqi soldiers firing indiscriminately into the crowds and using vehicles to try and run others down.”⁸⁰ This attack left 36 Camp Residents dead, including eight women, one of whom was as young as 19 years old.⁸¹ Over 300 Camp Residents were also injured.⁸²

E. *Forced Transfer of Residents from Camp Ashraf to Camp Liberty (Hurriya)*

Following these deadly attacks, the Iraqi Government stated its intention to close Camp Ashraf by the end of 2011.⁸³ The massacre of innocent people, threats of more violence by the Iraqi government, and concern about the safety of the Residents resulted in more international attention being paid to the Residents’ situation. As such, UNAMI and UNHCR said they would work toward addressing the needs of the Residents.

These closure efforts were nevertheless initiated despite the unwillingness of the Iraqi Government to provide any explanation as to why the Residents had to move from Camp Ashraf to Camp Liberty as a prerequisite for beginning the processing of their refugee applications. Claims by the Iraqis and supported by UNAMI that such a move was needed for the Camp Residents’ safety ignored the fact that a portion of Camp Ashraf was under the exclusive control of the Iraqis from which a neutral, safe space for UN interviews could have been designated. The decision to move the Residents from Ashraf, on its face, appeared to be driven not by logistical or humanitarian concerns but rather by pressure from the Government of Iran to force the Residents to abandon the comfortable environment at Camp Ashraf they had built over the last quarter century. Nevertheless, there was absolutely no justification for the relocation. The Residents informed the UN and US that relocation would further endanger their lives and thus the Residents insisted that they were opposed to any relocation. International jurists and experts issued legal opinions concluding that, absent any justification or consent by the Residents, their relocation would constitute a forced eviction and would be in violation of international law. The SRSG was specifically warned on numerous occasions that the Residents would be more insecure if they were relocated from Ashraf, but he chose to ignore these warnings and insist that the new camp would be safe and secure.

On September 13, 2011, after receiving applications from all Ashraf Residents for asylum, UNHCR declared the Residents to be “asylum seekers under international law”⁸⁴ which entitled them “to benefit from basic protection of their security and well-being.”⁸⁵ Furthermore, UNHCR stated, “[it] . . . would work together with the Government of Iraq and the United

⁷⁹ *Iraq: Investigate Deadly Violence at Camp Ashraf*, Amnesty International, Apr. 8, 2011.

⁸⁰ *Id.*

⁸¹ *On the Anniversary of April 8 Camp Ashraf Massacre, ISDCI Calls on the International Community to Protect Members of Iranian Opposition (PMOI) Living in Iraq*, *supra* note 77.

⁸² Kate Allen, *supra* note 74.

⁸³ *Iraq Wants to Shut Down Camp Ashraf*, CNN, Apr. 12, 2011.

⁸⁴ UN High Commissioner for Refugees, *Camp New Iraq (formerly Camp Ashraf) Residents and the Determination of Their Refugee Status Claims*, Sept. 13, 2011, available at <http://www.unhcr.org/refworld/docid/4e857b3b2.html> [hereinafter *UNHCR Refugee Status Claims*].

⁸⁵ *Id.*

Nations Assistance Mission in Iraq (UNAMI) and other concerned actors to identify a location [for asylum processing] that ensures the safety and respects the rights of all individual applicants.”⁸⁶ As part of this, UNHCR also committed to “putting in place a process to consider these requests on an individual basis in a fair and efficient procedure.”⁸⁷

As part of this process the UN and Iraq had to find a new location to which the Residents could be temporarily moved, and they had to formalize an agreement for the transfer of the Residents and management of their new area. Mr. Boumedra indicates that the area chosen, Camp Liberty, was not adequate to hold 3,200 individuals, both because it lacked security protection and adequate living facilities (they were too small and in disrepair).⁸⁸ Mr. Boumedra told SRSG Kobler this and it was even confirmed in an independent assessment carried out by an expert.⁸⁹ Nevertheless, SRSG Kobler decided Liberty met international humanitarian standards and so he had to convince the Residents and the international community that the camp was suitable. Mr. Boumedra states that SRSG Kobler accomplished this by putting forth false reports, selectively chosen photographs, and misinformation to the Residents and international community.⁹⁰

On December 21, 2011, Iraq agreed to extend its deadline for Ashraf closure to April 2012.⁹¹ On December 25, 2011, the Government of Iraq and SRSG Kobler, on behalf of the UN, signed a Memorandum of Understanding (MOU) aimed at securing a humanitarian and peaceful resolution for the Residents of Camp Ashraf.⁹² The Residents of Camp Ashraf were not consulted as part of this process and ultimately were not a party to any agreement.⁹³ SRSG Kobler had promised the residents that he would not sign the MOU without their consent.⁹⁴ Therefore, the Residents and their representatives were shocked when they learned SRSG Kobler had signed the MOU.

In short, the MOU allows for the safe transfer of Ashraf Residents Camp Liberty, at which point their refugee status will be determined before they voluntarily resettle in either Iran or other third countries. The MOU falls far short of the necessary requirements to ensure the rights of the Residents. According to Tahar Boumedra, the original draft of the MOU was changed by SRSG Kobler at the last minute to meet the demands of the Iraqi government to the

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Affidavit of Mr. Tahar Boumedra (attached) at ¶13.

⁸⁹ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶¶ 13,18.

⁹⁰ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶¶ 4,15,18,20,34.

⁹¹ *Monitoring Human Rights: From Ashraf to Hurriya*, United Nations Assistance Mission for Iraq, <http://unami.unmissions.org/Default.aspx?tabid=4297&language=en-US>.

⁹² *Id.*

⁹³ *400 Camp Ashraf Residents Declare Their Readiness to Move to Camp Liberty With Their Vehicles and Moveable Belongings on December 30*, SECRETARIAT OF THE NATIONAL COUNCIL OF RESISTANCE OF IRAN, Dec. 29, 2011, <http://www.ncr-iran.org/en/ncr-statements/ashraf/11580-400-camp-ashraf-residents-declare-their-readiness-to-move-to-camp-liberty-with-their-vehicles-and-moveable-belongings-on-december-30> (noting that “...regrettably, the Government of Iraq (GOI) did not agree with...[the]...participation [of Camp Ashraf leadership] or the residents’ representatives and not even their lawyers in the negotiations between the GOI and the UN”).

⁹⁴ Tahar Boumedra, *The United Nations and Human Rights in Iraq: The Untold Story of Camp Ashraf* (2013) at 215 [hereinafter *The Untold Story of Camp Ashraf*].

detriment of the Residents.⁹⁵ As will be discussed below, however, the Government of Iraq failed to meet its obligation in accordance to the MOU. In pertinent part the MOU states:

The Government of the Republic of Iraq shall undertake the management of the temporary transit locations, and shall ensure the following:

1. The transit locations meet humanitarian and human rights standards.

[...]

3. Accommodation infrastructure, hygiene facilities, medical care and facilities for religious observance while taking into consideration the ‘separation between the sexes’ in Camp Liberty. The Government shall allow internal and external communication in accordance with the Iraqi laws.

4. The Government shall facilitate and allow the residents, at their own expense, to enter into bilateral contact with contractors for the provision of life support and utilities such as water, food, communications, sanitation, and maintenance and rehabilitation equipment. The Government shall allow Residents to move their individual moveable assets from Camp New Iraq into Camp Liberty. The Government of the Republic of Iraq shall allow the entry of an adequate number of vehicles for transportation within the camp.⁹⁶

In a letter to the Residents sent on December 28, 2011, SRSG Kobler explained that he had signed the MOU with the Residents’ “security and safety uppermost in mind.”⁹⁷ SRSG Kobler also tried to clarify the content of the MOU and affirmed the UN’s commitment to helping the Residents and respecting their needs. The letter was also a *de facto* acknowledgment that the Residents were not fully informed or consulted about the MOU. This letter was indeed intended to overcome the Residents’ opposition. In pertinent part he wrote:

Given the short time available, it was not possible to address all your requests.⁹⁸

[...]

The UN will conduct 24/7 monitoring at the Camp until the last of the residents leaves Iraq.⁹⁹

[...]

⁹⁵ *The Untold Story of Camp Ashraf*, *supra* note 94.

⁹⁶ *Memorandum of Understanding between the Government of the Republic of Iraq and the United Nations*, Dec. 25, 2011 (emphasis added) (on file with authors).

⁹⁷ Letter from SRSG Kobler to Residents, Dec. 28, 2011 (on file with authors) [hereinafter *Kobler December 28 Letter*].

⁹⁸ *Kobler December 28 Letter*, *supra* note 93.

⁹⁹ *Kobler December 28 Letter*, *supra* note 93 at ¶ 4.

I am aware of your request for respect for your privacy, in particular regarding women. I will continue my efforts with the Government of the Republic of Iraq in this regard to establish the appropriate arrangements.¹⁰⁰

With regard to other issues, such as assets and properties, we will continue the discussions towards reaching a solution that respects the property rights of the Residents in an organized way under Iraqi law.¹⁰¹

The transfer of the Residents began in February 2012. However, given that the Residents never agreed to move, along with the fact that MOU lacked their consultation and consent, the Residents and Mr. Boumedra maintain that the relocation was not voluntary. To the contrary, they were forcibly evicted.¹⁰²

Furthermore, in the course of the relocation Residents were harassed and mistreated by the Iraqi security forces. There were several cases where Iraqi forces imposed their own arbitrary rules; for example, if a shirt or an item contained the emblem of Ashraf, it would be taken away. Personal photographs were also taken from people, and the Iraqis would insult and provoke the Residents. On one occasion the Iraqi security forces started beating people. All of these incidents were reported to UNAMI which did nothing to prevent the harassment.

F. *Conditions Inside Camp Liberty (Hurriya)*¹⁰³

At present 3,100 Residents have been transferred from Camp Ashraf to Camp Liberty, which includes several women and minors under age 18. However, the conditions in the Camp have not met relevant provisions of international law or the requirements set out in the MOU, let alone the expectation of the Residents.

Camp Liberty is 658,000 square meters [or .254 square miles/7,082,653 square feet in size], which is significantly smaller than Camp Ashraf.¹⁰⁴ Residents are living in containers and the Camp lacks any recreational or sport facilities. The residents are thus forced to remain in these containers, which amount to a systematic psychological torture.

Prior to moving between the Camps, Ashraf Residents demanded a commitment that no Iraqi police would remain inside Camp Liberty, given the prior attacks on Camp Ashraf by Iraqi security forces.¹⁰⁵ The Residents report, however, that there exist several police posts inside the camp, with a 24-hour presence of 150 police guards armed with heavy machine guns.¹⁰⁶ The

¹⁰⁰ *Kobler December 28 Letter*, *supra* note 93 at ¶ 8.

¹⁰¹ *Kobler December 28 Letter*, *supra* note 93 at ¶ 9.

¹⁰² Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 4.

¹⁰³ Where not supplied from independent sources, the information on camp conditions has been given by Camp Residents.

¹⁰⁴ See Camp Comparison Chart in Appendix.

¹⁰⁵ *First Exiles to Leave Iraq's Camp Ashraf Slam New Site*, CNN, Feb. 18, 2012.

¹⁰⁶ *On the Anniversary of April 8 Camp Ashraf Massacre, ISDCI Calls on the International Community to Protect Members of Iranian Opposition (PMOI) Living in Iraq*, *supra* note 77.

Residents also report that Camp Liberty is significantly smaller than they were told it would be.¹⁰⁷

Moreover, due to obstructions in place by the Iraqi Government, the Residents of Liberty have been unable to transfer their lift trucks and mechanical material needed to carry out repairs and unload supplies of daily living. This has forced the Residents to do things manually. The physical nature of this work, the dusty environment, and the extreme heat—which often reaches 50 degrees Celsius/122 degrees Fahrenheit—necessitates regular showers, many times twice a day.

Further, dilapidated bathroom facilities and a broken sewage system¹⁰⁸ require daily maintenance work by the Camp Residents, leaving only about half of the facilities working at any given time. The camp's sewage system is of particular concern. Given its age there are continuous leaks, sewage surges, and the occasional tank eruption. During the past year alone, more than 1 million liters of waste has been scattered inside the residential areas raising concern about the potential for infectious disease to develop and spread. Moreover, torn and decayed shower and bathroom floors have created unsanitary conditions and there is difficulty in draining contaminated water.

This problem is made worse by the perimeter T-walls that line the camp. These cause difficulty when attempting to drain water during the wet season because they afford no ability to discharge water, and as a result, caused two water surges inside the camp during the wet season. This flooding of the residential areas mixed with wastewater and scattered pollution to all areas of the camp. With the limited resources available to them, the Residents pumped out more than 20 million liters of polluted waste from the first flooding and more than 30 million liters after the second.

Drinking water is also in very short supply; due to the high cost of bottled water, Residents are instead forced to boil water to make it potable. There are also problems with food. The Residents must purchase their food from outside contractors who face challenges getting the food inside Camp Liberty. In some cases the Iraqis restrict the food from being delivered, in other cases the Iraqi police threaten the drivers of the contractors, and in other instances the food is held outside for days, causing it to rot.

Reliable and accessible electricity is also in short supply. Generators deliver all the power, as Camp Liberty is not connected to the Baghdad's power grid. Because the water and sewage pumping systems require electricity, Residents are forced to run generators 24 hours a day in spite of the fact that they have no additional generators in the instance that one mechanically fails. Lack of proper maintenance, parts, and looting have created a situation in

¹⁰⁷ *First Exiles to Leave Iraq's Camp Ashraf Slam New Site*, supra note 105.

¹⁰⁸ UN Human Rights Council, *Joint Written Statement Submitted by France Libertés - Fondation Danielle Mitterrand, the Women's Human Rights International Association, the Women's International League for Peace and Freedom, Non-Governmental Organizations in Special Consultative Status, International Educational Development, Inc., Mouvement Contre le Racisme et Pour L'amitié Entre les Peuples, Non-Governmental Organizations on the Roster*, UN Doc. A/HRC/20/NGO/23 (June 3, 2012) at 3 (noting "the septic tanks are old and corroded. Furthermore, the asylum-seekers have to face the inconvenience related to corroded pipes and breakages in water and septic pipes.") [hereinafter *Joint Written Statement*].

which there are a limited number of working generators. Presently five power generators in different areas of the Camp are out of order or have low output because they are overused; two other generators have an output of less than 50% and do not have the capacity to function in hot weather.¹⁰⁹

Moreover, the Cummins Company has inspected all the generators and reported that the functioning ones have a remaining work life of 40% of their original capacity; the Company therefore doubts that the generators will be able to provide the electricity needed for Camp for the duration of the Residents' stay and they could stop working at any moment. Given this estimate, Cummins said the Camp is in need of a power station that would be backed up by generators, which it had prior to the Residents' relocation. With this in mind, the Residents planned to transfer six 1.5 mega power generators from Camp Ashraf to use as a base for Camp Liberty's power grid and to cut back on fuel costs. However, as discussed further below, the Iraqi Government has barred the transfer of property from Ashraf.

This supply problem is exacerbated by high fuel needs and costs. The amount of fuel used on a daily basis is approximately 15,000 liters or 3,960 gallons per day. Because the Iraqi Government prohibits Camp Residents from purchasing fuel inside Iraq,¹¹⁰ the Residents are forced to purchase from outside the country at a cost of \$1 U.S. dollar per liter. In the first 9 months of their stay, the Residents paid \$3.5 million U.S. dollars for fuel; at this rate, this will bring the cost per year to the prohibitive amount of roughly \$5.475 million U.S. dollars. The total cost of oil, fuel, and storage is approximately \$5.6 million U.S. Dollars.

Making matters worse is the lack of adequate cooling systems in the camp.¹¹¹ Camp Residents were originally prohibited from transferring their 300 air conditioner units from Ashraf to Liberty¹¹² and thus had to rely on the broken or inadequate units at Liberty. There are a total of 220 non-working air conditioning units. The fans and air conditioning units in the dining hall are limited in number or not working at all. Due to the extreme heat, the functioning air conditioning units are running nonstop and over capacity, causing them to break down frequently. Maintenance and repairs have been rendered impossible due to the lack of parts and tools. Residents have also been prohibited from building awnings for their residential units, which results in a complete lack of shade at Liberty. The Residents also report problems with infestation of bugs, snakes, and scorpions inside housing units and the Iraqi authorities will not allow Camp Residents to hire outside exterminators to address the problem.¹¹³

Of extreme distress to the Camp Liberty Residents is the plight of the handicapped and disabled. The terrain at Camp Liberty is very rocky, making it extremely difficult for those who

¹⁰⁹ *Id.* at 3.

