

INDEPENDENT REPORT ON THE EVENTS OF SEPTEMBER 1, 2013, AT CAMP ASHRAF, IRAQ

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Table of Contents

Executive Summary	4
I. EVENTS OF SEPTEMBER 1, 2013.....	7
A. Background on the Residents’ Presence in Camp Ashraf and Issues with Their Property Prior to the Assault.....	7
B. Statement of Facts Regarding the Massacre	9
1. Overview.....	9
Map #1: Camp Ashraf and its Immediate Surroundings	10
Map #2 Attackers’ Entry Routes.....	12
2. The Entry	12
Map #3: Execution Sites	16
3. The Attack.....	16
Picture #1: Execution Site in Clinic.....	17
Picture #2: Scene in Courtyard—Residents Handcuffed Prior to Execution	19
Map #4: Attackers’ Exit Route	20
4. The Retreat.....	20
Map #5: Property Damage Sites	22
C. Response of the Iranian and Iraqi Governments	23
1. Changing Public Claims by Iraq.....	23
2. Iran’s Public Praise of the Massacre	24
3. Iraq’s Abduction of Hostages	24
4. Culpability of Iraqi Government.....	25
D. Currents Demands by UN.....	26
E. International Standards for Independent Investigations	27
1. The Uniform Guidelines for Investigations	27
2. The Istanbul Protocol.....	28
3. UN Investigation Needed.....	30
II. BROKEN PROMISES – PAST COMMITMENTS TO RESIDENTS VIOLATED.....	30
A. Safety and Security	31
B. Property	31
III. VIOLATIONS OF INTERNATIONAL LAW.....	32
A. Crimes Against Humanity.....	32
1. Iraq’s Attack Against the Residents.....	34
2. The Massacre was Committed as Part of the Widespread and Systematic Attack.....	35
3. The Residents Are a Civilian Population.....	35
4. Iraq Participated in or Had Constructive Knowledge of the Massacre and the Context in Which the Massacre Took Place.....	35
5. The Specific Acts Committed During the Massacre Include 52 Murders and Torture Against the 42 Survivors.....	37
6. Other Prohibited Acts May Include Extermination, Forced Transfer, and Persecution on Political Grounds.....	37
B. International Covenant on Civil and Political Rights and Convention against Torture....	37
1. Right to Life – Article 6.....	38
2. Torture - ICCPR Article 7, 10 and CAT.....	39
3. Arbitrary Detention – Article 9.....	40

C. Fourth Geneva Convention	42
IV. BACKGROUND	42
A. Ashraf/Liberty.....	42
1. US Invasion.....	42
2. US Presence (2003-2009)	43
3. 2009 and 2011 Attacks on Ashraf.....	45
4. 2011 MOU	46
5. Move to Camp Liberty and Its Conditions	49
6. Communiqué from UNAMI to Residents Regarding Ashraf Property	52
7. Attacks on Camp Liberty.....	53
B. Past Attacks on Ashraf and Liberty.....	53
1. Response of UN	54
2. Lack of Any Investigation, Indictment, or Prosecution.....	55
3. Iraq Intransigence to Secure Camp Liberty	55
V. RECOMMENDATIONS	55
A. Securing the Release of the Hostages	55
B. Permanent Presence of UNAMI and UNHCR.....	55
C. Independent and Impartial UN Investigation.....	56
D. Use US Leverage to Provide the Residents Safety and Security	56
E. Expedited Group Determination of Refugee Status of Residents and Efforts to Resettle Abroad.....	56
Appendix I Abbreviations	58
Appendix II Letter from <i>Menschenrechtsverein Für Migranten</i> (Rights for Migrants).....	59
Appendix III Letter to Iraqi Ambassador.....	60
Appendix IV Phillips and Martin Statement.....	61
Appendix V Timeline of Major Events	63
Appendix VI List and Photos of Victims	65

Executive Summary

Under clear and sunny skies² at dawn on September 1, 2013, the Iraqi Government carried out or facilitated a massacre against a group of 101 asylum-seekers residing in Camp Ashraf, Iraq. At 5:15am, approximately 120 men (the Attackers) dressed in military uniforms and carrying AK-47s fitted with silencers and loaded with armor-piercing bullets, pistols, and explosives, engaged in a coordinated assault against Camp Ashraf. For two hours, the Attackers scoured the Camp, killing 52 and destroying millions of dollars in property. Every individual killed was shot in the head or neck, and many were handcuffed before being executed. The Attackers seized seven hostages—six women and one man—and forcibly transported them outside of the Camp, leaving behind a scene of destruction. Nearly two months later, after initially acknowledging its role in their abduction, the Government of Iraq now denies knowledge of the Hostages' whereabouts, although reports suggest that they have been moved to detention centers near Baghdad. The remaining 42 Residents managed to survive the attack by hiding or escaping.

The victims of the massacre were members of the People's Mojahedin Organization of Iran (PMOI), also known as the *Mujahedin-e Khalq* (MEK) (hereafter referred to as the Residents), an Iranian pro-democracy organization whose members have lived in Iraq for over 25 years. For most of this time, the Residents have primarily resided in Camp Ashraf; however, since last year most of them have been living in Camp Hurriya (Camp Liberty), a substandard prison camp close to Baghdad where the Iraqi Government forced them to relocate to undergo asylum processing. Based on an agreement reached between the United Nations Assistance Mission for Iraq (UNAMI) and the Government of Iraq (and with support of the US Government), 101 Residents had remained behind at Ashraf to address issues regarding the transfer and sale of property they had acquired over the past quarter-century.

Despite having been previously designated as “asylum-seekers” by the United Nations High Commissioner for Refugees (UNHCR) and as “protected persons” under the Fourth Geneva Convention by Coalition Forces during the 2003 Iraq War, the Residents have suffered numerous abuses at the hands of the Iraqi Government. This most recent attack is the fifth to occur in the past five years; of these five, the Iraqi Government has been directly involved in at least three.

According to independent media reports from CNN, Radio Free Europe/Radio Liberty, and Reuters, Iraqi government officials initially acknowledged the Government's involvement in the September 1 attack. Later it changed its story. However, both the evidence and applicable law indicate that the Government of Iraq is responsible. Not only was this massacre consistent with Iraq's two prior attacks against the Residents, but eyewitness testimony unequivocally puts Iraqi forces at the scene: Iraqi police moved blockades so that the Attackers could enter, the local police chief was present as the Attackers entered, and Iraqi police stood watch from the top of the local police headquarters, a mere 100 meters (328 feet) from the Camp's only entrance, as the Attackers made their way inside. In addition, the Attackers wore uniforms identical to those

² At 4:55am that morning in Baghdad, the temperature was 30 °C (86.0 °F), with clear skies, and a visibility of 9.97 kilometers (6.2 miles). See *Weather History for Baghdad, Iraq, September 1, 2013*, <http://www.wunderground.com/history/airport/KQTZ/2013/9/1/DailyHistory.html?&MR=1>.

worn by the Golden Division³, a Special Forces division of the Iraqi Government. This and other evidence led three former US military officials who at different times served as commanders of Camp Ashraf—Brigadier General (Ret.) David D. Phillips, Colonel (Ret.) Wesley Martin, and Colonel (Ret.) Thomas Cantwell—to conclude the massacre was carried out by Iraqi forces.⁴ Further, the sheer presence of Iraqi military and police forces spread around and inside the Camp, which were more than 1,200 in number, make it impossible that any rogue group of attackers could have entered Camp Ashraf without the knowledge, blessing, or direct authorization of the Iraqi Government. And even if none of this direct evidence existed, this was an Iraqi prison camp on Iraqi sovereign territory, and the Government of Iraq had exclusive jurisdiction and responsibility to protect these people.

This report, which is based on reliable evidence, confirms the direct involvement of the Government of Iraq in the attack. Beyond the changed story of the Iraqi Government, the report's authors have come across no evidence to suggest there was any other actor involved in the massacre other than the Iraqi Government. For this reason, there must be accountability. While the attack has been uniformly condemned by NGOs, parliamentarians, political dignitaries and human-rights advocates, neither the UN nor US have acknowledged the culpability of the Iraqi Government. Mere condemnation of a generic attack without reference to any perpetrator is not sufficient; the UN and US must break their silence and hold the Government of Iraq to account for its commission of these acts.

Based on the evidence, the Government of Iraq has committed numerous violations of international law. Violations include crimes against humanity under customary international law, which is binding on all states, and provisions of three treaties to which Iraq is a party—the International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Fourth Geneva Convention. Specifically, under customary international law, the acts of murder and torture constitute a crime against humanity. Iraq has also violated the Residents' right to life (ICCPR Article 6), the right to be free from torture (ICCPR Article 7, 10, and CAT), and the right to be free of arbitrary detention (ICCPR Article 9). As discussed below, Iraq's failure to protect the Residents, who were Protected Persons, is a breach of its obligations under the Fourth Geneva Convention.

In addition to this attack, the Government of Iraq has restricted the Residents' movements; arbitrarily detained them in Camps Ashraf and Liberty; restricted access to food, water, and life-saving medical treatment; and committed other acts of physical and psychological torture. All of these actions are in violation of international law, and contrary to at least two contractual agreements: (1) the US-Iraq Status of Forces Agreement between the US Government and the Government of Iraq, which transferred all responsibility for the safety and security of the Residents to the Government of Iraq in 2009, and (2) a Memorandum of

³ This division falls under the Ministry of Interior, which is accountable to Prime Minister Nuri al-Maliki.

⁴ See Appendix IV (in which Phillips and Martin state "...the assault was in fact done by Iraqi Special Forces brought in for the occasion"); see *infra* note 122 (Referencing Cantwell's oped in the Baltimore Sun, where he says the massacre was carried out "by the very troops we trained and to which we handed responsibility for protection of the camp"). None of these former US military officers were paid or compensated in any way to render their professional opinions.

Understanding between Iraq and UNAMI under which Iraq was to provide for the safety and security of the Residents, as monitored by the United Nations (UN). The issue of arbitrary detention was brought to the UN Working Group on Arbitrary Detention, a body of the UN Human Rights Council, which twice found the Government of Iraq to be acting in violation of its international legal obligations under the ICCPR.

Perseus Strategies was retained by *Menschenrechtsverein Für Migranten* (Rights for Migrants), a German non-governmental organization, to carry out an independent investigation into the massacre and to put the findings into this report. The facts presented here were gathered from individual interviews conducted with all 42 survivors of the massacre (who have all since been moved to Camp Liberty), reports from credible news organizations, video evidence gathered from the Residents, including from many of the murdered Residents who were courageously filming the unfolding events before being killed, and consultations with three former US military commanders at Camp Ashraf. Perseus Strategies also contacted the Iraqi Ambassador to the United States to obtain information and understand the views of the Iraqi Government—the letter making this request can be found in Appendix III; however, the Government did not respond to the request for information.