¹¹⁰ See Remarks by Hon. Ed Rendell, *Camp Ashraf/Camp Liberty Nuclear Talks, What Next? Thwarting Iran's Threats*, Washington, D.C., May 30, 2012, available at <http://www.ncr-iran.org/en/news/ashraf/11981-speech-of-honorable-ed-rendell-45th-governor-of-pennsylvania-and-chairman-to-the-democratic-national-party-during-the-2000-presidential-election> [hereinafter Rendell Speech].

¹¹¹ *Current and Former Officials and Lawmakers Demand Improvements at Camp Liberty in Iraq, Before Any More Iranian Dissidents are Relocated There*, PR NEWSWIRE, Jun. 1, 2012 (reporting there is a lack of running water and electricity in the camp).

¹¹² Rendell Speech, *supra* note 110.

¹¹³ *Id.*

are handicapped, amputees, or have bone conditions like arthritis to move around. The Iraqi Government has not allowed the disabled to transfer from Ashraf to Liberty the special equipment needed by these individuals. In Camp Ashraf the disabled had special motorized vehicles and wheelchairs as well as special housing units with bathroom facilities and ramps specifically designed for their use.¹¹⁴ In Camp Liberty, the disabled are essentially imprisoned in their sleeping quarters because there are no sidewalks or paved areas for them to use outside; and the Iraqi Government will not allow the Residents to build areas and facilities that would accommodate the movement of the disabled.¹¹⁵

Camp Residents report additional difficulties. Access to medical care, while sometimes available, is not prompt. There is a medical center in Camp Liberty but it lacks basic medical care equipment; thus, those with serious medical problems must be taken to an outside hospital. However, there are delays of hours, and in some cases days, to transfer the seriously ill to a hospital. Consequently, the lack of equipment in the clinic resulted in one Resident's death, and the delay in transfer resulted in the death of another Resident. There are also problems of interference with religious practice. The Camp is in need of sound equipment for religious ceremonies at the mosque; however, the Iraqi Government has banned this equipment. Residents also have limited ability to communicate with the outside world. The Iraqi Government has prevented the transfer of communications equipment from Ashraf to Liberty. Currently Residents at Liberty are limited to irregular access to a few mobile phones and the Internet from a few computers that must be shared by thousands of Residents. Additionally, Residents are prevented from sending/receiving normal post mail (including material assistance from family) and are denied the ability to see any outside visitors, including family members. Moreover, they are prohibited from leaving the Camp, thus denying them freedom of movement.

Further, despite provisions in the MOU and reassurances from SRSO Martin Kobler¹¹⁶ that guaranteed the Residents the ability to transfer their valuable property to Camp Liberty, most attempts to bring property (including, *inter alia*, hundreds of cars, forklifts, mobile phones, personal computers, and mobile air conditioning units) have been denied, as have their requests to be able to sell property left behind for market-value compensation and to purchase new items to be used at Liberty. In this regard, former Senator Torricelli and Steven Schneebaum visited Iraq in January in an attempt to resolve this issue. However, in their report¹¹⁷ they detailed the bias against the Residents by UNAMI and the Iraqi government and thus the unlikelihood that the Residents will be able to sell their property or obtain support from UNAMI toward this end. For example, they write:

In our view, much of the attitude of UNAMI toward the MEK file can be explained in light of this premise [that UNAMI has concluded that the future development of Iraq is dependent upon the survival of the current government of Nouri Al-Maliki]. We were explicitly told, for example, that the Maliki

¹¹⁴ *Joint Written Statement, supra* note 108, at 2-3.

¹¹⁵ *Id.*

¹¹⁶ *Joint Written Statement, supra* note 108, at 4 (quoting Kobler as stating on December 28, 2012, "With regard to . . . assets and properties, we will continue discussions towards reaching a solution that respects the property rights of the residents in an organized way under Iraqi law.")

¹¹⁷ Robert G. Torricelli and Steven M. Schneebaum, *Report on Visit to Iraq 1-4 January 2013* (on file with authors) [hereinafter *Report on Visit to Iraq*].

Government would literally not survive a decision to pay the MEK for its immovable property. In our view that is a preposterous leap of logic, but it is highly instructive that it reflects the position of UNAMI at the highest levels: the outcome of the MEK negotiations controls the survival, or not, of what UNAMI sees as the last bulwark against chaos.¹¹⁸

Residents also report great difficulties dealing with UNAMI. To distort reality, SRSK Kobler instructed the UN Monitoring Team to harass the Residents and provoke discontent among them who would be blamed by SRSK Kobler for not cooperating. A junior UNAMI officer, Massoud Durrani, gained notoriety for harassing the Residents at Kobler's request. A recent report¹¹⁹ issued by Colonel (Retired) Wesley Martin details hostile behavior toward the Residents by Mr. Durrani. This behavior includes, *inter alia*, being insensitive to religious and cultural practices, harassing female Residents, entering Residents housing units without permission, and encouraging other UNAMI staff to act similarly toward the Residents. Yet, despite these realities which have been brought to the attention of SRSK Kobler, not only has he not done anything about it, but on the contrary he has been providing false reports to the international community. The Residents' representative outside Iraq has responded in detail to allegations by SRSK Kobler against the Residents. He has written on several occasions to the UN Secretary General and the Under Secretary for Political Affairs. In this respect Mr. Mohaddessin's letter dated March 9, 2013¹²⁰ provides arguments and evidence that refute SRSK Kobler's attempts to distort reality.

Adding to these challenging conditions are serious due process violations. The Iraqi Government has prohibited all lawyers from accessing the camp;¹²¹ the Iraqi lawyers representing the Residents who have gone to the camp entrance were threatened and turned away. Should the Camp Residents wish to lodge a complaint about the Camp conditions, they are unable to do so because the Camp lacks any type of grievance procedure or complaint mechanism.

The above conditions have created great difficulties for the Residents by making the living conditions unbearable. The initial reporting of these conditions prompted several prominent British political and religious figures to speak out in support of Camp Residents. They registered their support on February 23, 2012, a full three weeks after the UN offered its assurance in a press release that camp conditions met international humanitarian standards.¹²² In relevant part the British figures stated:

An agreement to move the refugees to a new home – Camp Liberty – is being eroded as details of Liberty's conditions emerge.

¹¹⁸ *Report on Visit to Iraq*, *supra* note 117 at ¶¶ 6-7.

¹¹⁹ Colonel Wesley Martin, *Investigative Report Concerning Camp Liberty Residents' Allegations Against UNAMI Monitor Massoud Durrani*, May 31, 2013 (on file with authors).

¹²⁰ Mohammad Mohaddessin, *Letter to Ambassador Jeffrey Feltman*, Mar. 8, 2013 (on file with authors) (detailing how SRSK Kobler's misinformation to the UN has in turn caused other UN bodies to misunderstand the reality on the ground and thus not act accordingly).

¹²¹ *Current and Former Officials and Lawmakers Demand Improvements at Camp Liberty in Iraq, Before Any More Iranian Dissidents are Relocated There*, *supra* note 111.

¹²² *UN certifies that new camp for Iranian exiles meets international standards*, UN NEWS CENTER, Jan. 31, 2012.

The new camp is to be surrounded by a 4m-high wall, its Residents will not have freedom of movement inside or outside the camp or access to their lawyers and family members, while sanitation, water and eating facilities are limited. This is contrary to the memorandum of understanding agreed between the Iraqi Government and the UN in December, which sought to protect the human rights of the residents.

The UN must act to ensure that Camp Liberty genuinely meets the requirements and gives its Residents their “protected persons” status, along with the status recently accorded to them by the UN refugee agency UNHCR as asylum seekers. The UN must also act to show it has an important role to play in the new Iraq in upholding the basic rights of individuals and to ensure Iraq does not slip back into a regime that persecutes individuals and groups in the same way that Iran does.¹²³

Despite this pronouncement of support, Camp Liberty conditions have not changed.

According to the Secretary-General’s report of March 12, 2013:

UNHCR had completed the registration of 3,112 individuals and conducted in-depth interviews of 2,024 persons as at 27 February. A total of 1,546 individuals had been determined to have international protection needs, while the cases of the other individuals interviewed were being processed. Simultaneously, UNHCR is seeking durable solutions for individuals with identified international protection needs through resettlement, consular and humanitarian channels. To date, 25 residents have been accepted for consular solutions by seven countries. Another 26 individuals have been accepted for resettlement by five countries.¹²⁴

G. Residents Lack of Safety and Security

Given the glacial pace at which the refugee processing and resettlement is occurring, most concerning at present is the safety of the Residents. Three times this year Camp Liberty has been attacked by rocket fire. On February 9, the *New York Times* reported¹²⁵ that at least 27 rockets were fired at the camp resulting in the death of 7 individuals and more than 40 injured; since this reporting, the Residents have confirmed 38 rockets were fired which killed 8 people and injured more than 100. Claiming responsibility for the attack was *Jaish al-Mukhtar*, a pro government militant wing of Hizbullah in Iraq,¹²⁶ whose leader has also publicly declared allegiance to Iran’s Supreme Leader.¹²⁷

¹²³ *Threat to Iranians in Camp Ashraf*, THE GUARDIAN, Feb. 23, 2012.

¹²⁴ *Second report of the Secretary-General*, *supra* note 3 at ¶ 52.

¹²⁵ *Second report of the Secretary-General*, *supra* note 3 at ¶ 50. See also Yasir Ghazi, *Six Killed in Shelling of Iranian Refugee Camp in Iraq*, NEW YORK TIMES, Feb. 9, 2013 (indicating that the Residents report that more than 100 individuals were injured).

¹²⁶ *Second report of the Secretary-General*, *supra* note 3.

¹²⁷ Al-Hayat Daily, Feb. 24, 2013 (Stating that the “leader of the paramilitary force “Mukhtar Army”, Vasegh al-Batat in a telephone conversation told Al Hayat: “I am a loyal supporter of Velayat-e-Faqih (rule of clergy) which is represented by Mr. Khaemenei and the Hezbollah is obedient to the Leader (Khamenei). We are committed to him as our leader and will refer to him on military and political issues.” He ... also warned People's Mojahedin

This occurred despite the fact that the UN knew of Liberty's security vulnerabilities, which were highlighted both in its own security assessment of the camp prior to relocating the Residents from Ashraf to Liberty and from warnings that Tahar Boumedra put forth after his resignation.¹²⁸ Both underscored the vulnerability of Liberty, particularly from aerial and missile attacks.¹²⁹

Yet after the attack, no efforts were made by the Government of Iraq to make the camp safer or to return the Residents to Ashraf (which, with its better infrastructure and security fortifications relative to Liberty, provides a safer environment in which to process the refugee applications). The Residents have repeatedly asked for protective T-walls, sandbags, bulletproof vests, and helmets to be brought into Liberty. However, the Iraqi Government consistently denied these requests and obstructed efforts by the Residents to procure the safety materials themselves.

In addition, despite repeatedly asking for the bodies of those killed during the February 9 attack to be handed over for burial in accordance with Muslim tradition, the Government of Iraq repeatedly delayed and made up excuses for why this was not possible. It was not until March 24—six weeks after the attack—that the bodies were finally handed over to the Residents for burial. This delay caused a great amount of emotional distress for family members of the deceased.

On April 29, Liberty again was attacked, this time with at least 20 rockets being fired on the camp.¹³⁰ Fortunately, no residents were killed or injured because the missiles landed just next to the camp; however, this event prompted US Congresswoman Ileana Ros-Lehtinen to write the Iraqi Ambassador to the US. In her letter she condemned the attacks and the inability of the Iraqi Government and the UN to uphold the safety of the Residents. She writes:

Unfortunately, since the last attack [of February 9], there has been no action by the Iraqi Government nor the UN to facilitate the safe return of Hurriya residents to Camp Ashraf, as the grave and deteriorating situation on the ground continues to risk innocent lives.

According to reports, the defenseless residents of Camp Hurriya were hit by at least 20 rockets. As addressed in my previous letter, these residents were guaranteed their safety by both the UN and the Iraqi Government in the Memo of Understanding (MoU) of December 25, 2011. The Iraqi Government committed itself to providing the safety and security of the Ashraf residents at Camp Hurriya but, to date it has not lived up to its obligations.

(PMOI/MEK) against a "second decisive blow" and stressed that we consider striking and killing them as our honor and religious and moral duty and will target them in near future").

¹²⁸ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶¶ 16, 17, 32.

¹²⁹ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶¶ 17, 32.

¹³⁰ See *US Congresswoman Ros-Lehtinen's Letter to the Ambassador of Republic of Iraq to the US Condemning Terrorist Attack Against Residents of Camp Liberty*, Apr. 30, 2013, <http://ros-lehtinen.house.gov/press-release/ros-lehtinen-sent-letter-chairman-ambassador-republic-iraq-united-states-america> [hereinafter *Congresswoman Ros-Lehtinen's Letter*].

Again, I respectfully request that the Iraqi Government assist the Camp Hurriya residents to safely and quickly return to Camp Ashraf, which is equipped with a better infrastructure and safer facilities that can sustain future attacks and improve the livelihood of Ashraf residents. I also call on the Iraqi Government to immediately investigate this vicious attack and to use all measures to prevent any further attacks on these defenseless residents until it can ensure the safety that these residents were clearly guaranteed in the MoU of 2011.¹³¹

On June 15, Liberty was attacked for a third time this year. *Agence France Presse* reported¹³² 36 missiles were used which left 3 dead and 11 wounded; the Residents reported the actual number of injured exceeds 50.

For the above reasons, it is clear that Liberty is not safe for the Residents. The attacks indicate the Residents have no security and that the Camp is prone to attack and indiscriminate massacre of of the Residents at any given time. Moreover, the attacks damaged camp equipment that was already dilapidated or in disrepair.

Prior to the February attack the Residents were being interviewed and were prepared resettle outside Iraq (to European countries or the US) by any number, even on an individual basis. However, after the attack and considering the vulnerability of Camp Liberty, the Residents now maintain that they can only leave if there is a comprehensive group-wide solution i.e. all the Residents being relocated to US or Europe on temporary basis, or alternatively providing them security within Iraq while the resettlement process continues. If the former is not possible, then the latter must occur by means of the Residents being relocated back to Ashraf with Ashraf becoming a refugee camp under UNHCR protection.

H. *Lack of Independent and Impartial Judiciary System in Iraq*

Adding to these difficulties is the Iraqi judicial system, which is being used to give cover to illegal actions aimed at making the life of the Residents miserable. As Mr. Boumedra indicates, there exist at present roughly 200 arrest warrants against Residents issued on order of the Prime Minister's Office without any evidence presented to a court, opportunity to challenge that evidence, or any due process of law.¹³³ More recently, earlier this month a court ruled that the Residents must pay an exorbitant compensation to the landowners of Ashraf; and the same court also issued an eviction notice for those who remain at Ashraf.

On the surface, these decisions might appear to stem from proper judicial process. However, as discussed above, the Residents have been living legally in Ashraf since 1986. Therefore, any attempt to undermine their legal status or property rights is a blatant violation of their due process rights. Such court decisions, however, are driven by political backing of the Prime Minister, whose actions are being guided by Tehran.¹³⁴ Despite the Residents

¹³¹ *Congresswoman Ros-Lehtinen's Letter*, *supra* note 130.

¹³² 'Deadly' Rocket Attack on Iran Exiles Near Baghdad, AFP, Jun. 15, 2013

¹³³ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 5.

¹³⁴ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶¶ 6,7

complaining about these decisions to UNAMI, SRSB Kobler has sided with the Iraqi government and repeatedly told the Residents they must let the judicial process run its course.

A lack of functioning judiciary and the problems it creates is not unique to the Residents, however, as these inadequacies have been noted by outside sources. For example, the US State Department of State's 2012 Human Rights Report on Iraq¹³⁵ notes several problems with the court system, including, *inter alia*: judges that are susceptible to corruption and intimidation;¹³⁶ trial proceedings that fall short of international standards (including the lack of enforcement of the right to a fair trial and access to a defense attorney);¹³⁷ coerced confessions obtained by torture;¹³⁸ political interference in government investigations;¹³⁹ and investigations into government misconduct being subject to political influence.¹⁴⁰

Similarly, Human Rights Watch has found evidence of a broken Iraqi judicial system that offers rights on paper but not in practice. This system, Human Rights Watch notes, frequently carries out mass arbitrary arrests and detention, charges detainees without actual evidence, and extracts confessions through physical abuse and torture.¹⁴¹

Given that the Residents are living within this incompetent judicial context, it is clear they cannot obtain domestic legal redress for their grievances; and worse, their situation is made more ruinous by a politicized court system that is focused on making their lives intolerable. Their circumstances can only be alleviated by proper UNHCR action.

II. Governing Law

A. *International Law Governing the Conduct of United Nations in Iraq*

There are several sources of international law governing the conduct of the UN in Iraq. These include the UN Charter,¹⁴² UN Staff Rules and Regulations,¹⁴³ UN Security Council Resolutions creating¹⁴⁴ and extending UNAMI's mandate,¹⁴⁵ UNHRC Guidelines relating to the

¹³⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *Iraq 2012 Human Rights Report*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> [hereinafter *Iraq 2012 Human Rights Report*]

¹³⁶ *Iraq 2012 Human Rights Report*, *supra* note 135 at 15.

¹³⁷ *Iraq 2012 Human Rights Report*, *supra* note 135 at 16.

¹³⁸ *Iraq 2012 Human Rights Report*, *supra* note 135 at 16-17.

¹³⁹ *Iraq 2012 Human Rights Report*, *supra* note 135 at 35.

¹⁴⁰ *Iraq 2012 Human Rights Report*, *supra* note 135 at 34.

¹⁴¹ Human Rights Watch, Iraq: A Broken Justice System (Jan. 31, 2013), <http://www.hrw.org/news/2013/01/31/iraq-broken-justice-system>.

¹⁴² United Nations, *Charter of the United Nations*, October 24, 1945 [hereinafter *UN Charter*].

¹⁴³ United Nations, *Staff Regulations of the United Nations and Provisional Staff Rules*, ST/SGB/2009/7, Oct. 21, 2009 [hereinafter *UN Staff Rules*].

¹⁴⁴ See United Nations, Security Council Resolution 1500, S/RES/1500, Aug. 14, 2003 (creating UNAMI); United Nations, Security Council Resolution 1546, S/RES/1546, Jun. 08, 2004 ¶ 7 (creating the Special Representative of the Secretary-General and UNAMI's mandate with respect to the promoting of the protection of human rights) [hereinafter *Security Council Resolution 1546*]; United Nations, Security Council Resolution 1770, S/RES/1770, Aug. 10, 2007 ¶ 2 (extending UNAMI's mandate with respect to, *inter alia*, human rights protection and promotion, and creating its mandate with respect to, *inter alia*, delivery of humanitarian assistance to refugees and displaced persons) [hereinafter *Security Council Resolution 1770*].

detention of Asylum-Seekers,¹⁴⁶ and UNHCR procedures for the determination of refugee status.¹⁴⁷

1. The UN Charter

Chapter XV of the UN Charter puts forth the responsibilities of the Secretary-General, which consists of, *inter alia*, the appointment of staff,¹⁴⁸ including his/her special representatives. Toward this end, Article 101(3) states: “The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity.”¹⁴⁹

2. UN Staff Rules and Regulations

The proper conduct of UN staff and the Secretary-General’s oversight role thereof is further defined and elaborated upon in the UN Staff Rules and Regulations. Upon taking up employment with the UN, staff must make the following written declaration:

I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization.

I also solemnly declare and promise to respect the obligations incumbent upon me as set out in the Staff Regulations and Rules.¹⁵⁰

This oath is underpinned by core values that each employee is expected to exhibit. These include the requirements that:

Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the

¹⁴⁵ The following resolutions reaffirmed and extended UNAMI’s mandate as put forth in Security Council Resolution 1770: United Nations, Security Council Resolution 1830, S/RES/1830, Aug. 7, 2008 ¶ 1, 2; United Nations, Security Council Resolution 1883, S/RES/1883, Aug 7, 2009 ¶ 1, 2; United Nations, Security Council Resolution 1936, S/RES/1936, Aug. 5, 2010 ¶ 1, 2; United Nations, Security Council Resolution 2001, S/RES/2001, Jul. 28, 2011 ¶ 1, 2; and United Nations, Security Council Resolution 2061, S/RES/2061, Jul. 25, 2012 ¶ 1, 2.

¹⁴⁶ UNHCR, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012 (replacing UN High Commissioner for Refugees, *UNHCR’s Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, Feb. 26, 1999) [hereinafter *UNHCR Guidelines*].

¹⁴⁷ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992 [hereinafter *UNHCR Handbook*].

¹⁴⁸ *UN Charter*, *supra* note 142 at Chapter XV.

¹⁴⁹ *UN Charter*, *supra* note 142 at Article 101(3) (emphasis added).

¹⁵⁰ *UN Staff Rules*, *supra* note 143 at Regulation 1.1(b) (emphasis added); *see also UN Staff Rules*, *supra* note 143 at Regulation 1.2(d) (“In the performance of their duties staff members shall neither seek nor accept instructions from any Government or from any other source external to the Organization”).

human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them; [and]

Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.¹⁵¹

Within this context, there are a series of behaviors the UN staff are prohibited from doing, including: engaging in discrimination in connection with their work,¹⁵² interfering with other UN staff members' ability to conduct their official functions,¹⁵³ and intentionally falsifying, altering, or destroying official documents.¹⁵⁴

UN staff must carry out their duties in a manner consistent with the above rules and are accountable to the Secretary General,¹⁵⁵ who, as the chief administrative officer, must enforce the rules.¹⁵⁶ Staff are required to report any breach of the rules,¹⁵⁷ and disciplinary action may be instituted when a staff member fails to comply with his or her obligations under the rules.¹⁵⁸ Disciplinary action can include, *inter alia*, termination.¹⁵⁹

¹⁵¹ *UN Staff Rules, supra* note 143 at Regulation 1.1(a), (b) (emphasis added).

¹⁵² *UN Staff Rules, supra* note 143 at Regulation 1.2(e) (noting that “Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse at the workplace or in connection with work, is prohibited”).

¹⁵³ *UN Staff Rules, supra* note 143 at Regulation 1.2(f) (“Staff members shall not... engage in any conduct intended, directly or indirectly, to interfere with the ability of other staff members to discharge their official functions”).

¹⁵⁴ *UN Staff Rules, supra* note 143 at Regulation 1.2(h) (“Staff members shall not intentionally alter, destroy, falsify or misplace or render useless any official document, record or file entrusted to them by virtue of their functions, which document, record or file is intended to be kept as part of the records of the Organization”).

¹⁵⁵ *UN Staff Rules, supra* note 143 at Regulation 1.3(a) (“Staff members are accountable to the Secretary-General for the proper discharge of their functions. Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions. Their performance will be appraised periodically to ensure that the required standards of performance are met”).

¹⁵⁶ *UN Staff Rules, supra* note 143 at Scope and Purpose (“The Secretary-General, as the chief administrative officer, shall provide and enforce such staff rules consistent with these principles as he or she considers necessary”); and Regulation 1.1(c) (“The Secretary-General shall ensure that the rights and duties of staff members, as set out in the Charter and the Staff Regulations and Rules and in the relevant resolutions and decisions of the General Assembly, are respected”).

¹⁵⁷ *UN Staff Rules, supra* note 143 at Rule 1.2(c) (“It is the duty of staff members to report any breach of the Organization’s Regulations and Rules to the officials whose responsibility it is to take appropriate action and to cooperate with duly authorized audits and investigations. This will not be used as retaliation against the staff member”).

¹⁵⁸ *UN Staff Rules, supra* note 143 at Rule 1.2(d) (Disciplinary procedures set out in article X of the Staff Regulations and chapter X of the Staff Rules may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Staff Rules, the Financial Regulations and Rules and administrative issuances”).

¹⁵⁹ *UN Staff Rules, supra* note 143 at Rule 9.6(h) (“The appointment of a staff member may be terminated for unsatisfactory service under conditions established by the Secretary-General”).

3. UN Security Council Resolutions

The UN Security Council, which is tasked with “the establishment and maintenance of international peace and security”¹⁶⁰ can establish “subsidiary organs as it deems necessary for the performance of its functions.”¹⁶¹ With this in mind and to assist with reconstruction efforts in Iraq, the Security Council established UNAMI in 2003.¹⁶² In 2004, the Security Council put forth the mandate for UNAMI and the Special Representative of the Secretary-General in Iraq. In relevant part the mandate states: “the Special Representative of the Secretary-General and the United Nations Assistance Mission for Iraq (UNAMI) . . . shall . . . (iii) promote the protection of human rights.”¹⁶³ In 2007, the Security Council reaffirmed the prior mandate and expanded it to include assisting with refugees and internally displaced persons. The mandate reads: “the Special Representative of the Secretary-General and UNAMI, shall: . . . (b) Promote, support, and facilitate, in coordination with the Government of Iraq: (i) The coordination and delivery of humanitarian assistance and the safe, orderly, and voluntary return, as appropriate, of refugees and displaced persons; . . . (c) And also promote the protection of human rights.”¹⁶⁴ This mandate has been reaffirmed and extended in all subsequent Security Council resolutions regarding UNAMI.¹⁶⁵

4. UNHCR Guidelines Relating to the Detention of Asylum-Seekers

The UNHCR Guidelines relating to the detention of asylum-seekers provide for the minimum standards and conditions under which asylum-seekers must live while awaiting refugee processing and resettlement.¹⁶⁶ These Guidelines are informed by the general requirements of international refugee law, even though the Iraqi Government is not a party to the Refugee Convention and its related Protocol.¹⁶⁷

The UNHCR Guidelines¹⁶⁸ state that asylum-seekers should not be detained¹⁶⁹ except as a last resort¹⁷⁰ under exceptional circumstances clearly stated by national law,¹⁷¹ and in

¹⁶⁰ *UN Charter*, *supra* note 142 at Article 26.

¹⁶¹ *UN Charter*, *supra* note 142 at Article 29.

¹⁶² *See supra* note 144

¹⁶³ *Security Council Resolution 1546*, *supra* note 144 at ¶ 7, 7(3).

¹⁶⁴ *Security Council Resolution 1770*, *supra* note 144 at ¶ 2b(i), 2c.

¹⁶⁵ *See supra* note 145.

¹⁶⁶ *UNHCR Guidelines*, *supra* note 146.

¹⁶⁷ International and regional human rights standards pertaining to the prohibition of arbitrary detention are applicable to asylum-seekers and refugees. International refugee law endorses a sliding scale of treatment, depending on an individual’s legal status, via the 1951 Convention and its 1967 Protocol relating to the Status of Refugees. Under the Convention and Protocol there is a presumption against arbitrary detention, and detention is only permitted under specific circumstances and when necessary on an individual basis. *See UNHCR, Reception of Asylum-Seekers Including Standards of Treatment, in the Context of Individual Asylum Systems*, Global Consultations on International Protection, 3rd Meeting, UN Doc. EC/GC/01/17, Sept. 4, 2001, ¶ 3.

¹⁶⁸ *UNHCR Guidelines*, *supra* note 146 at ¶ 5 (“For the purposes of these Guidelines, ‘detention’ refers to the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities”).

¹⁶⁹ *UNHCR Guidelines*, *supra* note 146 at ¶ 2.

¹⁷⁰ *UNHCR Guidelines*, *supra* note 146 at Guideline 9 ¶ 14 (“These rights taken together – the right to seek asylum, the non-penalisation for irregular entry or stay and the rights to liberty and security of person and freedom of

accordance with the general norms and principles of international human rights law.¹⁷² UNHCR views detention of asylum-seekers as inherently undesirable, particularly in the case of women, children and unaccompanied minors, individuals with special medical or psychological needs, and other vulnerable populations.¹⁷³

Asylum-seekers must be afforded freedom of movement¹⁷⁴ along with due process guarantees. Guideline 7 entitles asylum-seekers in custody to be brought before a judicial authority.¹⁷⁵ In addition, Guideline 7 entitles asylum-seekers to be informed of their right to legal counsel¹⁷⁶ and to have the opportunity to make regular contact and receive regular visits from such counsel.¹⁷⁷ Asylum-seekers in custody must also have access to a complaint mechanism or grievance procedure.¹⁷⁸ Guideline 6 requires a maximum period for detention to be set by law, and for custody to be of a minimal period, which is not of unlimited or excessive length.¹⁷⁹ Finally, Guideline 7¹⁸⁰ entitles asylum-seekers to guarantees pertaining to notification of the custodial measures and any orders of detention.

Conditions of detention for asylum-seekers must be humane and respect human dignity.¹⁸¹ Individuals must have the opportunity to receive appropriate medical or psychological treatment.¹⁸² Women and adolescent girls, especially those arriving unaccompanied, are considered vulnerable, and unless they are close family relatives, detained

movement – mean that the detention of asylum-seekers should be a measure of last resort, with liberty being the default position”).

¹⁷¹ *UNHCR Guidelines, supra* note 146 at ¶ 15.

¹⁷² *UNHCR Guidelines, supra* note 146 at Guideline 8 ¶ 48(ii).

¹⁷³ *UNHCR Guidelines, supra* note 146 at Guideline 9.

¹⁷⁴ *UNHCR Guidelines, supra* note 146 at Guideline 2.

¹⁷⁵ *UNHCR Guidelines, supra* note 146, at Guideline 7 ¶ 47(iii) (Entitles asylum-seekers “to be brought promptly before a judicial or other independent authority to have the detention decision reviewed. This review should ideally be automatic, and take place in the first instance within 24-48 hours of the initial decision to hold the asylum-seeker. The reviewing body must be independent of the initial detaining authority, and possess the power to order release or to vary any conditions of release; Guideline 7(iv) following the initial review of detention, regular periodic reviews of the necessity for the continuation of detention before a court or an independent body must be in place, which the asylum-seeker and his/her representative would have the right to attend... ; Guideline 7(v) irrespective of the reviews in (iii) and (iv), either personally or through a representative, the right to challenge the lawfulness of detention before a court of law at any time needs to be respected”).

¹⁷⁶ *UNHCR Guidelines, supra* note 146, Guideline 7 ¶ 47(ii).

¹⁷⁷ *UNHCR Guidelines, supra* note 146, Guideline 7 ¶ 47(ii) (“Lawyers need to have access to their client, to records held on their client, and be able to meet with their client in a secure, private setting”).

¹⁷⁸ *UNHCR Guidelines, supra* note 146, Guideline 8 ¶ 48 (xv) (Non-discriminatory complaints mechanism (or grievance procedure) needs to be in place, where complaints may be submitted either directly or confidentially to the detaining authority, as well as to an independent or oversight authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages”).

¹⁷⁹ *UNHCR Guidelines, supra* note 146, at Guideline 6.

¹⁸⁰ *UNHCR Guidelines, supra* note 146, at Guideline 7 ¶ 47(i) (Asylum-seekers are entitled “to be informed at the time of arrest or detention of the reasons for their detention, and their rights in connection with the order, including review procedures, in a language and in terms which they understand”).

¹⁸¹ *UNHCR Guidelines, supra* note 146, at Guideline 8.