It is clear that the Residents are not safe anywhere in Iraq, whether in Camp Ashraf or Camp Liberty. The purpose of this report is to explain to the international community what happened at Camp Ashraf on September 1, and to urge the UN, US, and broader international community to intervene to assist the Residents. Regardless of who carried out the attack, it is undisputed that 52 innocent people were executed and seven hostages were abducted. The perpetrators of these acts, including the Iraqi military and police guarding Camp Ashraf on September 1 must be held to account. Toward these ends, and given the ongoing violations of international human rights law described in this report, along with the Residents' lack of safety and security, we respectfully request the following measures be undertaken:

First, the UN and US should ensure the Government of Iraq release the Hostages and provide for their safe transport to Camp Liberty. Both the UN and US have legal and moral obligations for the protection of these Residents.

Second, the UN should uphold the written commitment made by the Secretary-General's former Special Representative to Iraq, Martin Kobler (SRSG Kobler), to provide a 24/7 presence of UN monitors in Camp Liberty as well as providing the Residents with protective measures to ensure their safety and security. Under the present mandate of UNAMI, it is authorized to provide physical security for the Camp. The US Government should also help ensure the Residents' safety and security, as it has previously stated it would in writing.

Third, the UN should conduct an independent and impartial investigation. Iraq has said it will conduct its own investigation, but it is clear from Iraq's past actions that it is not capable of independently investigating the facts, especially if the conclusion is self-incriminating. The US Government should support the UN investigation and take all required measures to help implement the UN's recommendations.

Fourth, the US Government should use its leverage to resolve the Residents' situation, ensuring the Hostages are released and all security measures are provided at Camp Liberty. This could include following US Senate Foreign Relations Committee Chairman Robert Menendez's recent suggestion that the US halt its arms sales to Iraq until "we get this [Ashraf and Liberty] situation in...place...[and ensure]...people's lives are saved."⁵

Fifth, the UN should expedite the process of resettling the Residents abroad by processing the Residents' applications for refugee status as a group. Given the breach of its written guarantees, the US Government has an obligation to accept a large number of the Residents as political refugees into the US.

I. EVENTS OF SEPTEMBER 1, 2013

A. Background on the Residents' Presence in Camp Ashraf and Issues with Their Property Prior to the Assault

The PMOI 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.⁶ 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-Khalis, approximately 80.46 km (50 miles) from Baghdad and 64.37 km (40 miles) west of the Iran-Iraq border. The city covers an area of approximately 36 sq. km (13.9 sq. mi).⁷ Until recently, as is detailed below in section IV, there were approximately 3,400 Residents in Camp Ashraf, of whom 1,000 were women. Residents of Camp Ashraf are Iranian citizens, and one-third of Camp Ashraf Residents were former political prisoners during the reign of Shah and current regime in Iran. There are also a large number of Iranian expatriates, educated in universities of Western countries, who joined the resistance movement.

After Operation Iraqi Freedom began in March 2003, Coalition Forces took control of Camp Ashraf following the Coalition Forces' bombing of the camp.⁸ Ashraf Residents, following the orders of their leaders,⁹ did not fire on Coalition Forces, nor did they resist in any way.¹⁰ After being vetted by seven US security agencies, the Residents of Camp Ashraf were then granted protected status as civilians under the Fourth Geneva Convention by Coalition

⁵ *Transcript of Exchange between Senior Senators and State's Top Official on Camp Ashraf and Camp Liberty*, Oct. 3, 2013, <http://www.usccar.org/2013/10/03/transcript-of-exchange-between-senior-senators-and-state%E2%80%99s-top-official-on-camp-ashraf-and-camp-liberty/> (during which Senator Menendez stated "And for one thing that this committee can do since it has jurisdiction over all weapons sales, is that I doubt very much that we are going to see any approval of any weapons sales to Iraq until we get this situation in a place in which people's lives are saved") [hereinafter *Senator Transcript*].

⁶ See Remarks by Prominent Lawyers, Iran Experts and Dignitaries, Washington Seminar, May 4, 2004. 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."

⁷ After the April 8, 2011 attack, Iraqi forces occupied and separated the northern third of Ashraf.

⁸ See Karl Vick, *In a Delicate Balancing Act, U.S. Woos Iranian Group in Iraq*, WASHINGTON POST, Nov. 9, 2003.

⁹ See *Patterns of Global Terrorism 2004*, U.S. Department of State, Apr. 2005 [hereinafter *Patterns – 2004*].

¹⁰ See Vick, *supra* note 8.

Forces.¹¹ Thereafter, US forces provided for their protection until February 20, 2009, when the Government of Iraq assumed security control over all detainees in Iraq pursuant to the US-Iraq Status of Forces Agreement (SOFA). The US Government repeatedly said it received “full assurances” from the Iraqi Government that the people of Camp Ashraf would continue to be protected. Despite such assurances, however, the Iraqi Government 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 in July 2009 and April 2011, which resulted in numerous deaths and scores of injured Camp Residents.

Following these deadly attacks, the Iraqi Government stated its intention to close Camp Ashraf by the end of 2011.¹² This prompted the international community, led by UNAMI and UNHCR, to work toward addressing the needs of Ashraf Residents within this timeframe. On September 13, 2011, after receiving applications from all Ashraf Residents for asylum, UNHCR declared the Residents to be “asylum seekers under international law,”¹³ which entitled them “to benefit from basic protection of their security and well-being.”¹⁴ In order for the Residents to be processed for asylum, however, the Iraqi Government declared that the Residents would first have to relocate to a new location, Camp Liberty.

On December 25, 2011, the Government of Iraq and SRSO Martin Kobler (on behalf of the UN), signed a Memorandum of Understanding (MOU)¹⁵ aimed at securing a humanitarian and peaceful resolution for the Residents of Camp Ashraf.¹⁶ The transfer of the Residents began in February 2012. Within six months, approximately 3,100 of the Residents moved from Camp Ashraf to Liberty. Approximately 100 Residents had remained behind at Ashraf to address issues with their property; this was based on a mutual agreement¹⁷ between UNAMI and the Government of Iraq, with support of the US, in which the protection of the Residents was guaranteed. The MOU and reassurances from UNAMI and SRSO Martin Kobler¹⁸ guaranteed the Residents the ability to transfer to Camp Liberty their property, valuable possessions which they had acquired over the course of a quarter-century living in Iraq. However, most attempts to bring property (including, *inter alia*, hundreds of cars, forklifts, mobile phones, personal computers, and mobile air conditioning units) were denied, as were the Residents’ requests to be

¹¹ 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*].

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

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

¹⁴ *UNHCR Refugee Status Claims*, *supra* note 13.

¹⁵ See Section IV(A)(4) *infra* for more info.

¹⁶ *UNHCR Refugee Status Claims*, *supra* note 13.

¹⁷ See Section IV(A)(6) *infra* for more info.

¹⁸ 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 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”) [hereinafter *Joint Written Statement*].

able to sell property left behind for market-value compensation and to purchase new items to be used at Camp Liberty.

B. Statement of Facts Regarding the Massacre

1. Overview

Before discussing the specific events of September 1, 2013, it is important to understand the sheer magnitude of Iraqi military and police presence in the Camp Ashraf area. Within an 81 sq. km (31 sq. mi) area, there were more than 1,200¹⁹ Iraqi forces based at headquarters, stations, and guard posts surrounding and within Camp Ashraf.

From the Iraqi army, there are:

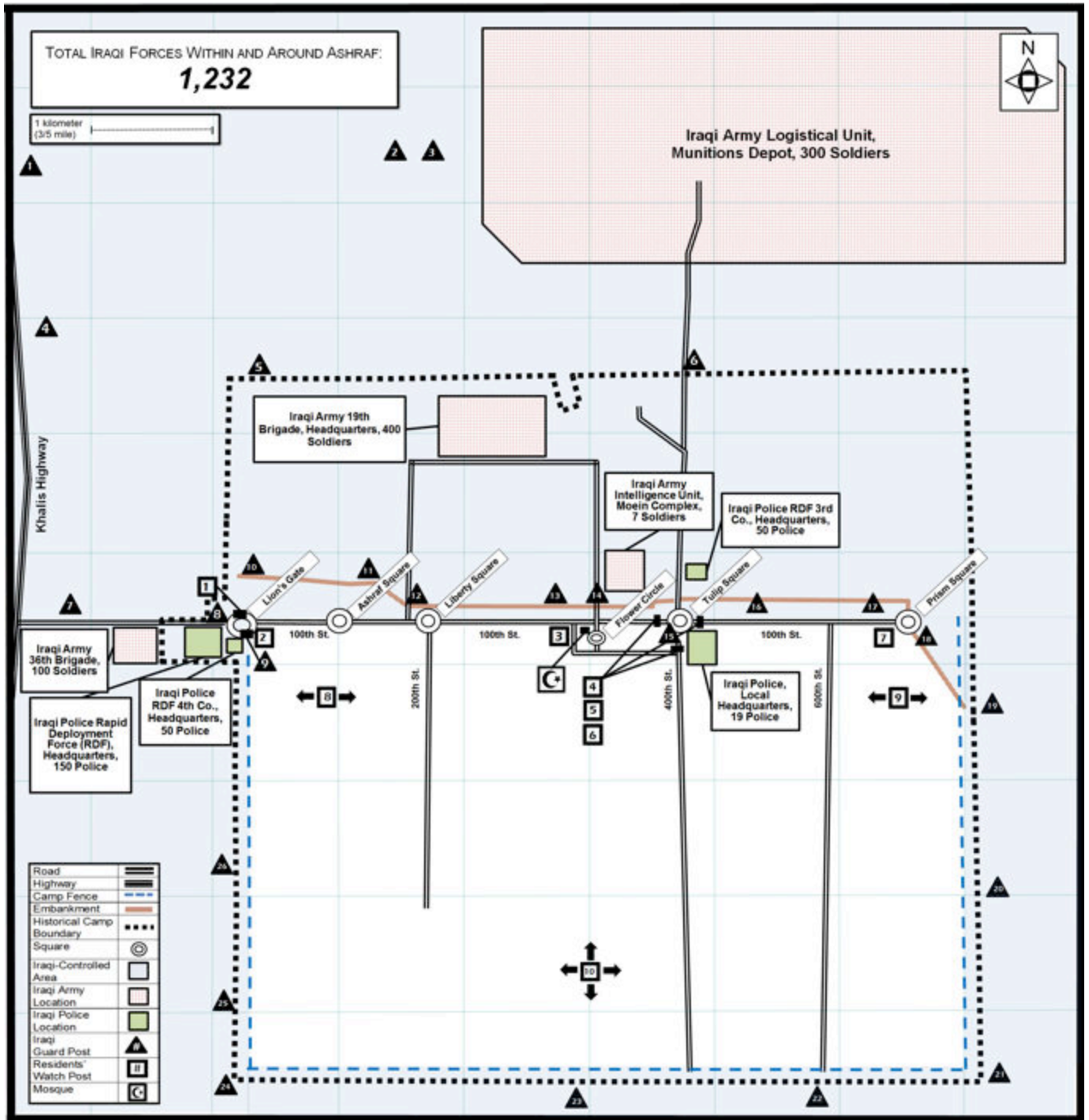
- 400 soldiers stationed at the Headquarters of the Iraqi Army, 19th Brigade, located 1.3 km (4/5 mile) north of 100th Street;
- 300 soldiers stationed at the Munitions Depot of the Iraqi Army Logistical Unit, located 1 km (3/5 mile) North of the Camp fence;
- 100 soldiers stationed with the Iraqi Army, 36th Brigade, located 700 meters (2/5 mile) west of Lion's Gate; and
- 7 soldiers stationed at the Moein Complex, where an Iraqi Army Intelligence Unit is housed, located 300 meters (985 feet) from Flower Square.