¹⁸² *UNHCR Guidelines, supra* note 146, at Guideline 8 ¶ 47(vi); Guideline 9.3 (noting that women asylum-seekers should be granted access to “facilities and materials are required to meet women’s specific hygiene needs”).

women asylum-seekers should be accommodated separately from male asylum-seekers.¹⁸³

Individuals must also have the opportunity to access basic necessities such as beds, shower facilities, and basic toiletries.¹⁸⁴ The asylum-seekers' right to practice religion must also be observed.¹⁸⁵ Additionally, Guideline 8 establishes that any asylum-seeker must have the possibility of communicating with the outside world while in custody.¹⁸⁶ And any asylum-seeker must have the opportunity to make regular contact and receive visits from friends, relatives, and religious and social counsel.¹⁸⁷

5. UNHCR Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention

The UNHCR Handbook offers eligibility criteria for those seeking asylum, along with the rules governing the way such individuals must be processed by UNHCR.¹⁸⁸ According to the 1951 Convention,¹⁸⁹ a refugee is someone who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”¹⁹⁰

Generally speaking each individual must prove she or he meets this definition; however, this can be accomplished by offering evidence of what has occurred to someone similarly situated within his or her group. In this respect, the UNHCR Handbook offers the following guidance for UNHCR staff:

These considerations need not necessarily be based on the applicant's own personal experience. What, for example, happened to his friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victims of persecution is well-founded. . . . The situation of each person, however, must be assessed on its own merits.¹⁹¹

However, UNHCR recognizes the unique nature of those seeking refugee status and that in some instances a group of people can be processed as one entity when the right conditions are present. Under these circumstances, the UNHCR Handbook notes:

¹⁸³ *UNHCR Guidelines*, *supra* note 146, at Guideline 9.3 (noting that the use of female staff is also recommended where women asylum-seekers are detained. As a general rule the detention of pregnant women and nursing mothers should be avoided).

¹⁸⁴ *UNHCR Guidelines*, *supra* note 146, at Guideline 8 ¶ 48(x).

¹⁸⁵ *UNHCR Guidelines*, *supra* note 146, at Guideline 8 ¶ 48(ix).

¹⁸⁶ *UNHCR Guidelines*, *supra* note 146, at Guideline 8 ¶ 48(vii) (discussing the requirement that individuals must have the possibility of regular communication, “including through telephone or internet, where possible”).

¹⁸⁷ *UNHCR Guidelines*, *supra* note 146, at Guideline 8 ¶ 48(vii).

¹⁸⁸ *UNHCR Handbook*, *supra* note 147.

¹⁸⁹ UN General Assembly, *Convention Relating to the Status of Refugees*, Jul. 28, 1951 [hereinafter *1951 Convention*].

¹⁹⁰ *1951 Convention*, *supra* note 189 at Article 1(A)(2).

¹⁹¹ *UNHCR Handbook*, *supra* note 147 at Interpretation of Terms ¶ B(2)(a)(43) (emphasis added).

While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called “group determination” of refugee status, whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.¹⁹²

B. *International Law Governing Conduct of the Government of Iraq*

There are several sources of international law governing the conduct of the Iraqi Government. These include the International Covenant on Civil and Political Rights¹⁹³ (ICCPR), the UN Body of Principles Regarding Persons Under Any Form of Detention or Imprisonment (UN Body of Principles),¹⁹⁴ the UN Standard Minimum Rules for the Treatment of Prisoners¹⁹⁵ (UN Minimum Rules of Treatment), and the Opinions of the UN Working Group on Arbitrary Detention.¹⁹⁶

1. ICCPR

Iraq is a party to the ICCPR.¹⁹⁷ Rights under the ICCPR apply equally to citizens, asylum-seekers, and refugees alike.¹⁹⁸ The Human Rights Committee (HRC) has held “the general rule is that each one of the rights of the [ICCPR] must be guaranteed without discrimination between citizens and aliens.”¹⁹⁹ It further stated that, “[i]n general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.”²⁰⁰

¹⁹² *UNHCR Handbook, supra* note 147 at Interpretation of Terms ¶ B(2)(a)(44) (emphasis added). *See also* Executive Committee of the High Commissioner’s Programme, *Follow-up on Earlier Conclusions of the Sub-Committee on the Determination of Refugee Status, inter alia, with Reference to the Role of UNHCR in National Refugee Status Determination Procedure*, EC/SCP/22/Rev.1, 3 September 1982 ¶¶ 29,30, 31(i) (reaffirming this proposition).

¹⁹³ *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52 UN Doc. A/6316 (1966), 999 UNTS 171, entered into force Mar. 23, 1976.

¹⁹⁴ UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Dec. 9, 1988, A/RES/43/173 [hereinafter *Body of Principles*].

¹⁹⁵ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, Aug. 30, 1955 [hereinafter *Minimum Rules of Treatment*].

¹⁹⁶ *Hossein Dadkhah et al. v. Government of Iraq*, Opinion No. 16/2012, adopted 4 May 2012 [hereinafter *Opinion No. 16/2012*]; and *Mehdi Abedi et al. v. Government of Iraq*, Opinion No. 32/2012, adopted 30 August 2012 [hereinafter *Opinion No. 32/2012*].

¹⁹⁷ United Nations Treaty Status: ICCPR, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (noting that Iraq signed the treaty on February 18, 1969 and ratified it January 25, 1971).

¹⁹⁸ Ophelia Field, UNHCR: *Legal and Protection Policy Research Series: Alternatives to Detention of Asylum Seekers and Refugees* (2006) at ¶ 20 (citing to art. 1(3), UN Charter; arts. 1 and 2, UDHR; art. 2(1), ICCPR) [hereinafter *Alternatives to Detention*].

¹⁹⁹ *Id.*

²⁰⁰ *Id.* (citing to Human Rights Committee, General Comment No. 15 on ‘The Position of Aliens under the

Article 9 of the ICCPR is the key provision guaranteeing the right to be free of arbitrary detention. In relevant part it states:

a) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his [or her] liberty except on such grounds and in accordance with such procedure as are established by law . . . c) Anyone who is deprived of his [or her] liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his [or her] detention and order his [or her] release if the detention is not lawful.

In accordance with Article 4, a State party may derogate from its obligations under Article 9 but only in time of public emergency.²⁰¹ However, it may do so only to the extent “strictly required by the exigencies of the situation” and “provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”²⁰² Additionally, any restrictions must be limited to the needs of the situation and cease as soon as the state of emergency no longer exists.²⁰³ Moreover, any derogation must not interfere with other non-derogable rights in the Covenant, such as the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment in accordance with Article 7 of the ICCPR.²⁰⁴ Finally, the State party must inform other State parties to the ICCPR immediately of any such derogation.²⁰⁵

Here, derogation is not applicable because there is no public emergency, and even if there had been, Iraq has not informed other State parties of a desire to derogate. Furthermore, and assuming *arguendo*, such derogation would be impermissible because it would result in the continued inhumane and degrading treatment of Camp Residents in violation of Article 7.

Article 9 provides for several factors that constitute arbitrary detention. In short, a detention is arbitrary when it is not authorized by law, unreasonable/unnecessary, has a lack of judicial and periodic review, and when the detained individual is unable to challenge the detention.²⁰⁶

First, a detention must be authorized and stand in *accordance with law*.²⁰⁷ Any deprivation of liberty that is not in conformity with national law is unlawful and therefore in breach of Article 9(1).²⁰⁸ Moreover, legislation that permits the use of detention must accord

Covenant’, CCPR/C/21/Rev.1, Apr. 11, 1986, ¶¶ 2 and 1 respectively).

²⁰¹ *Id.* at ¶ 24.

²⁰² *Id.* (citing to Article 4(1), ICCPR; HRC General Comment No. 29 (2001) on Article 4: Derogations during a state of emergency, Aug. 31, 2001 (adopted at 1950th meeting on Jul. 24, 2001), CCPR/C/21/Rev.1/Add.11).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.* (citing to Article 4(3), ICCPR).

²⁰⁶ *Id.* at ¶¶ 26-32.

²⁰⁷ *Id.* at ¶ 26.

²⁰⁸ *Id.*

with international human rights standards.²⁰⁹

Second, a detention must not be *arbitrary*.²¹⁰ National law may permit for the detention of individuals but such detention must not be arbitrary. The HRC has provided guidance in a number of cases for what constitutes arbitrariness. For example,

‘[A]rbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but *reasonable in all the circumstances*. Further, remand in custody must be *necessary in all the circumstances*, for example, to prevent flight, interference with evidence or the recurrence of crime²¹¹ (emphasis added).

For a deprivation of liberty to be considered reasonable and necessary depends on the proportionality of the measure with its intended objective.²¹² Moreover, in order to establish that detention is necessary and reasonable in all the circumstances, consideration must be given to “less invasive means of achieving the same ends.”²¹³

Third, any period of detention must be open to periodic review.²¹⁴ Even though an initial period of detention may not be arbitrary, subsequent periods may breach Article 9(1) of the ICCPR; prolonged detention, therefore, may be arbitrary.²¹⁵ Thus, an ongoing and periodic assessment is required to ensure that the initial reasons justifying detention continue to exist.²¹⁶ The mandatory and non-reviewable detention of asylum seekers and/or refugees without an individual assessment of their need for detention is arbitrary.²¹⁷

Fourth, an asylum-seeker and/or refugee must have a right to challenge his or her detention in a court.²¹⁸ Anything less than this is unsatisfactory.²¹⁹ Even where a decision to detain an individual is ordered by an administrative body or authority, Article 9(4) of the ICCPR obliges State parties to make available to the detainee the right of recourse to a court of law.²²⁰

²⁰⁹ *Id.* (citing to HRC Concluding Observations on Trinidad and Tobago (2000), CCPR/CO/70/TTO, at ¶ 16 in which the Committee stated that a vague formulation of the circumstances in which arrest may be issued was ‘too generous an opportunity to the police to exercise this power’ and that they recommended that the State party ‘confine its legislation so as to bring it into conformity with article 9.1 of the Covenant’).

²¹⁰ *Id.* at ¶ 27.

²¹¹ *Id.* at ¶ 27 (citing to Van Alphen v The Netherlands, HRC Case No. 305/1988, ¶ 5.8).

²¹² *Id.* at ¶ 28 (citing to A v Australia, HRC Case No. 560/1993, ¶ 9.2. *See also* M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, Strasbourg, 1993 pp.172-173).

²¹³ *Id.* at ¶ 32.

²¹⁴ *Id.* at ¶ 29.

²¹⁵ *Id.* (citing to Spakmo v Norway, HRC Case No. 631/1995, ¶ 6.3; HRC Concluding Observations on Japan (1998) CCPR/C/79/Add.102, ¶ 19 and Switzerland (1996) CCPR/C/79/Add.70).

²¹⁶ *Id.* (citing to A v Australia, above footnote 212, at ¶ 9.4).

²¹⁷ *Id.* (citing to A v Australia, above footnote 212; C v Australia, HRC Case No. 900/1999).

²¹⁸ *Id.* at ¶ 30.

²¹⁹ *Id.* (citing to Torres v Finland, HRC Case No. 291/1988; Vuolanne v Finland, HRC Case No. 265/1987; Amuur v France, ECtHR, Jun. 25, 1996 (1996) I.I.H.R.L. 39 (Jun. 25, 1998)).

²²⁰ *Id.* (citing to Vuolanne v Finland, HRC Case No. 265/1987, ¶ 9.6).

Moreover, review by the court must be effective; it cannot be circumscribed by law to particular forms of review. Merely formal review is not sufficient.²²¹ Most importantly, the court must be empowered to order a release of the individual.²²² The absence of effective court review renders detention arbitrary.

The criteria set out in Article 9 apply fully to the detention of refugees and asylum-seekers.²²³ And in addition, the standards elaborated by the HRC have informed UNHCR's position that asylum-seekers should not be detained, and that only in exceptional cases would it be necessary to resort to detention in an individual case, as discussed below.²²⁴

However, beyond all such obligations, as discussed earlier, the established fact is that Iraq judicial system lacks independence and influenced by political powers. Therefore, in such circumstances, the international community and particularly UNHCR must intervene with all available instruments at its disposal to look for a solution.

a. Freedom of Movement Guaranteed Under the ICCPR

ICCPR Article 12(1) requires States to ensure that, "everyone lawfully within the territory of the State shall, within that territory, have the right to liberty of movement and freedom of residence."²²⁵

Domestic law governs whether an alien is "lawfully" within the territory of a State. A State may impose restrictions on the entry of an alien to its territory, provided they are in compliance with the State's international obligations.²²⁶ The HRC has held that an alien who entered a State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of Article 12.²²⁷ Refugees, therefore, are lawfully within the territory for the purposes of Article 12 and accordingly enjoy its benefits.²²⁸ Similarly, an individual who registers to apply for asylum and is admitted to a procedure should to be considered "lawfully" within the territory.²²⁹ While the HRC has stated that a State may impose conditions on the entry of an alien, for example, in relation to movement, residence or employment,²³⁰ these conditions must be justified by reference to Article 12(3): "once aliens are allowed to enter the territory of a state party they are entitled to the rights set out in the Covenant."²³¹ Here, the Camp Residents were allowed by the prior Government of Iraq to settle

²²¹ *Id.*

²²² *Id.* (citing to *A v Australia*, above footnote 212, at ¶ 9.5; *C v Australia*, above footnote 196, at ¶ 8.3).

²²³ *Id.* at ¶ 31.

²²⁴ *Id.* at ¶ 32 (citing to UNHCR Guidelines 2 and 3).

²²⁵ *Id.* at ¶ 33 (noting that under Article 13 of the Universal Declaration of Human Rights, everyone has the right to freedom of movement and residence with the borders of each State).

²²⁶ *Id.* at ¶ 34 (citing to HRC General Comment No. 27 on Article 12: Freedom of Movement, Nov. 2, 1999 (adopted at 1783rd meeting on Oct. 18 1999), CCPR/C/21/Rev.1/Add.9, ¶ 4).

²²⁷ *Id.* (citing to *Celepli v Sweden*, HRC Case No. 456/1991 at ¶ 9.2).

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.* (citing to Human Rights Committee, General Comment No. 15 on 'The Position of Aliens under the Covenant', CCPR/C/21/Rev.1, Apr. 11, 1986, at ¶ 6).

²³¹ *Id.* (citing to Human Rights Committee, General Comment No. 15 on 'The Position of Aliens under the Covenant', CCPR/C/21/Rev.1, Apr. 11, 1986, at ¶ 6).

in Iraq and obtain and sustain legal permanent residence.

While Article 12(1) is not an unfettered right to freedom of movement and may be subject to particular restrictions, any restriction must be provided by law, necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and must be consistent with other rights recognized in the Covenant.²³² Any restriction must not “nullify the principle of liberty of movement.”²³³ Persons are entitled to move from place to place and to establish themselves in a place of their choice, irrespective of any particular purpose or reason for wanting to move or stay in a particular place.²³⁴ Any restrictions on the movement of persons must be justified by the State party²³⁵ and must not continue beyond the point for which the justification no longer exists.²³⁶ Therefore, periodic assessments are also required.²³⁷

There are only three grounds upon which lawful detention could be necessary in an individual case: to protect public order,²³⁸ public health, or national security.²³⁹ Of these, protecting the public order, specifically verification of identity,²⁴⁰ is the only one potentially applicable to the Camp Residents. Recourse to initial, temporary periods of detention in order to verify the identity of asylum-seekers, particularly those who arrive without, or with false, documentation, is accepted by UNHCR.²⁴¹

In addition, where any restrictive measure exists, it must be resorted to only when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose.²⁴² These are to be judged in each individual case.²⁴³ The need to detain the individual is to be assessed in light of the purpose of the detention and the overall reasonableness of that detention in all the circumstances, the latter of which requires an assessment of any special needs or considerations in the individual’s case.²⁴⁴ The general principle of proportionality requires that a balance be struck between the importance of respecting the rights to liberty and security of person and freedom of movement, and the public policy objectives of limiting or denying these

²³² *Id.* at ¶ 36 (citing to Art. 12(3), ICCPR).

²³³ *Id.* (HRC General Comment No. 27 on freedom of movement, above footnote 226, at ¶ 2).

²³⁴ *Id.* (HRC General Comment No. 27 on freedom of movement, above footnote 226, at ¶ 5).

²³⁵ *Id.* (citing to *See, Ackla v Togo*, HRC Case No. 505/1992, ¶ 10).

²³⁶ *Id.*

²³⁷ *Id.* (citing to C. Beyani, *Human Rights Standards and the Movement of People within States*, (Oxford University Press, 2000), p. 116. “In situations of mass influx, ‘case by case review of confinement may indeed be unrealistic, and there may also exist good reasons – racial, cultural, religious, economic – why alternatives to detention cannot be used in any particular context; but the conditional nature of these statements should not be overlooked”).

²³⁸ *UNHCR Guidelines*, *supra* note 146, at Guideline 4.1.1 (noting that within this category exists four subcategories: 1) to prevent absconding and/or in cases of likelihood of non-cooperation, 2) in connection with accelerated procedures for manifestly unfounded or clearly abusive claims, 3) for initial identity and/or security verification, and 4) in order to record, within the context of a preliminary interview, the elements on which the application for international protection is based, which could not be obtained in the absence of detention).

²³⁹ *UNHCR Guidelines*, *supra* note 146, at Guideline 4.1.

²⁴⁰ *UNHCR Guidelines*, *supra* note 146, at Guideline 4.1.1 ¶¶ 24-27.

²⁴¹ *UNHCR Guidelines*, *supra* note 146, at Guideline 4.1.1 ¶¶ 24. *See also* UN High Commissioner for Refugees, *Detention of Refugees and Asylum-Seekers*, 13 October 1986, No. 44 (XXXVII).

²⁴² *UNHCR Guidelines*, *supra* note 146, at Guideline 4.2 ¶ 34.

²⁴³ *UNHCR Guidelines*, *supra* note 146, at Guideline 4.2 ¶ 34.

²⁴⁴ *UNHCR Guidelines*, *supra* note 146, at Guideline 4.2 ¶ 34.

right.²⁴⁵ Under all circumstances, the restriction must be the least intrusive instrument among those that might achieve the desired result.²⁴⁶

b. Detention Conditions Must Not Violate the ICCPR

The HRC has also expounded on the ways in which conditions of detention can violate the ICCPR. Failing to provide medical treatment has consistently fallen within the protection of Article 7, either alone or in combination with other factors,²⁴⁷ or at a minimum has violated Article 10 in relation to rights to humane treatment. Poor sanitation, lack of bedding, cold floors, and/or over-crowding have been held to give rise to breaches of Article 7, usually when combined with some form of physical violence,²⁴⁸ or, alternatively, separately or together under Article 10.²⁴⁹ Separation from family members pending or after removal has also been asserted by several complainants as in breach of Article 7 of the ICCPR. While the HRC has not ruled this out entirely, it seems more likely to consider it under Article 10.²⁵⁰

c. Prohibition on Forced Transfer of Populations

Several sources of international law prohibit the forced transfer of populations. It is prohibited under ICCPR²⁵¹ Articles 1,²⁵² 7,²⁵³ 9,²⁵⁴ 12,²⁵⁵ 14,²⁵⁶ 17,²⁵⁷ 20,²⁵⁸ and 24.²⁵⁹ Similarly, Article 49(1) of the Fourth Geneva Convention states: “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of

²⁴⁵ *UNHCR Guidelines*, *supra* note 146, at Guideline 4.2 ¶ 34.

²⁴⁶ *UNHCR Guidelines*, *supra* note 146, at Guideline 4.2 ¶ 34.

²⁴⁷ *Alternatives to Detention*, *supra* note 198 at ¶ 57.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.* (citing Francesco Madafferi et al. v. Australia, HRC 1011/2001, and noting, “separation from family pending removal would cause psychological and financial problems. HRC found violation of article 10(1), but did not address article 7”).

²⁵¹ See Alfred de Zayas, *Forced Population Transfer*, Max Planck Encyclopedia of Public International Law [hereinafter *Forced Population Transfer*].

²⁵² *Forced Population Transfer*, *supra* note 251 at 13 (discussing how “Compulsory transfer constitutes a negation of the right to self-determination, since no person or community can exercise this fundamental right if subjected to expulsion”).

²⁵³ *Forced Population Transfer*, *supra* note 251 at 14 (indicating that forced transfer violates the right not to be subjected to torture or inhuman treatment).

²⁵⁴ *Forced Population Transfer*, *supra* note 251 at 14 (indicating that forced transfer violates the right to liberty and security).

²⁵⁵ *Forced Population Transfer*, *supra* note 251 at 14 (indicating that forced transfer violates the right to freedom of movement).

²⁵⁶ *Forced Population Transfer*, *supra* note 251 at 14 (indicating that forced transfer violates the right to a hearing).

²⁵⁷ *Forced Population Transfer*, *supra* note 251 at 14 (indicating that forced transfer violates the right to privacy).

²⁵⁸ *Forced Population Transfer*, *supra* note 251 at 14 (indicating that forced transfer violates the right to the prohibition of incitement to violence and racial hatred).

²⁵⁹ *Forced Population Transfer*, *supra* note 251 at 14 (indicating that forced transfer violates the right to special protection of children).

their motive.”²⁶⁰ Finally, under customary international law, forced transfers constitute a crime against humanity as reflected in such treaties as the Rome Statute of the International Criminal Court, Article 7(1)(d).²⁶¹

2. UN Body of Principles and UN Minimum Rules of Treatment

The UN Body of Principles and Minimum Rules of Treatment²⁶² provide additional protection for those in detention. The following requirements apply to the Camp Residents:

Principles 1²⁶³ and 6²⁶⁴ require detained individuals to be treated humanely and with dignity. To ensure this, they must be supplied with life necessities such as adequate food and water pursuant to Rule 20.²⁶⁵ In addition, the detained must be given proper living facilities. This includes having adequate accommodation²⁶⁶ with proper sanitation²⁶⁷ and separation between the sexes.²⁶⁸ Adequate medical care must also be supplied, as dictated by Principle 24²⁶⁹ and Rules 22²⁷⁰ and 52.²⁷¹ The detained must also be able to communicate with the outside

²⁶⁰ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, entered into force 21 October 1950, 75 UNTS 287 at Article 49(1).

²⁶¹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, entered into force 1 July 2002 at Article 7(1)(d) (“For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: ... (d) Deportation or forcible transfer of population”).

²⁶² See Rule 95 which applies the Rules discussed below to those individuals who have been imprisoned without charge e.g. asylum seekers.

²⁶³ *Body of Principles*, *supra* note 194, at Principle 1 (“All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person”).

²⁶⁴ *Id.* at Principle 6 (“No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment”).

²⁶⁵ *Minimum Rules of Treatment*, *supra* note 195, at Rule 20(1) (“Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served; 20(2) Drinking water shall be available to every prisoner whenever [s/]he needs it”).

²⁶⁶ *Id.* at Rule 10 (“All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”).

²⁶⁷ *Id.* at Rule 12 (“The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner”); Rule 13 (“Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as 38 necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate”); Rule 14 (“All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times”).

²⁶⁸ *Id.* at Rule 8(a) (“Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate”).

²⁶⁹ *Body of Principles*, *supra* note 194, at Principle 24 (“A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge”).

²⁷⁰ *Minimum Rules of Treatment*, *supra* note 195, at Rule 22(2) (“Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers”).

world. In particular, Principles 15,²⁷² 19,²⁷³ and Rule 37²⁷⁴ require the detained to have the ability to have communication with family. Finally, Rule 43²⁷⁵ gives the detained custody over their personal property and possessions.

The Body of Principles and Minimum Rules of Treatment also afford due process protection for detainees. In all cases, detention must be authorized by law, as required by Principle 4; this obliges detention to be ordered by judicial authority.²⁷⁶ Further, in accordance with Principles 11²⁷⁷ and 32,²⁷⁸ the detained have the right to challenge his/her detention in a court of law. Toward this end, the detained have the right to counsel²⁷⁹ and to access and communicate²⁸⁰ with counsel under conditions that allow for sufficient consultation.²⁸¹ Finally, Principle 33²⁸² and Rule 35²⁸³ require the detained to have access to a complaint mechanism. As

²⁷¹ *Id.* at Rule 52(1) (“In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity; 52(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency”).

²⁷² *Body of Principles, supra* note 194, at Principle 15 (“Notwithstanding the exceptions contained in Principle 16, paragraph 4, and Principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”).

²⁷³ *Id.* at Principle 19 (“A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations”).

²⁷⁴ *Minimum Rules of Treatment, supra* note 195, at Rule 37 (“Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits”).

²⁷⁵ *Id.* at Rule 43(1) (“All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition; 43(2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him”). *See also* United Nations High Commissioner for Refugees, *Conclusion No. 109 (LX, 2009) Conclusion on Protracted Refugee Situations, Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, 198, Dec. 2009 at 198 (“Recognizing that, in principle, all refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile; *noting*, therefore, the potential need for fair and effective restitution mechanisms”).

²⁷⁶ *Body of Principles, supra* note 194, at Principle 4 (“Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority”).

²⁷⁷ *Id.* at Principle 11(1) (“A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority”).

²⁷⁸ *Id.* at Principle 32(1) (“A detained person or his counsel shall be entitled at any time of take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful”).

²⁷⁹ *Id.* at Principle 17(1) (“A detained person shall be entitled to have the assistance of a legal counsel”).

²⁸⁰ *Id.* at Principle 18(1) (“A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel”).

²⁸¹ *Id.* at Principle 18(2) (“A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel”).

²⁸² *Id.* at Principle 33(1) (“A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to authorities responsible for the administration of the place of detention and to higher authorities and, when necessary,

discussed below, in this particular case, the Residents have been denied of all such rights, primarily due to a lack of a fair and independent judicial system in Iraq, which, under political pressure, has acted in a discriminatory manner toward the Residents.

3. Opinions of the UN Working Group On Arbitrary Detention

As will be elaborated upon further below, the Working Group discussed the cases of the Residents at Liberty in two separate opinions. Due to a lack of due process protections and proper living conditions, the Working Group found the camp conditions to be “synonymous with that of a detention center,”²⁸⁴ and thus the Government of Iraq in breach of its international legal obligations.²⁸⁵

4. UN Principles on Housing and Property Restitution for Refugees and Displaced Persons

Some of the most serious problems facing displaced persons are their loss of land, housing, and property rights during their displacement. These issues are at the center of the restitution equation; whatever their cause, displacement must always be treated as a phenomenon in need of remedy and redress when people are forced from their places of habitual residence. The process of housing and property restitution provides this remedy within a legally sound, coherent, and practical framework.

Under the *UN Principles on Housing and Property Restitution for Refugees and Displaced Persons* (“Pinheiro Principles”), Principle 2 focuses on the “Right to Housing and Property Restitution”:

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.²⁸⁶

to appropriate authorities vested with reviewing or remedial powers”).

²⁸³ *Minimum Rules of Treatment*, *supra* note 195, at Rule 35(1) (“Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution”).

²⁸⁴ *Opinion No. 16/2012*, *supra* note 196 at ¶ 16; and *Opinion No. 32/2012*, *supra* note 196 at ¶¶ 30-31.

²⁸⁵ *Opinion No. 16/2012*, *supra* note 196 at ¶ 17-18; and *Opinion No. 32/2012*, *supra* note 196 at ¶ 30.

²⁸⁶ *UN Principles on House and Property Restitution for Refugees and Displaced Persons*, UN Sub-Commission on the Protection and Promotion of Human Rights, E/CN.4/Sub.2/2005/17, Jun. 28, 2005.

III. Analysis of International Law Violations by United Nations

A. Violations of UNAMI's Mandate; UN Staff Rules; and the UN Charter

UNAMI must act in accordance not only with its mandate but also pursuant to UN staff rules. However, UNAMI's work, led by SRSG Kobler, on behalf of the Residents of Ashraf and Liberty appears to have been inconsistent with its mandate and UN rules and appears dangerously prejudicial and incompetent.

Because the Residents of Ashraf and Liberty are recognized as asylum-seekers,²⁸⁷ UNAMI, pursuant to its mandate, must promote the protection of the Residents' human rights, and support and facilitate the coordination of humanitarian assistance on their behalf.²⁸⁸ In carrying out this assignment, UNAMI staff must also act consistently with UN staff rules. Toward this end, UNAMI staff are required to act with competence, honesty, truthfulness, integrity, and impartiality; exhibit faith in fundamental human rights; and are prohibited from interfering with other UN staff members' ability to conduct their official duties, seeking or accepting instructions from any government, and intentionally falsifying, altering, or destroying official documents.²⁸⁹ In all of these areas, UNAMI has utterly failed.

As Tahar Boumedra indicates, UNAMI has been biased against the Residents because it views them as terrorists.²⁹⁰ Because of this bias—which is in contravention of the presumption of innocence—UNAMI actions towards the residents have been improper and in violation of UN duties and rules. Four allegations in particular must be highlighted: SRSG Kobler's interfering with the official duties of Tahar Boumedra and other UNAMI staff, UNAMI/Kobler's falsifying of UN documents, UNAMI/Kobler taking orders from the Iraqi Government, and UNAMI/Kobler's lying to the UN and international community.

In his affidavit, Mr. Boumedra testifies that it was his responsibility to carry out fact-finding after the 2009 and 2011 attacks on Camp Ashraf.²⁹¹ Despite his insistence that the UNAMI Human Rights Office truthfully characterize what occurred as “attacks” that resulted in “extrajudicial killing,” UNAMI diluted the language in the official report by labeling the incidents as “confrontations” with “excessive use of force.”²⁹² Similarly, when Mr. Boumedra investigated the conditions in Camp Liberty prior to the Residents' relocation and concluded that it was not fit to hold 3,400 individuals,²⁹³ SRSG Kobler instructed Mr. Boumedra to be more positive in his reporting by emphasizing positive elements while eliminating negative ones.²⁹⁴ SRSG Kobler encouraged the rest of UNAMI to engage in a similar practice when issuing reports; he instructed them to feature and highlight progress, and to downplay or dismiss human-

²⁸⁷ *Supra* note 84.

²⁸⁸ *Supra* note 162.

²⁸⁹ *Supra* notes 150, 151, 152.

²⁹⁰ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶¶ 6, 8.

²⁹¹ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 9.

²⁹² Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶¶ 9, 10.

²⁹³ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 13.

²⁹⁴ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 14.

rights violations.²⁹⁵ In doing so, SRSK Kobler interfered with the ability of UNAMI staff, particularly Mr. Boumedra, to carry out their official duties, in contravention of UN rules.²⁹⁶

Mr. Boumedra indicates that SRSK Kobler's misconduct did not end there. In trying to convince the Residents and the international community that Liberty was safe for habitation, SRSK Kobler instructed UNAMI staff to put forth pictures of the camp that were least offensive, ensuring that the actual conditions were not seen or understood by the Residents or the international community.²⁹⁷ Moreover, SRSK Kobler dismissed and buried an independent report that concluded Liberty did not meet international humanitarian standards, and instead issued his own report saying the conditions did.²⁹⁸ Mr. Boumedra also indicated that SRSK Kobler choose to ignore a report that demonstrated the lack of security at Liberty.²⁹⁹ SRSK Kobler therefore intentionally falsified official UN documentation in further violation of UN rules.³⁰⁰

Mr. Boumedra notes that under pressure from Iran, the Iraqi Government has been intent on making the life of the Residents miserable with the ultimate goal of expelling them from Iraq.³⁰¹ Instead of objecting to this objective, SRSK Kobler not only acceded but also helped craft the strategy for doing so.³⁰² It was on this basis that SRSK Kobler helped facilitate the forced eviction of the Residents to Liberty despite the fact that Ashraf is perfectly suitable for refugee processing. Toward this end, SRSK Kobler worked in collusion with the Iraqi Government to draft the MOU, a document to which the Residents were not a party and did not consent.³⁰³ By doing so, SRSK Kobler failed to act in an impartial manner, and worse, he allowed the Iraqi Government to determine his duties in violation of the UN staff oath.³⁰⁴

The sum total of the above three violations, according to Mr. Boumedra and the Residents is that SRSK Kobler and UNAMI misled and lied to the larger UN organization, the Residents, and the international community, an action which is a UN staff rule violation *per se*.³⁰⁵ It was on the basis of SRSK Kobler's false representations about Liberty's conditions and the MOU that the Residents were coerced into moving from Ashraf to Liberty.³⁰⁶ As a result, the Residents now live in far worse circumstances. Eleven have died, dozens have been injured, and the remainder live in intolerable conditions. The end result is that UNAMI has not promoted and protected the human rights of the Residents. On the contrary, it intentionally undermined the safety and security of the Residents and the values upon which the UN itself is built.

²⁹⁵ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶¶ 11, 14, 15, 18.

²⁹⁶ *Supra* note 153.

²⁹⁷ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 15.

²⁹⁸ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 18.

²⁹⁹ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 17.

³⁰⁰ *Supra* note 154.