From the Iraqi police, there are:

- 150 police stationed at the Headquarters of the Rapid Deployment Force (RDF), located 70 meters (262 feet) from Lion's Gate;
- 50 police stationed at the Headquarters of the RDF 4th Company, located 40 meters (131 feet) from Lion's Gate;
- 50 police stationed at the Headquarters of the RDF 3rd Company, located 100 meters (328 feet) from Tulip Square;
- 100-150 Diyala Province Police stationed at 26 Iraqi Guard Posts surrounding and within the Camp (4–6 police per post); and
- 19 police stationed at the Headquarters of the local Diyala Province Police, located less than 100 meters (328 feet) away from Tulip Square, within the Camp.

¹⁹ The Residents have calculated a range of 1,180–1,232.

Map #1: Camp Ashraf and its Immediate Surroundings

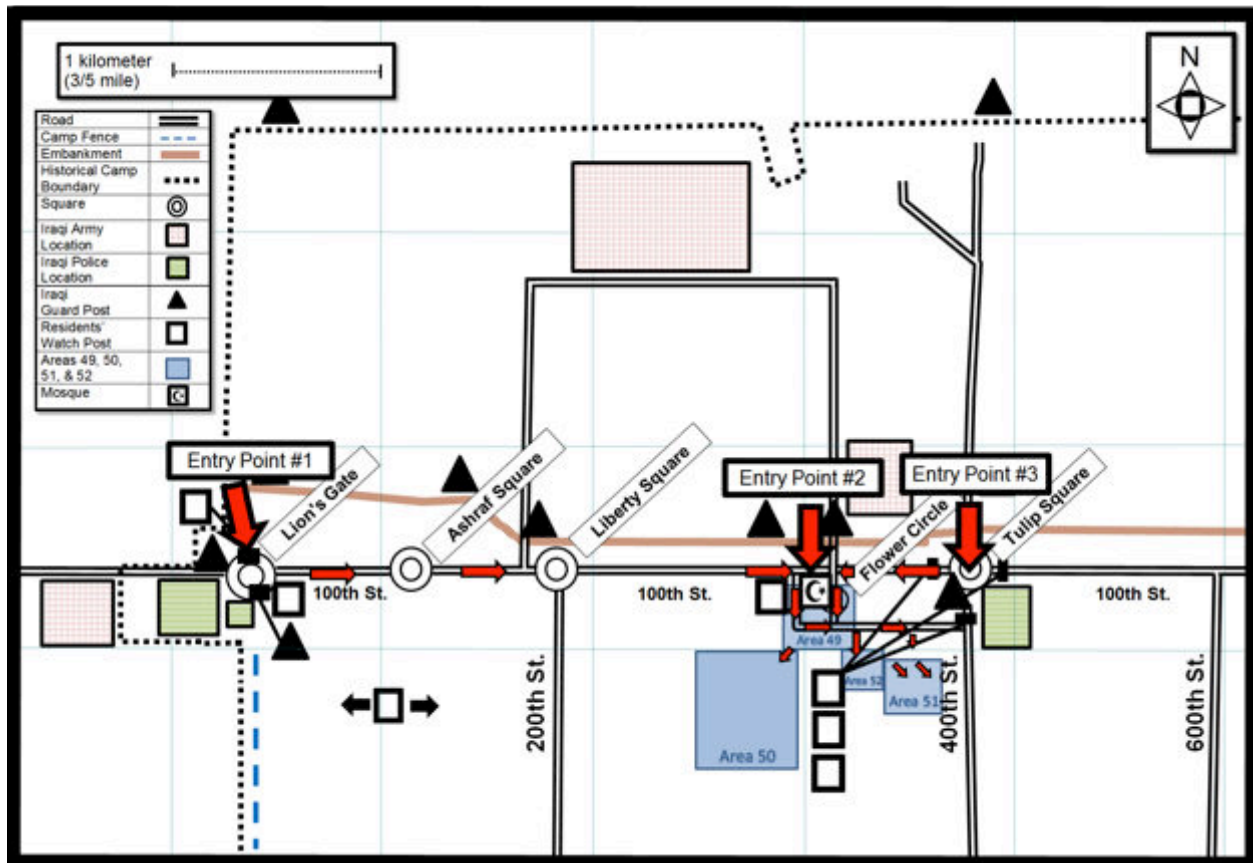


At dawn on September 1, a group of Attackers armed with AK-47s fitted with silencers and loaded with armor-piercing bullets, pistols, and explosives entered Camp Ashraf, intent on massacring the remaining Residents. For nearly two hours, from approximately 5:15am to 7:00am, the Attackers launched a full assault on the Camp, brutally killing 52 Residents, seizing seven Hostages, and destroying property and facilities within the Camp. The Attackers went room by room in search of Residents, killing all those they found with a gunshot to the head. They went after any resident they could find—women, men, and wounded alike. Some Residents were temporarily detained, handcuffed, or beaten before being shot point-blank. Only 42 Residents managed to survive by hiding in locked rooms or fleeing the scene.

The following account of the massacre is based on the testimony of the 42 witnesses who survived. These witnesses saw the attack from different vantage points, but their individual recollections corroborate and reaffirm the same terrifying story. Under the cover of early morning, when many of the Residents were still in their dormitories or on their way to the dining hall for breakfast, approximately 120 armed men surrounded the Camp and engaged in a coordinated assault. They came in from at least three locations: Lion’s Gate on the west side of the Camp, 100th Street across from the Mosque, and Tulip Square in the center of Camp Ashraf. Eighty of the Attackers entered the Camp; the remaining 30–40 stayed behind the assault line—an embankment running along 100th Street—perhaps to monitor the activities and help facilitate the final retreat. At both Lion’s Gate and Tulip Square, small groups of 5–6 Attackers entered. The rest crossed over the embankment in waves, approaching the Camp on foot from several spots in close proximity to one another.

Once inside, the Attackers focused their attention on the four areas where most Residents were located: Area 49, Area 50, Area 51, and Area 52. Having entered at different points, the Attackers converged in on these areas and split into four groups. The first went into Area 50 to cause significant property damage. Destruction caused to buildings and monuments along 100th Street between Lion’s Gate and Liberty Square suggests that more Attackers may have also entered in that vicinity. The remaining three groups went off into Area 49, Area 51, and Area 52, where they sought out the Residents, killing and taking Hostages as they combed through the buildings and gardens. After two hours, the Attackers reconvened in the center of the Camp. They then fled north with their seven Hostages, leaving behind substantial amounts of destroyed property and the bodies of the murdered Residents.

Map #2 Attackers' Entry Routes



2. The Entry

As the sun broke over the Iraqi desert on September 1, 2013, a scene of terror played out for the Residents of Camp Ashraf. The attack came without warning, leaving the Residents defenseless. From posts scattered throughout the camp—where the Residents take turns keeping watch over one another—the Resident lookouts could only watch as groups of armed men entered their Camp. Many of the Residents' posts are located steps away from the Iraqi military and police forces, who are also stationed in and around the Camp and whose mission it is to guard the Residents. The Attackers came in mostly on foot, crossing through the Iraqi-military controlled zone north of the dirt embankment that runs nearly parallel to 100th Street. Each Attacker wore the same uniform: black pants, an army-green long-sleeved shirt, bullet-proof black vest, and a white cap—virtually identical to the uniforms worn by Iraqi forces of the Golden Division (a special group of the Iraqi Interior Ministry), as shown in official photos posted at the entrance of the Ministry's Special Forces training academy near the Baghdad Airport.²⁰

After witnessing suspicious activity the night before at Lion's Gate, named for the two lions "guarding" the Western entrance that was then controlled by Iraqi police forces, some

²⁰ An example of this photo can be seen here: <http://iraq4allnews.dk/ShowNews.php?id=59068>.

Residents suspected that something was amiss. At around 11:30pm, a convoy of vehicles had approached the Camp from the north and parked outside the Rapid Deployment Force (RDF) Headquarters, where 150 police are stationed.²¹ The Residents recognized at least one of the vehicles as belonging to General Jamil al-Shameri, police Commander of the Diyala Province, where Camp Ashraf is located.²² The convoy was soon joined by two more vehicles from an outpost of the 36th Brigade, a unit of the Iraqi army stationed less than 700 meters (2/5 mile) away from Lion's Gate.²³ Knowing that General Jamil's nighttime visit to the RDF was extremely unusual, the Residents inquired with the police guard regarding the nature of General Jamil's visit.²⁴ He confirmed that General Jamil was in fact present and meeting with Colonel Nahad, Commander of the RDF, but told them it was not a "serious matter."²⁵ Apprehensive, yet unable to do anything more, the Residents waited and then watched as General Jamil and his convoy left the area after a short, hour-long visit.²⁶

Five hours later, four different Residents were keeping watch at Lion's Gate as a first group of Attackers approached the Camp.²⁷ The Attackers' arrival was preceded in minutes by that of Colonel Nahad (the same man who had met with General Jamil the night before), who drove up to the gate and looked around.²⁸ Colonel Nahad then walked over to the soldiers stationed at the Iraqi Guard Post north of Lion's Gate²⁹ and spoke to them.³⁰ Nahad then got back into his car, was driven up and down the northwest side of the camp, and returned to the gate.³¹ Within minutes, the Residents could see a group of five or six armed men approaching along an embankment that runs parallel to the western boundary of the Camp.³² As Colonel Nahad looked on from the west side of Lion's Gate, the Attackers cut through the barbed wire surrounding the Camp fence and climbed down the embankment.³³ The Residents could hear the Attackers speaking to one another in Arabic with an Iraqi accent.³⁴ One of the Residents managed to capture some footage of this on his phone before joining three other Residents in a car.³⁵ When the Attackers opened fire at the car, yelling "[i]f you get away, we will kill you," the Residents sped away from the gate.³⁶

²¹ Eyewitness accounts by Witness #15, Witness #9, and Witness #41.

²² Eyewitness accounts by Witness #15, Witness #9, and Witness #41.

²³ Eyewitness accounts by Witness #15, Witness #9, and Witness #41.

²⁴ Eyewitness accounts by Witness #15 and Witness #9.

²⁵ Eyewitness accounts by Witness #15 and Witness #9.

²⁶ Eyewitness accounts by Witness #15 and Witness #9.

²⁷ Eyewitness accounts by Witness #3, Witness #4, Witness #27 and Witness #37.

²⁸ Eyewitness accounts by Witness #3, Witness #4, Witness #27 and Witness #37.

²⁹ See Post #8 on Map #1: Camp Ashraf and its Immediate Surroundings.

³⁰ Eyewitness accounts by Witness #3, Witness #4, Witness #27 and Witness #37

³¹ Eyewitness accounts by Witness #3, Witness #4, Witness #27 and Witness #37

³² Eyewitness accounts by Witness #3, Witness #4, Witness #27 and Witness #37.

³³ Eyewitness accounts by Witness #3, Witness #4, Witness #27 and Witness #37.

³⁴ Eyewitness accounts by Witness #3, Witness #4, Witness #27 and Witness #37

³⁵ Video of Attackers climbing embankment near Lion's Gate:

<http://www.youtube.com/watch?v=INB71PRdrd0&feature=youtu.be>. Video of Attackers entering Ashraf and shooting at Residents in car at Lion's Gate: <http://www.youtube.com/watch?v=WgsagQE9hPg&feature=youtu.be>.

³⁶ Eyewitness accounts by Witness #3, Witness #4, Witness #27 and Witness #37.

At Tulip Square and the Mosque, a similar scene was unfolding. The first report to the Residents of an attack inside the Camp came from Sayed Ali Bagherzadeh (1),³⁷ who was at a resident post near the Mosque.³⁸ Bagherzadeh saw the Attackers crossing the embankment onto 100th Street, but managed to escape and went to the residential quarters to inform other Residents.³⁹ Minutes later, two Residents—Amir Afzali (2) and Amir Masoud Nazari (3)—drove up to the post to investigate what was happening.⁴⁰ Afzali and Nazari were both pulled from their minibus and shot in the head on the street.⁴¹ The minibus was left behind, and later used by the Attackers as an escape vehicle to transport some of the Hostages.⁴² A piece of rope left around Afzali’s neck suggests that he was strangled before he was shot.⁴³ From vantage points around the Mosque, other Residents could see as many as 40 armed men cross through Flower Square and fan out into Area 49.⁴⁴ Some of the Residents called the Camp Control Room to warn of the attack.⁴⁵ They listened on speakerphone as Fatemeh Tahoori, the Resident who happened to be answering phones at the time, spoke with others around the Camp who were calling in with the same report.⁴⁶ Tahoori was later taken from the Control Room as a Hostage.

The Residents in the Control Room quickly realized the severity of the situation, and phoned their colleagues at Camp Liberty for help.⁴⁷ At 6:00am a Resident at Liberty called UNAMI and spoke to Mohammed al Najjar,⁴⁸ the political advisor to the acting Special Representative of the Secretary-General Gyorgy Busztin (who was abroad the day of the attack).⁴⁹ Najjar followed up by contacting the Iraqi authorities, including General Jamil, who reported to him that nothing was going on at Ashraf.⁵⁰ Similarly, after hearing of reports of an attack from Ashraf, another Liberty Resident contacted UNAMI by emailing Francesco Motta, the Director of UNAMI’s Human Rights Office. At 7:03am, Motta wrote back saying UNAMI had “called the Iraqi military who have denied [sic] that anything is happening. General Jamil says they are on standby to receive any wounded should it be the case that anything has taken place.”⁵¹ Jamil reported this despite the fact that the Attackers were detonating explosives throughout the Camp during the entire assault. Just after 7am, a Resident at Liberty directly contacted the UNAMI representative for Diyala province, Amer Wghad Al-Qeisi, who lives less than an hour’s drive from Camp Ashraf.⁵² Al-Qeisi told the Residents at Liberty that he could not act without a directive from UNAMI Headquarters, which he had not received.⁵³ At 9am, a

³⁷ After the name of each victim, there is a number in parenthesis referring to how many people were killed. The number does not reference the order in which the Residences were killed, but is instead reflects the order in which the murders are presented in this report.

³⁸ Eyewitness accounts by Witness #7 and Witness #33.

³⁹ Eyewitness accounts by Witness #7 and Witness #33.

⁴⁰ Eyewitness accounts by Witness #7 and Witness #33.

⁴¹ Eyewitness accounts by Witness #7 and Witness #33.

⁴² Eyewitness accounts by Witness #39, Witness #7, and Witness #30.

⁴³ Eyewitness accounts by Witness #33 and Witness #7.

⁴⁴ Eyewitness accounts by Witness #33, Witness #7, Witness #15, Witness #2, and Witness #22.

⁴⁵ Eyewitness accounts by Witness #7 and Witness #15.

⁴⁶ Eyewitness accounts by Witness #7 and Witness #15.

⁴⁷ Account by Liberty Witness #1.

⁴⁸ Account by Liberty Witness #1.

⁴⁹ Account by Liberty Witness #1.

⁵⁰ Account by Liberty Witness #1.

⁵¹ *Email to UNAMI from Liberty Resident*, Sep 1, 2013 (7:03am) (on file with authors).

⁵² Account by Liberty Witness #2.

⁵³ Account by Liberty Witness #2.

Resident at Liberty again called Al-Qeisi.⁵⁴ He repeated that he could not do anything without instructions from UNAMI, but he did tell the Resident at Liberty that he had been in contact with his UNAMI superiors, who were aware of the reports of an attack.⁵⁵ Al-Qeisi also told the Resident at Liberty that he was attempting to make arrangements with the Iraqi police, who were refusing to accompany Al-Qeisi into Ashraf because they too had not been instructed to do so.⁵⁶ By 11:00am, UNAMI instructed Al-Qeisi to go to Ashraf.⁵⁷ Because of delays in transportation and in getting clearance from the Iraqi police, it took three more hours for Al-Qeisi to enter the Camp, and even then the police refused to accompany him beyond Tulip Square.⁵⁸

Meanwhile, the attack on the Camp was progressing. A third group of Attackers entered into the Camp through Tulip Square, where the only entrance and exit gate for the Camp is located. Prior to the attack, barbed wire and an RDF police truck blockaded the gate. At the time of the attack, there were Residents in all three of the resident posts surrounding the square. From the eastern post, the two Residents on watch saw vehicles depart the Moein Complex, where the Iraqi military intelligence unit is located, and approach Tulip Square from the north.⁵⁹ The vehicles stopped in and then soon left the square, but as they drove away, the Residents could see five armed men walking from the spot where the vehicles had been.⁶⁰ A few minutes later, the vehicles returned and pulled up to the blockaded entrance.⁶¹ As police officers watched with binoculars from the top of the local police headquarters,⁶² a soldier from RDF (whose identity is unknown) moved the RDF truck and another RDF soldier, Riyadh (whose last name is unknown), removed the barbed wire, allowing the vehicles to enter.⁶³ Soon after, the Residents in Tulip Square heard gunshots, and growing concerned, prepared to leave the area.⁶⁴ Bijan Mirzaee (4), who was on the west side of the square, was quickly gunned down by some Attackers as he left his post.⁶⁵ The group of Attackers had entered the Camp by the Mosque and were making their way east on the road, hidden by the embankment.⁶⁶ Mirzaee stumbled, but managed to get away and went back into the post.⁶⁷ However, few places in the Camp were safe—a different group of Attackers later found and killed him by a gunshot to the head.⁶⁸

⁵⁴ Account by Liberty Witness #2.

⁵⁵ Account by Liberty Witness #2.

⁵⁶ Account by Liberty Witness #2.

⁵⁷ Account by Liberty Witness #2.

⁵⁸ Account by Liberty Witness #2.

⁵⁹ Eyewitness accounts by Witnesses #33, Witness #2, Witness #33, and Witness #7.

⁶⁰ Eyewitness accounts by Witnesses #33, Witness #2, Witness #33, and Witness #7.

⁶¹ Eyewitness accounts by Witness #2 and Witness #22.

⁶² Eyewitness account by Witness #22.

⁶³ Eyewitness accounts by Witness #2 and Witness #22.

⁶⁴ Eyewitness accounts by Witness #2 and Witness #22.

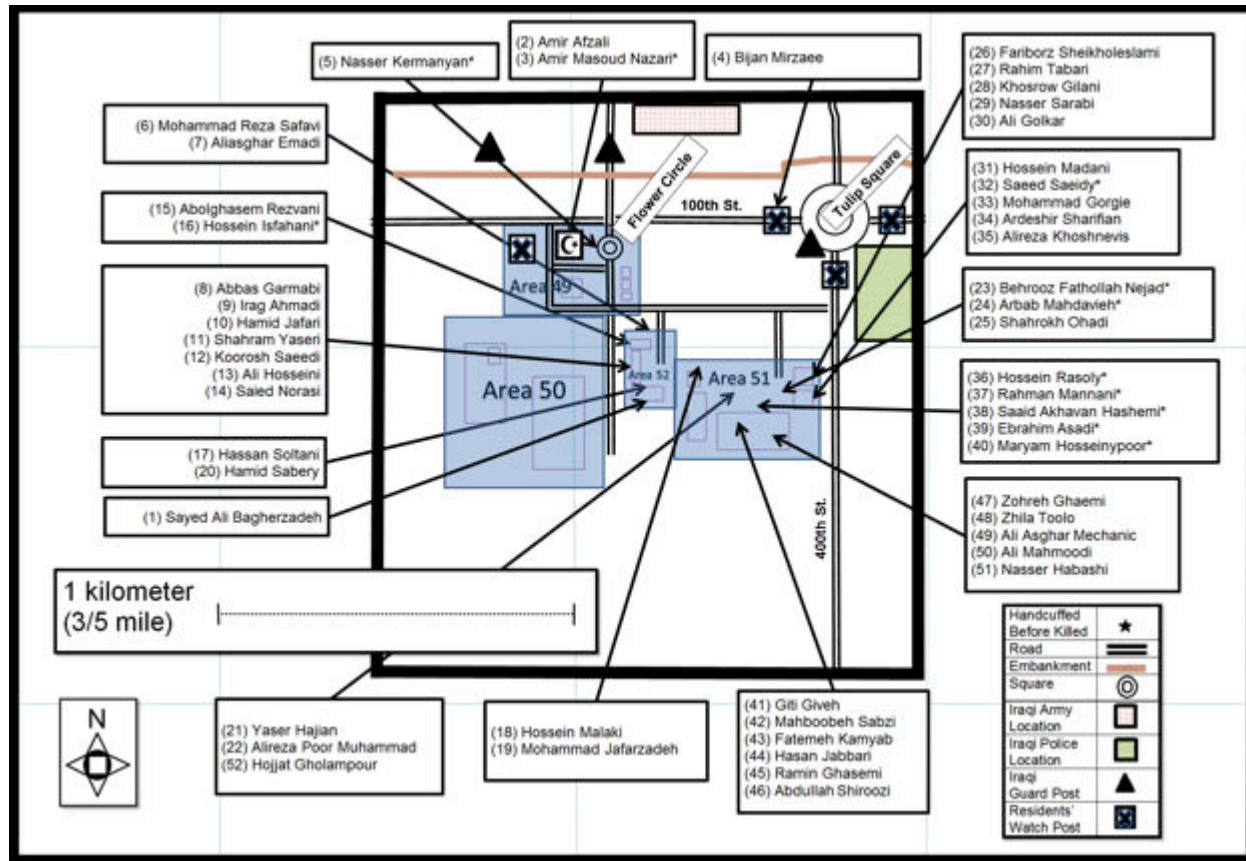
⁶⁵ Eyewitness account by Witness #33.