³⁰¹ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 2.

³⁰² Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 7.

³⁰³ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 7.

³⁰⁴ *Supra* note 150.

³⁰⁵ *Supra* note 151.

³⁰⁶ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 15.

Reporting UN misconduct is required by UN staff rules.³⁰⁷ As such, Mr. Boumedra has come forth to shed light about these UN transgressions, and he has done so at great professional sacrifice. However, the UN has turned a blind eye to his reports and done nothing to intervene. Instead he was told “not to worry” about the possibility of attacks on Liberty, which later occurred despite his warnings.³⁰⁸

Furthermore the conduct of the monitors under instruction of SRSK Kobler at Camp Liberty is in clear violation of UN staff rules that require staff to respect and promote human rights. The monitors’ harassment of the Residents violates the right to privacy and to be free of intimidation and harassment.

Because the Secretary-General is the Chief Administrative Officer of the UN, he ultimately bears responsibility for addressing misconduct of UN personnel.³⁰⁹ Accountability for UNAMI’s improper conduct thus lies within his jurisdiction. He alone can and must bring resolution to this horrible situation.

B. *Complicity in Iraqi Violations of UNHCR Guidelines*

UNAMI and SRSK Kobler are not the only parties at fault in maintaining the ongoing suffering of the Residents. UNHCR is as well. Although UNAMI and SRSK Kobler are violating their mandate and UN staff rules, UNHCR is also complicit in the ongoing violations of human rights of the Residents.

As indicated above, UNHCR’s Guidelines³¹⁰ afford asylum-seekers freedom of movement, due process protections, and proper living conditions as they undergo resettlement processing. However, the Ashraf and Liberty Residents have not been given any of these.

The due process rights and freedom of movement discussed above have been violated for the Camp Residents, who are *de facto* prisoners that are prohibited from leaving the Camps at any time. As of yet, they have not received any kind of detention order from the Iraqi Government, in violation of Guideline 7. Further, in violation of Guideline 6, no maximum duration has been established for their detention in the Camp. As discussed above, violations of Guideline 7(ii) have occurred because the Camp Residents are forbidden from accessing their lawyers, as outsiders are prohibited from entering the camp. Residents also lack access to any kind of complaints or grievance procedures, in violation of Guideline 8(xv).

As discussed above, the Camp conditions are abhorrent, and constitute a violation of human rights under the UNHCR Guidelines. Basic needs, such as clean drinking water, food, and electricity, are in short supply. Access to medical care is extremely slow, or in some cases non-existent. Moreover, violations of Guideline 9 arise because vulnerable groups such as minors and the disabled reside in the camp; women are also recognized as an at-risk group in detention centers. There are several women and minors (accompanied by their guardians)

³⁰⁷ *Supra* note 157.

³⁰⁸ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 32.

³⁰⁹ *Supra* note 155,156.

³¹⁰ *See supra* section II(A)(4)

present. Furthermore, UNHCR Emergency Standards for refugee camps require that roads and walkways constitute 20 to 25 percent of the entire site and UNHCR Guidelines require “special accommodation”³¹¹ that are tailored to the specific needs of the disabled; however, Camp Liberty does not have sidewalks or paved areas making it is near impossible for the handicapped, disabled, and infirm to move around. Moreover, the Iraqi Government denied the transfer into Camp Liberty of special equipment needed by such individuals to facilitate their mobility.

While the Residents have access to basic means for maintaining personal hygiene, such as showers and toilets, the torn and decaying floors of the showers and bathrooms have created unsanitary conditions. There is difficulty draining contaminated water as a result, thus presenting a significant threat to basic hygiene. Due to the water shortage and unreliability of its transport into the camp, Residents are only able to shower every two to three days, despite the extremely hot, dusty conditions. In violation of Guideline 8, the Residents’ religious burial rights were violated when the Iraqi Government prevented the transfer those who were killed during the February 9 attack.

As discussed above, additional violations arise under Guideline 7 and 8, as Camp Residents have limited contact with the outside world and are denied the opportunity to meet with legal counsel, both inside and outside the camp. The Residents are also prohibited from seeing family members and friends who are not already inside the camp, a further violation of Guideline 8(vii).

Ultimately, the Residents of Camp Liberty are asylum-seekers who are effectively treated as detainees, and they are being denied the basic rights to which they are entitled by international human rights law. The fact that their conditions are prison-like is not just our opinion, but also that of a body of the United Nations itself – the UN Working Group on Arbitrary Detention.

In two separate opinions, the Working Group found the conditions prison-like and thus in violation of the ICCPR, Articles 9 and 10. As the Working Group wrote:

The conditions in Camp Liberty are synonymous with those in a detention centre, as residents have no freedom of movement, nor interaction with the outside world, nor do they have freedom of movement and the semblance of a free life within the Camp. The situation of the residents of Camp Liberty is tantamount to that of detainees or prisoners.

The Working Group considers that there is no legal justification for holding the above-mentioned persons and other individuals in Camp Liberty, and that such detention is not in conformity with the standards and principles of international human rights law, and more specifically violates article 9 of the Universal Declaration of Human Rights and articles 9 and 10 of the International Covenant on Civil and Political Rights.³¹²

³¹¹ *UNHCR Guidelines*, *supra* note 146 at Guideline 9.5.

³¹² *Opinion No. 16/2012*, *supra* note 196 at ¶ 16; and *Opinion No. 32/2012*, *supra* note 196 at ¶¶ 30-31.

Furthermore, the Working Group found that these conditions violate the Principles from the Working Group's *Deliberation No. 5 Regarding the Situation of Immigrants and Asylum Seekers* (Deliberation No. 5 Principles).³¹³ These Principles are virtually synonymous with UNHCR's Guidelines, the UN Body of Principles, the UN Minimum Rules of Treatment, and the protections afforded by the ICCPR.³¹⁴ As the Working Group stated:

The deprivation of the camp residents' freedom...violates the guarantees under Deliberation No. 5 of the Working Group. Where the Working Group determines whether the custody of an asylum-seeker is arbitrary, there is also an assessment of whether certain due process guarantees contained in Deliberation No. 5 have been met. Asylum-seekers in custody should be brought before a judicial authority.³¹⁵ [...]

The Working Group recalls that in its resolution 1997/50, the Commission on Human Rights requested the Working Group to devote all necessary attention to reports concerning the situation of asylum-seekers allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy.³¹⁶

The Working Group reiterates that in order to determine the arbitrary character or otherwise of the custody of an asylum seeker, it considers whether or not the person is able to enjoy, *inter alia*, the following guarantees: (a) to be entitled to have the decision involving administrative custody reviewed by a higher court or an equivalent competent, independent and impartial body; (b) to have possibility of communicating by an effective medium such as the telephone, fax or electronic mail, from the place of custody, in particular with a lawyer and relatives; (c) to be assisted by counsel both through visits in the place of custody and at any hearing; (d) to have possibility to benefit from alternatives to administrative custody...³¹⁷

In the case under consideration, none of the aforementioned guarantees are met by the authorities, which leads the Working Group to conclude that the custody of these individuals is arbitrary³¹⁸

By not insisting that the Iraqi Government abide by UNHCR Guidelines, UNHCR is complicit in the human rights abuses being carried out against the Residents. As Mr. Boumedra

³¹³ UN Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, 28 December 1999, E/CN.4/2000/4.

³¹⁴ See *supra* sections II(A)(4); II(B)(1)-(3) (discussing these various sets of standards, guidelines, rules, and laws all of which offer the following protections: the detention must be authorized by law; the detainee must be able to challenge the detention; the detainee must be able to access and communicate with legal counsel; the detainee must have access to a complaint mechanism; the detainee must be able to communicate with the outside world; the detainee must be able to visit with family members; the detainee must have access to medical treatment; the detainee must have access to basic life necessities; and the detainee must have access to proper accommodations).

³¹⁵ *Opinion No. 32/2012, supra* note 196 at ¶ 25.

³¹⁶ *Opinion No. 32/2012, supra* note 196 at ¶ 33.

³¹⁷ *Opinion No. 32/2012, supra* note 196 at ¶ 34.

³¹⁸ *Opinion No. 32/2012, supra* note 196 at ¶ 35.

states:

UNHCR has turned a blind-eye to . . . [the] . . . egregious violations of its own promulgated guidelines and continued to visit Camp Liberty and conduct interviews of the Residents for refugee status. Surely given the desperation of the Iraqi Government to get the Residents out of Iraq, UNHCR and UNAMI had substantial leverage to press the Iraqi Government to abide by the Guidelines. Yet, instead of protecting the fundamental human rights and freedoms of the residents, both agencies decided to forgo any criticism of the Iraqi Government and just do its bidding. Such actions by UNCHR undermine its moral authority and credibility.³¹⁹

Indeed, if UNHCR is willing to forgo its own Guidelines in a situation in which its own staff are playing an indisputably essential function – the processing of applications for asylum – then how can it ever insist, let alone request, that governments around the world abide by these Guidelines in their own conduct where UNHCR is not engaged.

C. Complicity in Forced Transfer and Ignoring Opinions of UN Working Group on Arbitrary Detention; Refusal to Conduct Group Determination of Refugee Status; Refusal to Assist Residents in Obtaining Their Property or Compensation for Its Value

Both the Residents and Mr. Boumedra³²⁰ maintain that the relocation from Ashraf to Liberty was not voluntary but rather forced. As discussed above,³²¹ the forcible transfer of a population is illegal under international law. By forcing the Residents to move, the Iraqi Government violated its obligations under the ICCPR. Furthermore, the Residents were given protected status as civilians under the Fourth Geneva Convention.³²² Because the present Iraqi Government derivatively received responsibility for the Residents’ protection from Coalition Forces, the Iraqi Government is responsible for the Residents’ safety. By not offering this protection, the Iraqi Government breached its obligations under the Geneva Convention. Worse, because it forced the Residents to move, it also violated customary international law even though Iraq is not a party to the Rome Statute. For a forced transfer of population to constitute a crime against humanity it must be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Given that the Iraqi Government indicated its intent to expel the Residents from Iraq through use of force under the threat of physically eradicating the group³²³—and thereafter twice attacked the Residents in Camp Ashraf with this goal in mind—the subsequent forced relocation from Ashraf to Liberty was merely a continuation of the same illegal behavior and thus constitutes a crime against humanity. By allowing the Iraqi government to engage in this forced transfer, UNAMI and UNCHR are complicit in this illegal action.

³¹⁹ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 26.

³²⁰ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 4.

³²¹ See *supra* section II(B)(1)(c)

³²² See *supra* note 46

³²³ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶ 2.

The Working Group issued its two opinions on Camp Liberty on May 4 and August 30 of last year.³²⁴ Despite warnings from the Special Procedures of the UN Human Rights Council that Iraq—and by extension UNAMI and UNHCR—was engaging in human rights violations, the behavior of UNHCR has not changed. UNHCR did not insist Iraqi abide by UNHCR Guidelines; it hasn't insisted that the Residents be able to come and go from Camp Liberty as they pleased; nor has it worked to process the Resident's refugee/asylum applications more expeditiously.

As stated above, in instances where an entire group has been displaced under circumstances where members of the group individually can be considered refugees, the need to provide assistance is extremely urgent, and for purely practical reasons it is not possible to carry out an individual determination of refugee status for each member of the group, UNHCR procedures allow for a group determination of refugees status.³²⁵

Although UNHCR has not insisted Iraq follow UNHCR Guidelines, UNHCR is well aware of the desperate conditions under which the Residents are living. It knows that the Residents are a forcibly displaced group; it knows that the camp conditions do not provide any due process protection, freedom of movement, or adequate living standards; and it knows of the threat of attack to the camp and therefore the need to get the Residents relocated as quickly as possible.

Moreover, as Mr. Boumedra indicates, if UNHCR was able to process the large number of PKK individuals within three-months time, and to designate them as a group in order to facilitate this,³²⁶ there is no reason why UNHCR cannot do the same for Residents of Ashraf and Liberty.

Yet, for inexplicable reasons, UNHCR has refused to speak up, delayed, and refused to process the Residents as a group. These delays are not only unnecessary and in contravention of UNHCR Guidelines, they have and may well continue to cause the direct loss of life and serious injuries to Camp Residents.

Beyond UNAMI and UNHCR's unwillingness to take actions to preserve the lives of the Residents, it has also refused any efforts to insist the Government of Iraq abide by the Pinheiro Principles, which require the Residents to be "compensated for any housing, land and/or property that is factually impossible to restore."³²⁷

IV. Consequences of International Law Violations by United Nations

The improper conduct by UNAMI and UNHCR has resulted in abhorrent conditions for the Residents. Camp Liberty has been hit by rocket attacks three times this year, resulting in 11 deaths and scores of injured individuals. Despite this security vulnerability, the Iraqi Government, UNAMI, and UNHCR have not made any effort to enhance the safety of the

³²⁴ *Supra* note 196.

³²⁵ *See supra* section II(A)(5)

³²⁶ Affidavit of Mr. Tahar Boumedra, *supra* note 88 at ¶¶ 29, 30.

³²⁷ *See* Pinheiro Principles, *supra* note 286 at Principle 2.

Residents. All requests by the Residents for materials to fortify the camp have been ignored. The Residents have repeatedly asked the Iraqi Government for bunkers, sandbags, bulletproof vests, and helmets to be brought into Camp Liberty. However, the Iraqi Government has consistently denied these requests and obstructed efforts by the Residents to procure the safety materials themselves.

UNHCR's *Manual on Security of Persons of Concern*³²⁸ indicates that when confronted with a vulnerable population, UNCHR's primary aim is "securing the safety and security of persons of concern" [which] "is a responsibility shared by all UNHCR staff, operational partners and the wider UN community."³²⁹ Furthermore, the Manual dictates that in the instance of an attack on a camp, UNCHR should "evaluate the case for relocating the people most directly affected or the entire camp population."³³⁰ And in cases where the "host government is unable or unwilling to provide adequate security and cannot guarantee the safety and welfare of persons of concern,"³³¹ UNHCR should "consider the merits of relocating the camp or settlement population."³³² Furthermore, UNHCR should "conduct a needs assessment to plan for replacement of damaged or looted goods and assets"³³³ and engage in preventative actions by "[involving] persons of concern in discussions on the possible sources of attacks, and steps that can be taken to respond to them"³³⁴ and advocating "in favour of vigorous investigation and criminal prosecution of those responsible for attacks on persons of concern."³³⁵ The above actions should occur because "attacks on camps and settlements represent a serious crisis, even a breakdown of protection. The re-establishment of a peaceful and secure environment for persons of concern has to be UNHCR's primary objective."³³⁶ Finally, the Manual notes "persons of concern should be settled at a reasonable distance from international borders or potentially sensitive areas, such as military installations."³³⁷

Yet, thus far no efforts have been made to return the Residents to Ashraf, which would provide a safer environment in which to process the refugee applications given its better infrastructure, security fortifications, and much more spread out living conditions. At this point the Residents chief concern is their safety and security because they live in fear of another attack that could occur at any moment and result in additional injuries and/or deaths. Meanwhile, the daily living conditions discussed above³³⁸—which are nothing short of cruel, inhuman, and degrading treatment—remain intolerable. These circumstances are exacerbated by UNHCR's delays in processing which has the attendant result of delaying the resettling of the Residents to third countries. **UNHCR must therefore start acting pursuant to its mandate and guidelines**

³²⁸ UN High Commissioner for Refugees, *UNHCR Manual on Security of Persons of Concern*, November 2011, <http://www.refworld.org/docid/4f6313032.html> (emphasis added) [hereinafter *UNHCR Manual on Security*]

³²⁹ *UNHCR Manual on Security*, *supra* note 328 at 11 (emphasis added).

³³⁰ *UNHCR Manual on Security*, *supra* note 328 at Section 1.7 (p 60) (emphasis added).

³³¹ *UNHCR Manual on Security*, *supra* note 328 at Section 1.7 (p 61) (emphasis added).

³³² *UNHCR Manual on Security*, *supra* note 328 at Section 1.7 (p 61) (emphasis added).

³³³ *UNHCR Manual on Security*, *supra* note 328 at Section 1.7 (p 60) (emphasis added).

³³⁴ *UNHCR Manual on Security*, *supra* note 328 at Section 1.7 (p 61) (emphasis added).

³³⁵ *UNHCR Manual on Security*, *supra* note 328 at Section 1.7 (p 61) (emphasis added).

³³⁶ *UNHCR Manual on Security*, *supra* note 328 at Section 1.7 (p 57) (emphasis added).

³³⁷ *UNHCR Manual on Security*, *supra* note 328 at Section 2.2 (p 220) (emphasis added).

³³⁸ See *supra* section I(F).

and protect the Residents from further harm. Furthermore, it must initiate an investigation into why the attacks occurred and help the Residents recover the value of their damaged goods.

V. Proposed Remedies

Given the ongoing human rights violations and safety risks that the Residents are enduring, we respectfully request that the UN engage in the below remedies in order to alleviate the Residents' suffering:

- A. Operating under its Chapter VII authority as it renews UNAMI's mandate, the Security Council should require the immediate return of Camp Liberty Residents to Camp Ashraf and designate Camp Ashraf as a UN-Flagged Refugee Camp under UNHCR control.

Given that Liberty lacks the appropriate conditions for daily living/refugee processing, and the proper security fortifications that would allow for a safe haven from outside rocket attacks, the Residents should be moved back to Camp Ashraf immediately. Furthermore, given the Iraqi Government's inability and unwillingness to provide for safety in either camp, Camp Ashraf should be designated as a UN refugee camp and the administration, security, and control of Ashraf should be overseen exclusively by the UN. This is the only way to ensure the safety and security of the Residents until they are resettled. Such a move is also required by the UNHCR Manual on Security of Person of Concerns, which notes that "persons of concern should be settled at a reasonable distance from international borders or potentially sensitive areas, such as military installations."³³⁹

Operating under its Chapter VII authority as it renews UNAMI's mandate and unless it receives Iraq's agreement to move the Residents back to Camp Ashraf, the Security Council should include the following language in its perambulatory and operative clauses of the upcoming resolution:

Expressing deep concern at the situation of the residents of Camps Liberty and Ashraf, including their ongoing detention in violation of the of the opinions of the UN Working Group on Arbitrary Detention (No. 16/2012 and No. 32/2012);

...

The Residents of Camp Liberty should be transferred to Camp Ashraf, which will be operated by the Office of the UN High Commissioner for Refugees as a UN-flagged refugee camp.

- B. Secretary-General Ban Ki-moon should initiate a thorough personnel investigation into SRSG's alleged misconduct.

³³⁹ UNHCR Manual on Security, *supra* note 328 at Section 2.2 (p 220).

The conduct by SRSK Kobler as reported by Mr. Boumedra and the Residents falls well below that which is required of UN staff. In his sworn affidavit, Mr. Boumedra offers his firsthand knowledge of SRSK Kobler's improprieties; and Mr. Boumedra has reported this illicit behavior per UN staff rules. Mr. Boumedra's public pronouncements, along with his sworn affidavit, should therefore prompt the UN to investigate SRSK Kobler's alleged misconduct. Mr. Boumedra's affidavit should be given substantial evidential weight given he implicitly acknowledges his own complicity in misconduct ordered by SRSK Kobler. Such an investigation should occur even though SRSK Kobler will be leaving Iraq in July to serve in the Democratic Republic of Congo.³⁴⁰

- C. UNCHR should make a group determination and recognizes all residents as refugees to reduce the security threat against them.

Given that all the Residents are similarly situated—they all have been forcibly displaced and live with a fear of persecution from Iran, and they all need to be processed urgently given the camp conditions and security threats—UNHCR should expedite their processing by pursuing a group refugee status determination.

- D. The UN High Commissioner for Human Rights should initiate an independent and impartial investigation into the United Nation's handling of the situation of Camp Liberty and Camp Ashraf Residents.

Given the serious and extensive nature of the UN's misconduct, High Commissioner for Human Rights Navanethem Pillay should initiate and carry out an investigation into the alleged misconduct by both UNAMI and UNHCR. The investigation should be independent, impartial, swift, and thorough. The High Commissioner for Human Rights has been described as the "conscience for the world." It is clear when UN Member States violate the human rights of residents in its territories the range of treaties and special procedures that are applicable to any given situation. But when the United Nations itself commits human rights abuses or is complicit in their commission, the High Commissioner who "represents the world's commitment to universal ideals of human dignity," must take action and hold the organization to its highest values.³⁴¹

- E. UNAMI and UNHCR should insist that the Government of Iraq abide by the *UN Principles on House and Property Restitution for Refugees and Displaced Persons*, which require that displaced persons be compensated for any housing, land, and/or property that is impossible to restore.

As has been detailed substantially in this petition, the Residents have lost substantial housing, land, and/or property that the Government of Iraq has refused to allow it to keep or otherwise sell. It is incumbent on UNAMI and UNHCR to insist that the Government of Iraq pay the Residents for any housing, land, and/or property that cannot be restored to them.

³⁴⁰ *U.N. Chief Appoints Germany's Martin Kobler as Congo Envoy*, REUTERS, Jun. 10, 2013.

³⁴¹ *Who We Are*, UN High Commissioner for Human Rights, available at <http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx>

- F. Upon completion of relevant investigation(s), the United Nations should provide just compensation to those killed or injured as a result of any misconduct by UN personnel; and those individuals found responsible of any misconduct must be held personally accountable.

Any misconduct that is discovered as a result of the investigation should then form the basis of a just compensation package to be given to the Residents whose family members have been harmed or killed as a result of UN misconduct. And those responsible for the misconduct must be held accountable.

Submitted By:

Jared Genser and Chris Fletcher



1146 19th Street, NW, Suite 500
Washington, D.C. 20036
+1 (202) 466-3069
info@perseus-strategies.com

Appendix – Affidavit of Tahar Boumedra, Former Chief of Human Rights Office of UNAMI and Advisor to the Special Representative of the UN Secretary-General

AFFIDAVIT OF MR. TAHAR BOUMEDRA

I, Tahar Boumedra, an Algerian citizen born in 1952 in Algeria, held the position of Chief of the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI) for the period January 2009 – June 2010 and Adviser to the Special Representative of the United Nations Secretary-General (SRSG) from July 2010 until I resigned on May 5, 2012. I hereby put on record the following, based on my personal experience as the lead person on Camp Ashraf and related issues.

INTRODUCTION

1. In my capacity of Chief of the Human Rights Office of UNAMI and Advisor to the SRSG, it was my task to monitor the human rights and the humanitarian situation of 3,400 Iranian exiles that have made their home north of Baghdad since 1986 at a place called Camp Ashraf (hereinafter referred to as Residents). Until assuming my position in Iraq, I had never had any contact with the National Council of Resistance of Iran (NCRI), Mujahedin-e Khalq (MEK/PMOI), or any of its members.
2. In a declaration made public on June 17, 2008, the Government of Iraqi (GOI) decided to put an end to the Residents' presence in Iraq by closing Camp Ashraf, the place where they lived for the past 26 years, and expelling them from Iraq under the threat of physically eradicating the group. UNAMI, without involving or consulting the population concerned, negotiated a plan for their temporary relocation to a former US military facility near Baghdad International Airport called Camp Liberty (Camp Hurriya in Arabic), with the purported objective of conducting refugee-status determination for possible resettlement in third countries.
3. To implement this plan, UNAMI, led by SRSG Martin Kobler, has engaged in a series of actions that resulted in serious human rights abuses being committed against the Residents of Camp Ashraf and Camp Liberty. SRSG Kobler, while describing himself as impartial facilitator, took it upon himself to facilitate the implementation of Prime Minister al-Maliki's decision to close down Camp Ashraf. The plan was prepared with the declared intention to resettle the Ashraf Residents in third countries. In reality the plan's goal was to break the resolve of the Ashraf Residents and thus undermine their ability to remain as an organized opposition group. Prime Minister al-Maliki's presumed that once the group was disbanded, the Residents would give up and voluntarily return to Iran where they would be arrested.
4. To achieve this objective SRSG Kobler led a campaign of disinformation and doctored reports about Camps Ashraf and Liberty. As the Residents moved from Ashraf to Liberty, SRSG Kobler reported this as a voluntary relocation when in fact it was a forced eviction. In the process, he instructed UNAMI staff to put in place a strategy that vilified the Ashraf Residents by labeling them as a terrorist group while presenting the GOI as a government that respects its international human rights and humanitarian obligations. As a senior Human Rights Officer, and as a matter of conscience, I refused to continue to be part of this process that violated the fundamental human rights of the Residents and I

resigned from my position on May 5, 2012. I believed that SRSG Kobler's actions have been incompatible with the values enshrined in the UN Charter, the Universal Declaration of Human Rights, the United Nations Covenant on Civil and Political Rights and the UNHCR mandate and its existing standard books. According to the UN Personnel Rules and Regulations, it is my duty to report any wrongdoing of my supervisor. When I did so, however, the UN system turned a blind eye and did nothing to intervene. I am now left with no choice but to pursue my moral obligation not only to distance myself from UNAMI's actions in this matter, but also to denounce them. I deeply regret any role I played by association in implementing SRSG Kobler's plan and strategies and hope that by revealing the truth, under oath, the United Nations and the international community will take the necessary actions to expedite the safe resettlement of former Camp Ashraf residents to third countries and provide them immediate protection in Iraq, and thereby restore integrity to the UN.

ASHRAF RESIDENTS SUBJECTED TO A SERIES OF HUMAN RIGHTS VIOLATIONS BY THE GOI WITH UN COMPLICITY

5. The fundamental rights of the Residents have been systematically denied by the Iraqi government at the direction of the Iraqi Prime Minister's office, namely:
 - The right to life: extra-judicial executions of Ashraf Residents took place July 28 and 29, 2009, and April 8, 2011. 47 people were killed and others succumbed to their wounds later due to a lack of medical assistance.
 - Liberty and security of the person: from 2009 onwards, Ashraf Residents were blockaded and constantly harassed and humiliated by organized mobs driven to the proximity of the Camp by the Iraqi army.
 - The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment: from February 2009 until December 2011, Camp Ashraf was subjected to collective punishment by the installation of 300 loudspeakers blaring profanities and threats day and night. The embargo and restrictions on supplies of goods and services since 2009 caused immense suffering, particularly to the most vulnerable, the sick, and wounded.
 - Freedom from arbitrary arrest or detention: 36 Ashraf Residents were arrested during the July 2009 attack and were detained without the due process of law, despite a decision from al-Khalis court in Diyala Governorate to release them from detention. There exist at present roughly 200 arrest warrants against Residents of Ashraf issued on order of the Prime Minister's Office.
 - Access to justice and full equality to a fair and public hearing by an independent and impartial tribunal: the Iraqi police in Camp Ashraf refused to record complaints against mobs surrounding the Camp which had prevented Ashraf Residents from taking their complaints to court. The judiciary in Iraq had proven that it has no independence when dealing with Ashraf related matters because the judiciary is subordinated to the executive. In December 2010, Judge Kazim al-Aboudi appeared on an Iraqi public TV station and—without any investigation, charges or court proceedings—condemned Ashraf Residents for the crime of terrorism.

- Access to a lawyer of one's choice: Lawyers are banned from visiting Camp Ashraf and now Camp Liberty. International lawyers are refused accreditation to represent Ashraf residents and their interests. The example of Senator Robert Torricelli and Professor Steven M. Schneebaum who visited Baghdad to represent the interests of Ashraf Residents in January 2013 but were refused entry and access is an illustrative example.
 - The right to be presumed innocent until proved guilty according to law in a public trial at which s/he has had all the guarantees necessary for his/her defense: For example, the statement by Judge Kazim al-Aboudi mentioned above. Additionally, the general perception disseminated by the UN staff to the effect that the Residents are a terrorist group despite the fact that they were cleared by different courts of law in different countries including Canada, the European Union, the United Kingdom, and the United States.
 - The right to be free from unlawful attacks on honour and reputation: The Iraqi authorities installed loudspeakers in Ashraf for a period of nearly three years which they used to blare defamatory messages to the Residents, particularly to Ashraf women.
 - The right to freedom of movement and residence within the borders of each state: From 2009 forward (when Ashraf came under control of the Iraqi Government), freedom of movement has been denied to Ashraf Residents without due process of law. This freedom has been denied even for humanitarian purposes such as travel for medical reasons.
 - Access to humanitarian necessities such as food, water, public utilities and medical services: I monitored the embargo imposed by the Iraqi Government on the Residents for more than 3 years. Ashraf Residents were denied access to the Iraqi market and were forced to get supplies from Kuwait at a higher cost than they would have paid if they had access to the local markets. Access to water, fuel and electricity were severely restricted. Restrictions on access to medical services caused a number of deaths among the Residents.
 - The right to seek and to enjoy asylum. Ashraf Residents are all registered asylum-seekers. The stigma of terrorism attached to them and disseminated by the UN, has become a challenge to the UNHCR refugee status determination process, which is delaying their departure and resettlement in other countries.
6. These violations are the result of the pressure exercised by the Iranian Government and also the product of a biased environment against Camp Ashraf and now Camp Liberty Residents. From the very first day the Iraqi Government took over control of Camp Ashraf in 2009, it started implementing a policy to make the life of the population of Ashraf “unbearable” in the belief that this would break their will and resolve and push them to return individually to Iran in desperation. The Iraqi Government, without respect for the due process of law, presumed Ashraf Residents were guilty of terrorism and took measures to effectively detain and deprive them from any contact with the outside world. The Government made it a crime punishable under the anti-terrorist law for any person or organization to establish contact with the Residents or assist them in any manner. This resulted in the banning of visits to Ashraf by journalists, NGOs, parliamentarians, and diplomats. The Iraqi Government also announced from the beginning that it would

terminate the presence of the Ashraf Residents from Iraq through the closure of Camp Ashraf and relocation to another location pending their departure from Iraq. Camp Liberty, a military zone, was the chosen location for this purpose.

7. In the first instance, the entire premise of relocating the residents was rotten to the core. The Iraqi Government was pressured by the Iranian government to crack-down on the Residents. Relocating them to a prison-like environment was the strategy designed to pressure them to leave Iraq. I participated in several meetings with Iraqi government officials and meetings with Iranian diplomats where this strategy was developed together with UNAMI and SRSG Kobler. That said, however, UNAMI's public position was that the residents needed to be relocated so there would be a neutral and secure environment where refugee determination status would be conducted. In reality, such a process could have easily been conducted at Camp Ashraf in fenced-off facilities that had been created by the United States when the Camp came under their control during 2003-2009.
8. The UN also exhibited undisguised bias against Camp Ashraf Residents. This initially included my own office. On my arrival to UNAMI I was brief on Ashraf file and was warned that the residents were a bunch of terrorists. It was only by working with the Residents over the years that I realized I was misled. This UN bias was also projected outward toward the international community. UNAMI periodically briefed members of the diplomatic community (e.g., the diplomats accredited in Baghdad) about Camp Ashraf to reinforce the perception that the Residents are terrorists.
9. This UN bias took many forms. One of the most egregious examples of bias was diluting the language used to describe the attacks on Ashraf. In 2009 and 2011, Iraqi forces attacked the unarmed Ashraf Residents. After each attack, my task was to conduct the body count and to undertake fact-finding. The April 2011 raid, which took 36 lives and caused hundreds of injuries, was a massacre in which men and women alike were crushed to death by military vehicles or killed by bullets at close range.
10. In both incidents I reported the facts and characterized what had occurred as "attacks." However, UNAMI cleansed my language and attenuated my description; instead of calling them "attacks" the UN referred to "confrontations." Instead of "extrajudicial killing" the UN used "excessive use of force."
11. Moreover, when the Office of the High Commissioner for Human Rights and UNAMI called for an independent commission of inquiry, the Iraqi Government refused. My repeated efforts to send several wounded Residents to Iraqi specialized hospitals were blocked by the Iraqi authorities, and some of them eventually died of their injuries. In the face of this inhumane conduct, UNAMI routinely underscored in its periodic human rights reports that the GOI has achieved some gains in the field of promotion and protection of human rights and had met its international obligations in the treatment of Ashraf Residents. These UNAMI observations are nothing more than a reproduction of the GOI's own statements. Calls for independent inquiries into the massacres committed against the defenseless Residents have never been followed through. On the contrary, UNAMI does not encourage reviving calls for investigation of matters that have fallen

out of public attention. Consequently, the calls for an independent commission of inquiry to investigate the attacks against Camp Ashraf never materialized and impunity has prevailed under UN supervision.