⁶⁶ Eyewitness account by Witness #33.

⁶⁷ Eyewitness account by Witness #33.

⁶⁸ Eyewitness account by Witness #33.

Map #3: Execution Sites



3. The Attack

Having entered the Camp from three points along the main street, the Attackers were well positioned to begin their assault on the most concentrated area of the Camp, a section barely larger than $\frac{1}{2}$ sq. km. (0.3 sq. miles). They converged in Areas 49, 50, 51 and 52, where the dining hall, medical clinic, Control Room, and the majority of dormitories are located. From there, they broke off into groups to complete specific tasks. Most of the Attackers moved through Area 49, Area 51, and Area 52 in pursuit of the Residents. Among these Attackers, some were intent on capturing the Hostages, although it is not clear why they targeted specific individuals.

The Attackers first made their way through Area 49. From inside locked rooms and buildings, the Residents could hear the sounds of bullets and explosions as the Attackers used these to get to hidden Residents.⁶⁹ In Flower Square, Nasser Kermanyan (5) was pulled from his bicycle and shot in the head.⁷⁰

⁶⁹ Eyewitness accounts by Witness #7 and Witness #33.

⁷⁰ Eyewitness account by Witness #18.

From Area 49, some of the Attackers then moved into Area 52, which is accessible through two gates: one on the north side (closest to Area 49) and one on the east side (leading into Area 51). Inside Area 51 and Area 52, the majority of the murders took place; 48 Residents were killed, including six who were already in the clinic being treated for previous gunshot wounds.⁷¹ As the Attackers were approaching, they began shooting at Residents who had come out to close the northern gate of Area 52.⁷² Two of those Residents, Mohammad Reza Safavi (6) and Aliasghar Emadi (7), were shot dead on the road.⁷³ Others were wounded and brought to the medical clinic located nearby.⁷⁴ The Attackers followed the Residents into the medical clinic and deliberately opened fire.⁷⁵ All six patients, Abbas Garmabi (8), Irag Ahmadi (9), Hamid Jafari (10), Shahram Yaseri (11), Koorosh Saeedi (12), and Ali Hosseini (13), along with the acting medic, Saied Norasi (14), were killed.⁷⁶ Norasi was holding scissors and gauze in his hands to dress the bullet wounds of his injured colleagues when he was killed.⁷⁷ The Attackers then moved into adjacent dormitories, where they killed two more Residents: Abdolghasem Rezvani (15) and Hossein Isfahani (16).⁷⁸ The Attackers handcuffed Isfahani before shooting him in the head.⁷⁹

Picture #1: Execution Site in Clinic



⁷¹ Eyewitness accounts by Witness #20, Witness #40, Witness #11, Witness #16, Witness #9, and Witness #21.

⁷² Eyewitness accounts by Witness #20, Witness #40, Witness #11, Witness #16, Witness #9, and Witness #21.

⁷³ Eyewitness accounts by Witness #20, Witness #40, Witness #11, Witness #16, Witness #9, and Witness #21.

⁷⁴ Eyewitness accounts by Witness #20, Witness #40, Witness #11, Witness #16, Witness #9, and Witness #21.

⁷⁵ Eyewitness accounts by Witness #20, Witness #40, Witness #11, Witness #16, Witness #9, and Witness #21.

⁷⁶ Eyewitness accounts by Witness #20, Witness #40, Witness #11, Witness #16, Witness #9, and Witness #21.

⁷⁷ Eyewitness account by Witness #9.

⁷⁸ Eyewitness account by Witness #9.

⁷⁹ Eyewitness accounts by Witness #20, Witness #40, Witness #11, Witness #16, Witness #9, and Witness #21.

Exiting the dormitory, the Attackers walked across the garden to Area 51, killing another four Residents—Hassan Soltani (17), Hossein Malaki (18), Mohammad Jafarzadeh (19), and Hamid Sabery (20)—on the way.⁸⁰ Seyed Ali Bagherzadeh (1), the resident guard who had been the first to alert the other Residents of Attackers entering near the Mosque, was ultimately found dead in the generator room nearby.⁸¹

Area 51, situated almost directly south of Tulip Square, also has two entrances: a northeast gate and northwest gate. Two separate groups of Attackers descended on this Area, one from each gate.⁸² At the northwestern gate, a Resident filmed as the Attackers entered with guns raised.⁸³ In the courtyard they gunned down five men: Yaser Hajian (21), Alireza Pour Mohammad (22), Behrooz Fathollah Nejad (23), Arbab Mahdavi (24), and Shahrokh Ohadi (25).⁸⁴ Hajian was forcibly restrained then shot point blank.⁸⁵ Mohammad was first shot in the leg, and then thrown to the ground before Attackers killed him with a bullet to the head.⁸⁶ Nejad was also handcuffed, shot with a pistol, and thrown onto the ground.⁸⁷ Either to humiliate him or to prevent him from running away, the Attackers pulled down his pants before shooting him.⁸⁸ Ohadi was already injured when an Attacker approached and shot him in the head at close range; his murder was caught on film by another Resident.⁸⁹

At the northeastern entrance to Area 51, the Attackers also entered while shooting.⁹⁰ A group of six Residents had locked themselves in the East Building, but the Attackers used bullets and brute force to break open the doors.⁹¹ With their machine guns, the Attackers killed five of the six Residents inside the East Building: Fariborz Sheikholeslami (26), Rahim Tabari (27), Khorow Gilani (28), Nasser Sarabi (29), and Ali Golkar (30).⁹² Call logs from Tabari's mobile phone show that he had attempted to contact the local police, but the calls were not answered.⁹³ One Resident, Hossein Madani (31), was shot in the stomach and managed to flee to the next building, which houses the Camp's Control Room. Like Tabari, Madani used his cellphone to reach out for help; he called the UNAMI advisor, Mohammed al Najjar, and told him that he had been shot.⁹⁴ However, the Attackers immediately followed and murdered him, in addition to the four Residents already in the room: Saeed Saeidi (32), Mohammad Gorgie (33), Ardeshir

⁸⁰ Eyewitness accounts by Witness #20, Witness #40, Witness #11, Witness #16, Witness #9, and Witness #21.

⁸¹ Eyewitness accounts by Witness #20, Witness #40, Witness #11, Witness #16, Witness #9, and Witness #21.

⁸² Eyewitness accounts by Witness #8, Witness #33, Witness #23, Witness #28, and Witness #17.

⁸³ Video of Attackers entering Area 51: <http://www.youtube.com/watch?v=TbhXmqdTSLY&feature=youtu.be>.

⁸⁴ Eyewitness accounts by Witness #28, Witness #23, Witness #33, Witness #40, Witness #31, and Witness #19.

⁸⁵ Eyewitness accounts by Witness #28, Witness #23, Witness #33, Witness #40, Witness #31, and Witness #19.

⁸⁶ Eyewitness accounts by Witness #28, Witness #23, Witness #33, Witness #40, Witness #31, and Witness #19.

⁸⁷ Eyewitness accounts by Witness #28, Witness #23, Witness #33, Witness #40, Witness #31, and Witness #19.

⁸⁸ Eyewitness account by Witness #14.

⁸⁹ Eyewitness accounts by Witness #8, Witness #33, Witness #23, Witness #28, and Witness #17; Video of the murder of Shahrokh Ohadi http://www.youtube.com/watch?v=3DyV_NH1pfg&feature=youtu.be.

⁹⁰ Eyewitness account by Witness #40.

⁹¹ Eyewitness account by Witness #40.

⁹² Eyewitness account by Witness #40.

⁹³ Eyewitness account by Witness #11.

⁹⁴ Account by Liberty Witness #1.

Sharifian (34), and Alireza Khoshnevis (35).⁹⁵ Like 11 other Residents, Saeidy and Gorgi were handcuffed before being shot.⁹⁶

Having killed all the Residents in the East Building that they could locate, the Attackers went to the South Building of Area 51.⁹⁷ On the way, the Attackers arrested five Residents: Hossein Rasoly (36), Rahman Mannani (37), Saaid Akhavan Hashemi (38), Ebrahim Asadi (39), and Maryam Hosseiny poor (40), handcuffed them, and temporarily left them in the courtyard.⁹⁸ The Attackers would return to kill them later.⁹⁹ Again the Attackers used bullets to break through a locked door to the South Building and then proceeded to kill all the Residents inside: Giti Givchian (41), Mahboobeh Sabzi (42), Fatemeh Kamyab (43), Hasan Jabbari (44), Ramin Ghasemi (45), Abdullah Shiroozi (46), Zohreh Ghaemi (47), Zhila Toolo (48), Ali Asghar Mechanic (49), Ali Mahmoodi (50) and Nasser Habashi (51). Shiroozi and Mahmoodi were wounded in the waist and chest, respectively.¹⁰⁰ Mahmoodi had been brought into the South Building in search of protection; Shiroozi was en route to the clinic with help from his friends.¹⁰¹ Outside the South Building, Hojjat Gholampour (52) was shot dead as the Attackers exited. Turning on the last living Residents in view, the Attackers went back to the five handcuffed Residents they had left in the courtyard and shot them while their hands were still tied behind their backs.¹⁰²

Picture #2: Scene in Courtyard—Residents Handcuffed Prior to Execution



⁹⁵ Eyewitness account by Witness #40.

⁹⁶ Eyewitness account by Witness #40.

⁹⁷ Eyewitness account by Witness #40.

⁹⁸ Eyewitness account by Witness #40.

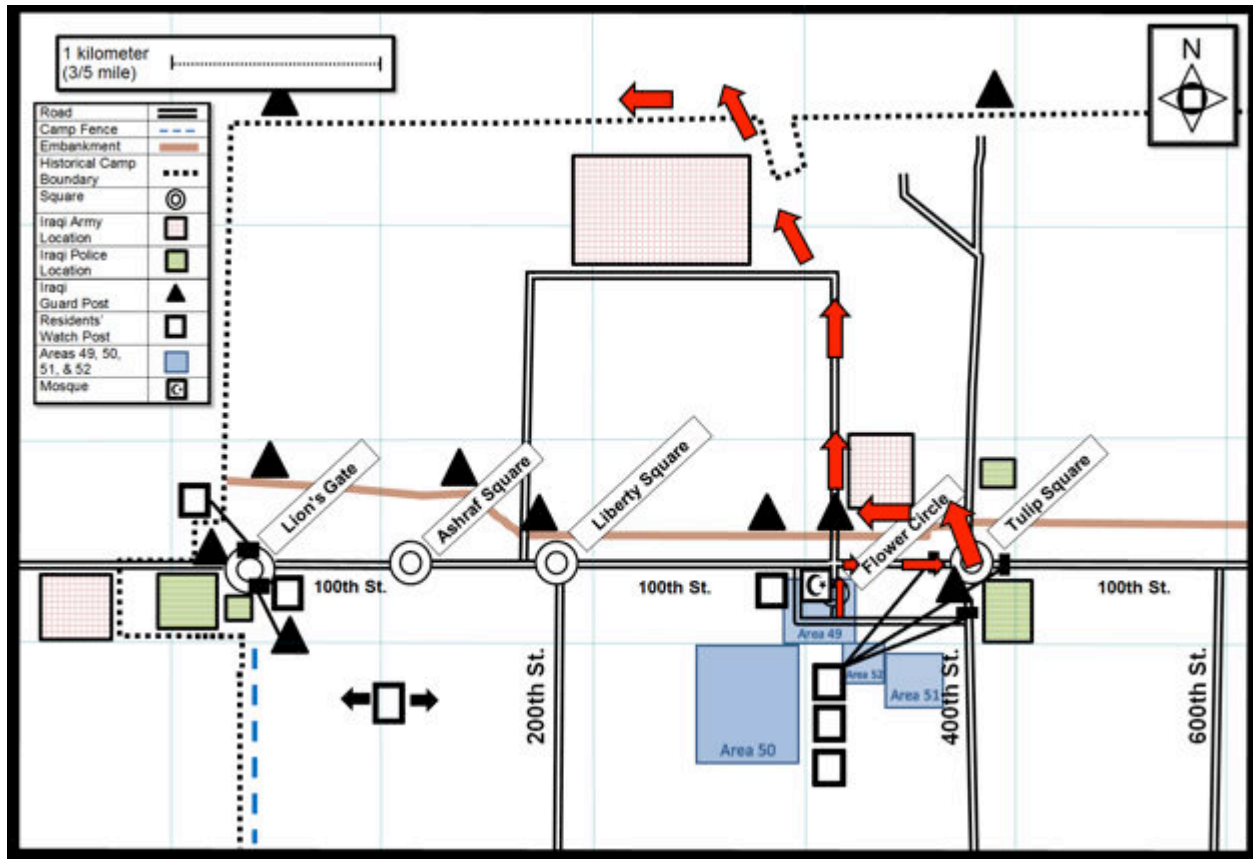
⁹⁹ Eyewitness account by Witness #40.

¹⁰⁰ Eyewitness account by Witness #40.

¹⁰¹ Eyewitness accounts by Witness #28, Witness #23, Witness #33, Witness #40, Witness #31, and Witness #19.

¹⁰² Eyewitness account by Witness #40.

Map #4: Attackers' Exit Route



4. The Retreat

Likely believing that they had killed all the Residents, the Attackers gathered in the adjacent parking lot of Area 52 with seven Hostages.¹⁰³ The Hostages include six women—Mahnaz Azizi, Vajihe Karbalaey, Zahra Ramezany, Lila Nabahat, Fatemeh Tahoori, and Fatema Sakhie—and one man, Mohammad Ratebi.¹⁰⁴ The room from which they were taken was in disarray after the attack, suggesting that the Hostages were taken by force.¹⁰⁵ Using a truck stolen from the Residents, some Attackers stood guard as others bound the Hostages and threw them onto the flatbed of the truck before departing for Tulip Square.¹⁰⁶ Those Residents who had managed to survive vividly remember hearing the Hostages screaming and crying, as the Attackers barked orders to one another in Arabic with an Iraqi accent.¹⁰⁷ The remaining Attackers moved away, stealing a minibus, the one Amir Afzali (2) and Amir Masoud Nazari (3) had been in when they were murdered earlier near the Mosque.¹⁰⁸ Both the truck with the

¹⁰³ Eyewitness accounts by Witness #39, Witness #7, and Witness #30.

¹⁰⁴ Eyewitness account by Witness #40.

¹⁰⁵ Eyewitness account by Witness #40.

¹⁰⁶ Eyewitness accounts by Witness #39, Witness #7, and Witness #30.

¹⁰⁷ Eyewitness accounts by Witness #39, Witness 7, Witness #30, and Witness #18.

¹⁰⁸ Eyewitness accounts by Witness #39, Witness #7, and Witness #30.

Hostages and the minibus stopped near Tulip Square, where three of the Hostages were transferred into the minibus.¹⁰⁹ The remaining four Hostages were kept on the truck bed.

The Attackers then left the Camp through the gate in Tulip Square, the same gate that some of the Attackers had been permitted to drive through hours earlier.¹¹⁰ Still fearing for their safety, the Residents stayed hidden until after 2pm, when the UNAMI representative Amer Wghad Al-Qeisi finally arrived.¹¹¹ Al-Qeisi was dropped off alone by the Iraqi police at Tulip Square and entered the Camp on foot,¹¹² because the police refused to accompany him to assess the situation.¹¹³ Walking down 100th Street towards the Mosque, he saw the bodies left where they had been shot, but did not come across a single living Resident.¹¹⁴ Those Residents who had survived did not emerge from their hiding spots until their colleagues in Liberty called them, and even then, they only emerged after receiving assurances that the Attackers had in fact departed.¹¹⁵

Meanwhile, despite repeated and desperate requests for help from the Residents at Ashraf and Liberty, inquiries by UNAMI, and all the noise from the explosions and smoke rising out of the Camp, no protective response force was dispatched from the Iraqi Army's 19th Brigade located to the immediate north of the Residents' living area,¹¹⁶ or from any of the other Iraqi military or police forces around and within Ashraf.

After the attack, survivors could see the truck and stolen minibus parked besides an Iraqi building at the 19th Brigade Headquarters, as the Headquarters are only 1.3 km (4/5 mile) away.¹¹⁷ When the Director of UNAMI's Human Rights Office, Francesco Motta, arrived the next day, the Residents explained to him that these vehicles were used to transport the Hostages out of the Camp. Motta met with General Jamil later and asked him to return the vehicles to the Residents. General Jamil rejected the request, saying the property that had been removed from the Camp perimeter no longer belonged to the Residents.¹¹⁸

Almost two months later, the Iraqi Government claims to be unaware of the Hostages' location, though the European Union,¹¹⁹ UNHCR,¹²⁰ and reports gathered by the Residents suggest that the Hostages have been moved from the 19th Brigade Headquarters and brought to the Baghdad area. There, they have reportedly been transferred between detention centers and jails around the Baghdad airport. The Hostages have been held *incommunicado* since their

¹⁰⁹ Eyewitness accounts by Witness #39, Witness #7, and Witness #30.

¹¹⁰ Eyewitness accounts by Witness #39, Witness #7, and Witness #30.

¹¹¹ Account by Liberty Witness #2.

¹¹² Account by Liberty Witness #2.

¹¹³ Account by Liberty Witness #2.

¹¹⁴ Account by Liberty Witness #2.

¹¹⁵ Account by Liberty Witness #2.

¹¹⁶ See Appendix IV.

¹¹⁷ Eyewitness accounts by Witness #39, Witness #7, and Witness #30.

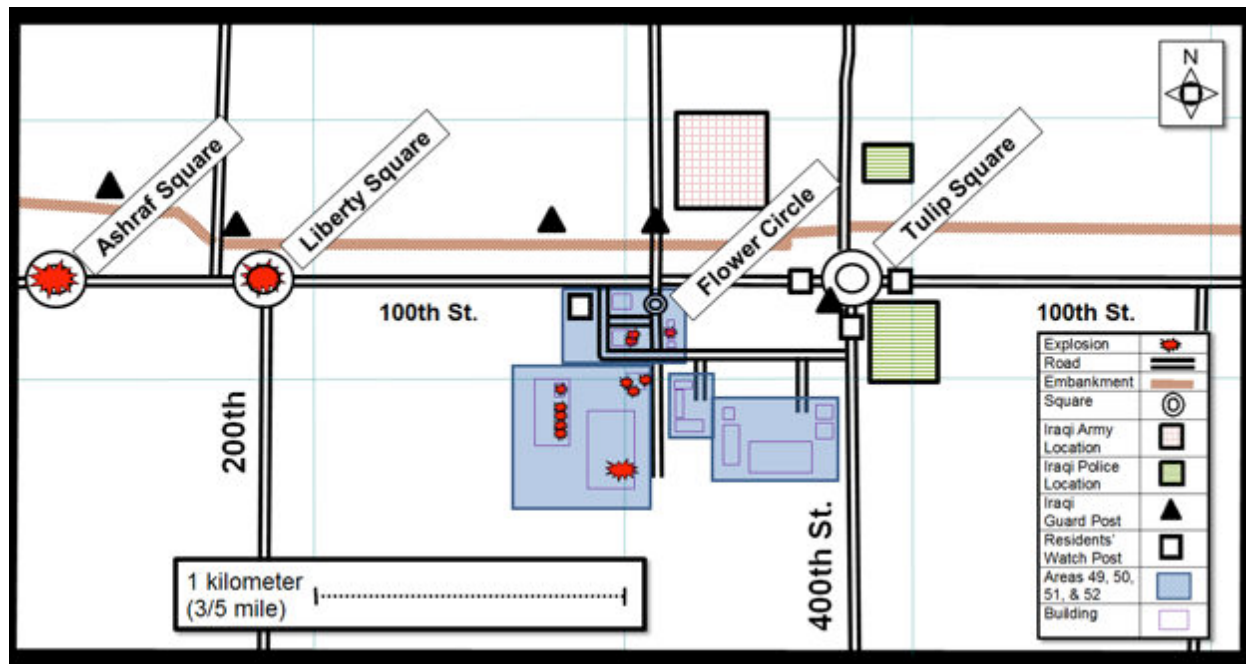
¹¹⁸ Eyewitness accounts by Witness #39, Witness #7, and Witness #30.

¹¹⁹ *EU's Ashton Fears for Safety of Iran Dissidents*, AGENCE FRANCE PRESSE, Sep. 23, 2013, available at <http://www.dailynewsegypt.com/2013/09/23/eus-ashton-fears-for-safety-of-iran-dissidents/> (quoting the EU's foreign policy chief, Catherine Ashton, as saying "We have reason to believe that up to seven camp residents are being held in captivity near Baghdad, and that there is a significant risk that they could be sent to Iran").