12. UNAMI's conduct at all levels perpetuated the stigma against Camp Ashraf Residents by ignoring a fundamental principle of justice, that of the presumption of innocence. UNAMI's job is to help protect fundamental human rights for all people within Iraq without discrimination as to race, ethnicity, nationality, religion, or political belief. In the first place, it should be the organization that upholds the presumption of innocence until one is proven guilty by a competent court of law. In the case of Camp Ashraf, however, the UN reversed this fundamental principal. It dealt with the Residents on the presumption that they are terrorists.

RELOCATION OF RESIDENTS FROM CAMP ASHRAF TO CAMP LIBERTY

13. In December 2011, SRSG Kobler was eager to declare Camp Liberty compliant with the humanitarian norms and standards and ready to accommodate the Ashraf Residents. Between November 2011 and January 2012, I made several visits to inspect Camp Liberty. I reported to SRSG Kobler clearly and unequivocally that it was not fit to accommodate 3,400 men and women. Camp Liberty was a former American military base designed as a dormitory for the US soldiers. Following the departure of the US Forces from Iraq, the camp was vandalized and looted by Iraqi soldiers and fell into disuse. The camp needed substantial work including the removal of waste, cleaning, fitting with basic furniture and bedding. Electricity and water utilities were not functional. Sewage systems needed servicing. Safety checks needed to be completed once utilities were working. There were also considerable safety issues. Getting through the checkpoints to reach Camp Liberty was a serious challenge to both UN and UNHCR staff, let alone the contractors the Residents wanted to hire to complete repairs. Given that the Residents were intending to use contractors for the purpose of making essential repairs and delivering goods, the checkpoints were likely going to create serious problems. In addition outdoor communal toilets were at a distance from the sleeping areas and would represent a challenge to the elderly, disabled, or sick. There was no outdoor lighting thus making it difficult to navigate the camp at night. Doors could only be locked from the outside. The dining facility was a long distance from the living areas, again making it difficult for the elderly, sick, and disabled, not least because the journey entailed crossing a main road via a yet-to-be-installed bridge. The dining facility and the kitchen had clearly been looted and vandalized and needed to be checked by professionals for repair. The camp was circled with T-walls with barbed wire on the top and spying cameras all along the wall which would later be used to control and restrict the movement of the Residents while the internal T-wall designed to protect the cabins were removed as the Residents were being relocated from Ashraf to Liberty, thus greatly reducing their safety. The area allocated for accommodation was about half a square kilometer for a population of 3,200 persons. The high density of the Camp's population and the absence of any shelter made the camp highly vulnerable to mortar attacks. SRSG Kobler personally visited Camp Liberty and saw these realities. Yet, he decided the place was suitable to accommodate Ashraf population.

14. When I protested, SRSG Kobler told me that I needed to be more positive. I know from other experience that reporting negatively is not something that is appreciated by the UN hierarchy. I asked how it was possible to be more positive. He told me to emphasize the positive elements of the situation and minimize the importance of the negative issues. In short, he requested me to file inaccurate reports and misleading pictures about Camp Liberty.
15. In order to sell the idea of Camp Liberty positively, SRSG Kobler instructed UNAMI staff to take around 500 photographs at Camp Liberty, of which 20-30 of the least offensive were selected, and sent to the Residents' parent organization in Paris with the message that the new site would measure 40 square kilometers. When pressed on this in Paris, SRSG Kobler reduced the figure to 2.5 square kilometers. In reality, it was 0.6 square kilometers or 0.37 square miles. These pictures were meant first and foremost to convince the Ashraf Residents that the conditions in Camp Liberty were acceptable; and second, to convince the international community that the location met basic international humanitarian standards. Based on the false information they received from the SRSG Kobler, the Residents gave in to the demands to move out of Camp Ashraf and to temporarily relocate to Camp Liberty.
16. UNAMI also had to keep international attention away from certain realities such as the security situation of Camp Liberty. Toward this end, we carried out two assessments of Camp Liberty.
17. The first assessment evaluated the security of Camp Liberty. It highlighted the danger of the area and the vulnerability of Camp Liberty, particularly from aerial and missile attacks. But, this report was never made public. It was only used to request the UN HQ to reinforce the security of UNAMI staff engaged in the monitoring process; to minimize the danger for the UN staff, the UN authorized the recruitment of more Fijian soldiers and more UN security officers, but nothing was done to minimize the same danger for Camp Ashraf Residents.
18. The second report related to human rights and humanitarian standards of Liberty. The main consideration was trying to figure out how to convince the international community that Camp Liberty met international standards. An outside expert, Martin Zirn (of Swiss nationality) working for the UNHCR in Addis Ababa, Ethiopia, was hired to assess the camp conditions. He spent two weeks evaluating the environment and concluded that Camp Liberty did not meet minimum humanitarian standards required for asylum-seekers. Instead of saying to the Iraqis, "this is the expert assessment and the camp is not suitable," at SRSG Kobler's direction, UNAMI dismissed the report, and issued its own assessment without mentioning the independent report. UNAMI's report concluded that Camp Liberty met international standards despite UNAMI's knowledge that it did not. In doing so, SRSG Kobler misled the international community and the Residents alike into believing the standards were met so that the transfer process could proceed.

19. Why did SRSG Kolber and UNAMI behave this way? Following his own ambitions, SRSG Kobler's conduct satisfied a number of powerful interests. UN/UNAMI looked for Prime Minister al-Maliki's approval. Without such approval UNAMI's presence in Iraq could be terminated at will by al-Maliki (UN Security Council successive resolutions establishing the UNAMI mandate) and no one in the UN wishes this to happen. When Secretary-General Ban Ki-moon visited Baghdad in April 2012 during the Arab League summit, he thanked SRSG Kobler for having developed good relations with Prime Minister al-Maliki.
20. When Ashraf Residents began to move from Camp Ashraf to Camp Liberty the UN knew full well that Camp Liberty did not meet international humanitarian standards. However, the SRSG, to the satisfaction of a number of players, wanted to create a *fait accompli* and blame Ashraf Residents were things to go wrong for being too demanding. Throughout the process, I stood firm arguing that what SRSG Kobler was doing is a forced displacement in violation of the pertinent international law, UN rules and guidelines, and even common sense.
21. These events prompted my resignation because I am a human rights officer, not a politician. I was unwilling to compromise human rights for political expediency; I was unwilling to sacrifice the lives and well-being of the residents of Camp Ashraf and Camp Liberty so that certain governments could be satisfied.

CONDITIONS IN CAMP LIBERTY

22. From the first of several rounds of moves of groups of Ashraf Residents to Camp Liberty, the Residents complained about the living conditions in Camp Liberty. The Residents wrote to UNAMI, to the UN Headquarters, to the US and EU authorities, but to no avail. In reply SRSG Kobler went to Camp Liberty and told the Residents, "I live in a place like yours with T-walls." Of course there is a huge difference between SRSG Kobler's residence, the UN compound in the Green Zone, and Camp Liberty. The Green Zone itself has huge security arrangements in place. The UN living and working buildings are highly fortified. They have strong roofing that is rocket-proof and contains electronic devices for the detection of flying objects that give advance warning to take cover from incoming fire. The roofs within the UNAMI compound are reinforced with several layers of sandbags and steel, making it impossible for missiles to penetrate and reach within. Similarly, sandbags reinforce the walls of the containers. This security system prevents Rocket Propelled Grenades from penetrating the walls or roofs of the living quarters.
23. To hear SRSG Kobler compare his residence to Camp Liberty is absurd. Camp Liberty is in a hostile environment controlled and managed by hostile Iraqi officers. The living containers have soft skin and are not protected by sand bags; a soldier could hit it with one fist and break through. The roofs are not reinforced and there are no shelter places to take cover in case of a missile attack. The Iraqi authorities have vowed that they will not permit a mini Camp Ashraf to be reconstituted in Camp Liberty. They therefore banned any efforts to improve the living conditions in Camp Liberty. They even banned planting trees (which the Residents wanted for shade) and they banned any work aimed at

improving the Camp's infrastructure including paving roads to facilitate the movement of the disabled.

24. By far the worst problem is the high density of the population in half a square kilometer. This makes the population very vulnerable; if you were to throw a stone from outside the wall of the camp it would almost be guaranteed to hit somebody. It's so crowded, so dense.
25. The United Nations Working Group on Arbitrary Detention addressing complaints from some residents has found Camp Liberty equivalent to a prison. Indeed, since the Iraqi government took over Camp Ashraf on January 1, 2009, the residents of Camps Ashraf and Liberty have been held as prisoners, without charge, trial, or any due process of law. This is a flagrant violation of Iraq's obligations under the International Covenant on Civil and Political Rights, a convention Iraq has signed and ratified. SRSK Kobler, UNAMI, and UNHCR have not only failed to oppose the imprisonment of the Ashraf Residents, they in fact facilitated their ongoing imprisonment in Camp Liberty. This is not an overstatement. The MOU negotiated by SRSK Kobler with the Government of Iraq and signed on December 25, 2011, provides for the Iraqi government to "manage" what it refers to as "temporary transit locations," yet fails to provide any requirements for the fundamental rights and freedoms of the residents.
26. While UNAMI's complicity in the detention of the residents is perhaps unsurprising given SRSK Kobler's close collaboration with the Iraqi and Iranian Governments on the situation of the Residents, the role of UNHCR is especially troubling. UNHCR has had in place *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*. As noted by the UN Working Group on Arbitrary Detention, the Iraqi Government has violated the Working Group's guidelines related to the detention of asylum-seekers (the so-called Deliberation No. 5 Principals), which are virtually synonymous with UNHCR's Guidelines and those protections afforded by the ICCPR. Yet despite this fact, UNHCR has turned a blind-eye to these egregious violations of its own promulgated guidelines and continued to visit Camp Liberty and conduct interviews of the Residents for refugee status. Surely given the desperation of the Iraqi Government to get the Residents out of Iraq, UNHCR and UNAMI had substantial leverage to press the Iraqi Government to abide by the Guidelines. Yet, instead of protecting the fundamental human rights and freedoms of the residents, both agencies decided to forgo any criticism of the Iraqi Government and just do its bidding. Such actions by UNCHR undermine its moral authority and credibility.

REFUGEE PROCESSING

27. Prime Minister Al-Maliki, with Iran's encouragement, has continuously obstructed the UN mission of processing these exiles as refugees and placing them safely in third countries. Iraq would not let UNHCR conduct interviews at Camp Ashraf, although it had done so satisfactorily in the past. After the invasion of Iraq, the MEK organization informed its members in Camp Ashraf that those who could no longer tolerate the hardship imposed by the new Iraqi environment were free to leave. The US Forces in

Iraq interned those who left in a nearby center called the Temporary Internment and Protection Facility (TIPF) and called upon the UNHCR to determine their refugee status. The US Forces facilitated this process between 2004-2006. Interviews were conducted by telephone from Geneva and about 200 people were granted UNHCR refugee status. As to those who chose to remain in Ashraf, when they came under the control of the Iraqi Army in 2009, the Iraqi authorities refused to cooperate with them in planning their departure. Death threats in Farsi have been broadcast for 18 hours on most days through loudspeakers surrounding Camp Ashraf. About 200 arrest warrants for unspecified crimes allegedly committed in both Iran and Iraq were issued with no due process against Ashraf Residents. They were issued on orders from the Prime Minister's Office. The process of moving the Residents in 2012 from Camp Ashraf to Camp Liberty was coordinated, including dates and specific numbers, by SRSK Kobler together with the Iraqi National Security Advisor, Faleh Fayyadh and the Iranian Embassy in Baghdad. In fact, the SRSK was not coordinating; he was simple receiving instructions that he incorporated into his work plan. It happened that I attended most of these meetings and witnessed this first hand.

28. The agenda of Iraq and Iran towards the Residents is obvious. It is intended to break their resolve and morale, disband them as an organized group, and force their departure from Iraq. UNAMI never seriously tried to arrange for a third country to resettle the Ashraf Residents because SRSK Kobler believes that the option of their return to Iran is the best option. With over 3000 exiles at Camp Liberty to date the UN has already interviewed 2000, but to my knowledge very few people have so far been resettled outside Iraq. Whether foreign government officials involved in the relocation and processing of the exiles are aware of these realities I do not know; Ambassador Kobler is their interlocutor. Foreign officials, other than from the United Nations and a few consular officers, have been denied access to both Camp Ashraf and Camp Liberty.
29. What is baffling is that when we look around for solutions to this situation, there is the example of another displaced group in Iraq whose situation is similar to that of Ashraf Residents who received a totally different treatment by the Iraqi authorities and the UN. It is the case of the residents of Camp Makhmour in north Iraq, south of Ninawa Governorate. Camp Makhmour is a place of residence for 11,000 members and sympathizers of the Kurdistan Workers Party (PKK). The PKK is an armed group fighting Turkey. Members of this group carry arms openly. Yet this did not give UNHCR a reason for denying them refugee status. In the presence of goodwill and political expediency, within only three months UNHCR registered them, regularized their situation, and gave them travelling documents. The GOI gave them the right to move around in Iraq and the right to undertake income-generating activities. They were also given travel documents to go abroad for those who want to study or those who want to go as tourists, or whatever.
30. Contrast this to Camp Ashraf, a population that voluntarily renounced violence as an opposition group and gave up their weapons in 2003. This fact was verified by the American Forces before they granted them the protected person status under the Fourth Geneva Convention. The Iraqis searched the Camp twice for weapons and did not find

any. Now Ashraf residents are universally recognized as a civilian population. Camp Makhmour on the other hand is an armed group listed as a terrorist organization by the US, the EU member states and the United Nations. Regardless of the merit of the listing of the PKK as a terrorist group, I find these double standards in the treatment of asylum seekers highly questionable. In my interaction with the UNHCR in Baghdad, I often asked for an explanation to these double standards in the treatment of asylum seekers. The answer I usually received is that UNHCR does not deal with terrorist groups unless members defect from the group and apply individually for refugee status. Makhmour residents, however, did not defect from the PKK, did not apply individually for refugee status, and were not individually interviewed. They were considered a *prima facie* refugee group and were registered as such. When I asked the UNHCR to explain the difference, I was told the Iraqi Government wanted the UNHCR to deal with the PKK members in Iraq as refugees and so UNHCR acted accordingly. The UNHCR criteria for refugee-eligibility status remains an enigma to me.

31. Iraq's actions toward the Ashraf/Liberty Residents, which for years had been accorded a guest status comparable to a foreign sovereign establishment, violate the well-established principle that a change of government does not affect acquired rights without due process of law.
32. After I resigned from my position last summer I immediately warned both UNAMI and UNHCR, about the likelihood of a deadly attack on Camp Liberty and raised concern about the lack of minimum protection facilities in Camp Liberty. I told UNAMI and UNHCR they should bear the responsibility when such an attack occurs. My warning was dismissed and I was told, "not to worry." Since then, Camp Liberty has been hit twice by rockets during which 8 people were killed.
33. These defenseless Residents are facing intolerable abuses and dangers. The UN Secretary-General and willing governments need to establish conditions for their resettlement in third countries expeditiously and safely. Immediate action is needed to uphold their basic human rights, secure them from further threat of physical harm, and restore the UN's integrity.

CONCLUSION

34. SRSG Kobler and UNAMI have misled the United Nations, the international community and the Residents of Ashraf by providing cover for what would have been illegal actions of the GOI. By doctoring reports, SRSG Kobler has brought an immense amount of suffering to Ashraf Residents; he has failed them and exposed them to deadly danger. He has also discredited the UN's core values by helping a government persecute a vulnerable group of people despite their protected status under the Fourth Geneva Convention. I believe that those who participated in the displacement of Ashraf Residents must be held accountable for these transgressions, the negative effects that resulted, and the future harm that will surely occur unless this improper UN conduct is put to an end.

I make this statement and testify that it reflects to the best of my knowledge and experience the realities surrounding the events that lead to the relocation of the Ashraf Residents and the ensuing consequences on their safety and security.



(Signed) Tahar Boumedra

Date 29 May 2013