¹²⁰ UNHCR Concerned, *infra* note 153.

capture on September 1. To protest this abduction, several Residents at Camp Liberty have engaged in a hunger strike that has now entered its ninth week.¹²¹

Map #5: Property Damage Sites



In addition to committing these acts of violence, the Attackers also caused significant property damage to the Camp. This damage took two forms: the destruction caused by the Attackers using grenades, bullets and explosives, which appear to be of US ordinance,¹²² and the deliberate targeting of specific property items. As they entered the Camp from Lion’s Gate, some Attackers ransacked Residents’ trailers and stole many items of value.¹²³ Attackers moving through Freedom Square planted explosives on a tower located in the Square, which mutilated some of the steel frame. Explosives planted on a monument in Ashraf Square also detonated, causing sections of the stone façade to break off. To the south of Ashraf Square, the swimming pool was raided. In Area 50, a group of Attackers purposefully diverged from the rest and went off to the west of the residences to destroy parked vehicles and the fuel station.¹²⁴

¹²¹ *Seventh Week of Hunger Strike by PMOI Members in Camp Liberty and Iranians in Various Countries*, NCRI, Oct. 13, 2013, <http://www.ncr-iran.org/en/ncri-statements/ashraf-liberty/14916-seventh-week-of-hunger-strike-by-pmoi-members-in-camp-liberty-and-iranians-in-various-countries>.

¹²² See Appendix IV. Brigadier General (Ret.) David D. Phillips and Colonel (Ret.) Wesley Martin reviewed photo evidence of undetonated explosives left behind after the attack and concluded: “American-made military explosives were among the ordinance used in this attack.” See also, Colonel (Ret.) Thomas Cantwell, *America Abandons its Responsibility for Iranian Dissidents in Iraq*, THE BALTIMORE SUN, Oct. 28, 2013) (noting... “The attackers used explosives and U.S.-made small arms. They wore U.S.-provided uniforms and boots. The handcuffs used to tie the hands of unarmed men and women before they were shot through the head are U.S.-made. ...[T]he attackers used U.S.-style tactical movement techniques”).

¹²³ Eyewitness accounts by Witness #3, Witness #1, Witness #27, Witness #37, and Witness 26.

¹²⁴ Eyewitness accounts by Witness #7, Witness #15, Witness #9.

Some cars were completely destroyed by explosives or fires.¹²⁵ In all, at least 50 vehicles, including utility trucks and water tankers, were destroyed.¹²⁶ The sounds of explosions could be heard by the Residents hours after the Attackers retreated. In total, the Residents believe more than \$10 million worth of property was destroyed or stolen during the massacre.

C. Response of the Iranian and Iraqi Governments

1. Changing Public Claims by Iraq

During the course of this investigation, the report authors wrote to Ambassador of Iraq to the US to hear the Iraqi Government's side of the story; however, there was never any response. Thus, to the extent possible, the authors have reviewed public statements made by the Iraqi Government to analyze its stance on the massacre.

After the events, the Iraqi Government issued a number of contradictory statements about its involvement with the attack. CNN reported Prime Minister Al-Maliki's office as saying it had ordered an investigation into the attack, implying his government was not sure what had occurred; yet, CNN also cited two different officials within Iraq's Interior Ministry who reported "security forces [had] raided the camp after their base was hit by mortar rounds."¹²⁷ Yet, in its reporting, Agence France Press cited an Iraqi official responsible for overseeing Camp Ashraf, Haqi al-Sharifi, who said the blasts were not caused by mortars but by oil and gas containers exploding inside the camp; "There was no attack from outside against the camp, but what seems to have happened is that some barrels of oil and gas inside Ashraf exploded."¹²⁸ Al-Sharifi also stated, "Not a single soldier entered Camp Ashraf."¹²⁹ But Agence France Presse cited an Iraqi police colonel as saying, "some angry Ashraf residents came out and attacked the brigade protecting the camp, killing two soldiers and wounding three in clashes."¹³⁰ In other reporting, the Iraqi Government acknowledged the deaths, but denied any involvement by the Iraqi forces and instead blamed the events on infighting among the Residents.¹³¹ And in yet other reporting by Reuters, the Iraqi Government said it was not sure what triggered the attacks, but it also directly acknowledged "army and special forces had opened fire on [the] [R]esidents."¹³² Another statement, also issued by the Iraqi Government on September 1, stated, "The Iraqi

¹²⁵ Eyewitness accounts by Witness #7, Witness #15, Witness #9.

¹²⁶ Eyewitness accounts by, Witness #15, Witness #9.

¹²⁷ *Deadly Raid Hits Iranian Exile Group's Camp in Iraq*, CNN, Sep. 1, 2013, <http://www.cnn.com/2013/09/01/world/meast/iraq-violence/index.html>.

¹²⁸ *Clashes as Iran Exiles Claims 44 Dead in Iraq Raid*, AFP, Sep. 1, 2013, <http://english.alarabiya.net/en/News/middle-east/2013/09/01/Blasts-reported-at-Iran-exile-camp-in-Iraq-.html> [hereinafter *Clashes*].

¹²⁹ *Clashes*, *supra* note 128.

¹³⁰ *Clashes*, *supra* note 128.

¹³¹ *52 Iranian Exiles Killed at Iraq's Camp Ashraf*, THE WASHINGTON TIMES, Sep. 1, 2013, <http://p.washingtontimes.com/news/2013/sep/1/least-47-iranian-exiles-killed-iraqs-camp-ashraf/?page=all> [hereinafter *52 Iranian Exiles Killed*].

¹³² *Iranian Dissidents Killed in Iraq Camp, U.N. Demands Inquiry*, REUTERS, Sep. 1, 2013, <http://www.reuters.com/article/2013/09/01/us-iraq-violence-camp-idUSBRE98004H20130901> [hereinafter *Iranian Dissidents Killed*].

government stresses the need for help to deport elements of the [MEK] who are on Iraqi soil illegally but at the same time confirms its commitment to the safety of souls on its territory.”¹³³

To date, neither the Iraqi military nor the police have publicly announced the undertaking of any investigation, nor have they announced any arrests of the perpetrators of or those complicit in the attack. Similarly, the Iraqi Government has not announced the occurrence of a single indictment, prosecution, or conviction against any single perpetrator or complicit conspirator.

2. Iran’s Public Praise of the Massacre

The Iranian Government has not made secret its pleasure regarding the September 1 massacre. Four days after the attack, Qasem Soleimani, Commander of the Qods force (a special division of the Iranian Islamic Revolutions Guard Corps), gave a speech to Iranian officials in which he said that the attack was “God’s promise that is realized.”¹³⁴ The Iranian Foreign Ministry issued a statement on September 13, after the survivors had been moved to Camp Liberty, expressing “its gratitude to the Iraqi government for its sincere efforts to shut down [Camp Ashraf]”, adding, “the attack came at the hands of a group of Iraqi people.”¹³⁵ Another Iranian news source, Tasnim News Agency, also reported that the attack was executed by Iraq, quoting Iranian Brigadier General Salami as saying “the attack was carried out by a group of Iraqi youth.”¹³⁶ On September 25, Fars News Agency reported similar praise by Iranian Government officials; in a meeting with the Iraqi Defense Minister, Sadun Farhan Al-Dulaymi, Rear Admiral Ali Shamkhani, the Secretary of Iran’s Supreme National Security Council, expressed gratitude for the “expulsion of the members of the [PMOI/MEK].”¹³⁷ Such public praise has occurred despite President Rouhani’s promises of being a reformer.

3. Iraq’s Abduction of Hostages

The Iraqi Government exhibited similar contradictions in its statements regarding the Hostages. The Associated Press reported Ali al-Moussawi, the spokesman for Iraqi Prime Minister Nouri al-Maliki, as saying he had no information about missing Residents, and that he denied allegations suggesting Iraq planned to forcibly send the Residents to Iran.¹³⁸ This position was reaffirmed by Major General Jamil al-Shimmari, the police chief of Diyala Province, where the Camp is located, who contended that no Ashraf residents had been transferred out since the shooting.¹³⁹ But in an about-face move, the Iraqi Government then

¹³³ *Iranian Dissidents Killed*, *supra* note 132.

¹³⁴ FARS NEWS AGENCY, Sep. 4, 2013, <http://farsnews.com/newstext.php?nn=13920613000905>.

¹³⁵ Iran Thanks Iraq for Closing MKO’s Camp Ashraf, FARS NEWS AGENCY, Sep. 13, 2013, <http://english.farsnews.com/newstext.aspx?nn=13920622000303>.

¹³⁶ *Commander: Attack on MKO’s Camp to Have Strategic Significance for Region*, TASNIM NEWS AGENCY, Sep. 8, 2013, <http://www.tasnimnews.com/English/Home/Single/135488>.

¹³⁷ *Iran’s SNSC Secretary Thanks Iraq for MKO Expulsion*, FARS NEWS AGENCY, Sep. 25, 2013, <http://english.farsnews.com/newstext.aspx?nn=13920703001387>.

¹³⁸ *Iranian Exiles Say 7 Members Held by Baghdad*, ASSOCIATED PRESS, Sep. 10, 2013, <http://abcnews.go.com/International/wireStory/iranian-exiles-allege-iraqi-plan-deport-members-20210310> [hereinafter *7 Members Held by Baghdad*].

¹³⁹ *7 Members Held by Baghdad*, *supra* note 138.

admitted it had the Hostages in its possession. On September 12, Radio Free Europe/Radio Liberty reported Kamel Amin, the spokesman of Iraq's Human Rights Ministry, as saying that security forces arrested the Hostages because they had attacked the forces.¹⁴⁰

4. Culpability of Iraqi Government

Although the Government of Iraq now denies involvement in the attack, the evidence clearly indicates that Iraq alone is responsible for the massacre:

- Stories about the massacre from CNN, Radio Free Europe/Radio Liberty, and Reuters cite Iraqi government sources that confirm it was Iraqi forces that conducted the attack.
- Since taking over control of Camp Ashraf from Coalition Forces in 2009, the Iraqi Government has stationed over 1,200 soldiers and police officers in and directly outside Camp Ashraf. Tahar Boumedra, former Chief of the Human Rights Office at UNAMI, recently testified about this before the UN: "Ashraf is [a] highly fortified camp where nobody...[can]...penetrate into the camp without the active preparation and support of the Iraqi Police and Army."¹⁴¹ Boumedra's conclusion is supported by the statements of three former US military commanders of Camp Ashraf, including Brigadier General (Ret.) David D. Phillips, Colonel (Ret.) Wesley Martin, and Colonel (Ret.) Thomas Cantwell, all of whom have personal experience working in Ashraf.¹⁴²
- Colonel Nahad, the commander of the RDF forces, was at Lion's Gate as the Attackers made their way into Ashraf.
- General Jamil made a highly unusual late-night visit to Camp Ashraf just before the attack took place. And as the Attack was underway, two UNAMI representatives, Mohammed al Najjar and Francesco Motta, were in touch with General Jamil (Commander of the Diyala Province police), who reported to them that nothing was going on in the Camp.
- The Attackers entered the Camp with the direct and unequivocal assistance of Iraqi policemen.
- The Attackers, who were speaking Arabic with an Iraqi accent, wore uniforms identical to those worn by the Interior Ministry's Golden Division. Brigadier General (Ret.) David

¹⁴⁰ *Iraqi Human Rights Spokesman: Iraqi Security Forces Arrested Seven Members of PMOI Because They Had Attacked Them*, FREE IRAQ RADIO, Sep. 12, 2013, <http://www.iraqhurr.org/archive/news/20130912/1093/1093.html?id=25104078>.

¹⁴¹ *Ex-UN official in Iraq: It is impossible for UNAMI and US Embassy to be uninformed of the hostages' location*, NCRI, Sep. 23, 2013, <http://www.ncr-iran.org/en/ncr-statements/ashraf-liberty/14695-ex-un-official-in-iraq-it-is-impossible-for-unami-and-us-embassy-to-be-uninformed-of-the-hostages-location>; *see also* <http://www.youtube.com/watch?v=aq3gRrXWhpc> (minutes 1:12-3:30).

¹⁴² *See* Appendix IV (in which both men state, "Since 2009 when the United States handed oversight and security of Camp Ashraf over to the Iraqi Government, the compound has been surrounded by Iraqi military forces. No one could leave or enter the compound without being engaged by Iraqi forces").

D. Phillips and Colonel (Ret.) Wesley Martin believe this and other evidence prove it was in fact these Special Forces who carried out the attack.¹⁴³

- The Iraqi police already stationed inside the Camp were watching from a high vantage point with binoculars as the attack was being carried out.
- The Iraqi police failed to answer numerous phone calls when those in Ashraf tried to reach them for help. Until this day, the Iraqi police had always efficiently answered their phones.
- Because of delays getting clearance from the Iraqi police, UNAMI representative Amer Wghad Al-Qeisi was not able to enter the Camp until 2pm, at which point the Iraqi police refused to accompany him beyond Tulip Square. If the Iraqi police were unaware that an attack had took place, they wouldn't have refused to enter the Camp.
- The massacre is consistent with Iraq's prior attacks against the Residents pursuant to its policy to expel them from the country.¹⁴⁴
- Iran has made public statements thanking Iraq for carrying out the massacre.

D. Currents Demands by UN

After the attack, the UN issued several statements of concern in addition to demands for the Iraqi Government to take action. On September 1, the Secretary-General's office immediately characterized the events as "tragic" and called for "urgent restoration of security" by the Iraqi Government whose responsibility it is to "ensure the safety and security of the residents."¹⁴⁵ The Secretary-General also called on the Government of Iraq "to promptly investigate the incident and disclose the findings."¹⁴⁶ The same day, UNAMI reiterated these sentiments and said it would conduct its "own assessment of the situation."¹⁴⁷ After visiting Ashraf and witnessing the aftermath on September 3, Gyorgy Busztin, acting UN envoy to Iraq, stated, "I call on the Iraqi government to ensure that a thorough, impartial and transparent investigation into this atrocious crime is conducted without delay and that the results of the investigation are made public."¹⁴⁸

On September 6, the Iraqi Government issued an order for all remaining Residents at Camp Ashraf to relocate to Camp Liberty. In response, UN envoy Busztin stated, "We strongly hope all parties will act responsibly and that the process of relocation . . . will be peaceful and

¹⁴³ See *supra* note 4.

¹⁴⁴ See *infra* section III(A)(1-2).

¹⁴⁵ *Statement Attributable to the Spokesperson for the Secretary-General on the Situation in Camp Ashraf*, Sep. 1, 2013,

<http://unami.unmissions.org/Default.aspx?tabid=2855&ctl=Details&mid=5171&Itemid=1878959&language=en-US> [hereinafter *Secretary-General Ashraf Statement Sep 1, 2013*].

¹⁴⁶ Secretary-General Ashraf Statement Sep 1, 2013, *supra* note 145.

¹⁴⁷ *Clashes*, *supra* note 128.

¹⁴⁸ *UN Counts 52 Corpses After Violence at Iranian Dissident Camp in Iraq*, REUTERS, Sep. 3, 2013, <http://www.reuters.com/article/2013/09/03/us-iraq-violence-camp-idUSBRE9820TO20130903>.

voluntary.”¹⁴⁹ On September 12, UNAMI announced that the remaining Residents had been relocated to Camp Liberty.¹⁵⁰ In this announcement, UN envoy Busztin also focused on “the necessity to conclude the final phase of the relocation process [out of Iraq] without further delay”, calling it “the priority”, and insisting that the “Iraqi government . . . abide by its commitment to ensure maximum safety and security for . . . [the Residents] . . . until all of them leave the country.”¹⁵¹

On September 13, UNHCR voiced its concern over the seven disappeared Hostages, declaring, “[i]n light of the numerous and persistent reports over the past week that these individuals may be at risk of forced return to Iran, UNHCR calls upon the Government of Iraq to locate them, to ensure their physical security, and to safeguard them against return to Iran against their will.”¹⁵² On September 24, UNHCR again said it was “gravely concerned” about the safety of the Hostages. Furthermore, it noted, “According to reports reaching UNHCR, the missing persons are reportedly being held somewhere in Iraq and may be at risk of being returned involuntarily to Iran, which would be a serious breach of international law. . . . These seven are all known by UNHCR to be asylum-seekers, and UNHCR wants to have the opportunity to interview them.”¹⁵³

E. International Standards for Independent Investigations

To promote accountability after the occurrence of a wrongdoing or crime, international standards require that an independent investigation be carried out. The standards for these investigations are drawn from two sources: the Uniform Guidelines for Investigations (“Uniform Guidelines”)¹⁵⁴ and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Istanbul Protocol”).¹⁵⁵

1. The Uniform Guidelines for Investigations

The Uniform Guidelines put forth the following requirements. When carrying out an

¹⁴⁹ UNAMI Press Release, *UNAMI Urges All Parties to Act Responsibly in the Relocation Process to Camp Hurriya*, Sep. 7, 2013,

<http://unami.unmissions.org/Default.aspx?tabid=2854&ctl=Details&mid=5170&ItemID=1900958&language=en-US>.

¹⁵⁰ UNAMI Press Release, *The UN Announces the Successful Relocation of Camp Ashraf Residents to Camp Hurriya*, Sep. 12, 2013,

<http://unami.unmissions.org/Default.aspx?tabid=2854&ctl=Details&mid=5170&ItemID=1916549&language=en-US> [hereinafter *UNAMI Sep 12, 2013 Press Release*].

¹⁵¹ *UNAMI Sep 12, 2013 Press Release*, *supra* note 150.

¹⁵² UNHCR: *Update No. 7 Camp New Iraq (formerly Camp Ashraf) Residents and the Processing of their Cases for Solutions*, Sep. 13, 2013,

<http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4f2a54a16&query=new%20Iraq>.

¹⁵³ UNHCR, *UNHCR Concerned as Sectarian Violence in Iraq Threatens New Internal Displacement*, Sep. 24, 2013, <http://www.unhcr.org/5241644c9.html> [hereinafter *UNHCR Concerned*].

¹⁵⁴ Conference of International Investigators, *Uniform Guidelines for Investigations* (2003),

http://www.un.org/en/pseataskforce/docs/uniform_guidelines_for_investigations.pdf [hereinafter *Uniform Guidelines*].

¹⁵⁵ United Nations, Office of the High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2004), <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> [hereinafter *Istanbul Protocol*].

Investigation, the investigators must operate with “objectivity¹⁵⁶ ... [the] highest personal integrity¹⁵⁷ ... demonstrate competence,¹⁵⁸ [and] maintain objectivity, impartiality, and fairness throughout the investigative process.”¹⁵⁹ They must also “maintain both the confidentiality and ... the protection of witnesses,¹⁶⁰ ... demonstrate [their] commitment to ascertaining the facts of the case¹⁶¹ [and issue] findings ... [that are] based on substantiated facts and related analysis, not suppositions or assumptions.”¹⁶²

With respect to the investigative process, it must “include the collection and analysis of documents and other material... [including] interviews of witnesses ... [and] observations of the investigators.”¹⁶³ There should be an “examination of all evidence,¹⁶⁴ ... [i]nformation received from witnesses and subjects should be documented in writing,¹⁶⁵ ... [and] ... documentary evidence should be identified and filed with the designation of origin of the document, location and date with the name of the filing investigator.”¹⁶⁶

Finally, with respect to the findings, “[w]here the investigative findings substantiate the complaint, those findings should be reported ... [and include] recommendations for corrective action ... and ... the steps needed to minimize the risk of recurrence.”¹⁶⁷ The investigative office should then “ensure that its recommendations are implemented in a timely fashion.”

2. The Istanbul Protocol

The Istanbul Protocol puts forth additional requirements for investigations when instances of torture and other cruel, inhuman or degrading treatment or punishment have occurred. It notes that States “are required under international law to investigate reported incidents of torture promptly and impartially.”¹⁶⁸ However, where “investigative procedures are inadequate because of ... the appearance of bias ... States shall pursue investigations through an independent commission of inquiry or similar procedure.”¹⁶⁹

When a commission of inquiry or similar procedure is used, a series of protocols must be followed. These include, *inter alia*,¹⁷⁰ the need to define the scope of the inquiry,¹⁷¹ the necessity of ensuring the commission has the power to obtain all necessary information,¹⁷² to

¹⁵⁶ *Uniform Guidelines*, *supra* note 154 at I(C)(2).

¹⁵⁷ *Uniform Guidelines*, *supra* note 154 at III(A).

¹⁵⁸ *Uniform Guidelines*, *supra* note 154 at III(B).

¹⁵⁹ *Uniform Guidelines*, *supra* note 154 at III(C).

¹⁶⁰ *Uniform Guidelines*, *supra* note 154 at III(D).

¹⁶¹ *Uniform Guidelines*, *supra* note 154 at III(E) (emphasis added).

¹⁶² *Uniform Guidelines*, *supra* note 154 at III(F) (emphasis added).

¹⁶³ *Uniform Guidelines*, *supra* note 154 at IV(B)(1).

¹⁶⁴ *Uniform Guidelines*, *supra* note 154 at IV(B)(3) (emphasis added).

¹⁶⁵ *Uniform Guidelines*, *supra* note 154 at IV(B)(3).

¹⁶⁶ *Uniform Guidelines*, *supra* note 154 at IV(D)(3).

¹⁶⁷ *Uniform Guidelines*, *supra* note 154 at IV(E)(1) (emphasis added).

¹⁶⁸ *Istanbul Protocol*, *supra* note 155 at ¶ 74.

¹⁶⁹ *Istanbul Protocol*, *supra* note 155 at ¶ 75.

¹⁷⁰ For a full list of the requirements see *Istanbul Protocol*, *supra* note 155 at ¶¶ 107-118.

¹⁷¹ *Istanbul Protocol*, *supra* note 155 at ¶ 107.

¹⁷² *Istanbul Protocol*, *supra* note 155 at ¶ 108(a).

issue a public report,¹⁷³ to conduct site visits, including where the torture has occurred,¹⁷⁴ and to receive evidence from witnesses.¹⁷⁵ The commission members must also be chosen for their recognized impartiality, competence and independence.¹⁷⁶ Finally, in gathering its data, the “commission must assess all information and evidence it receives to determine reliability and probity.”¹⁷⁷ Furthermore, it should “evaluate oral testimony...[and while doing so]... must be sensitive to social, cultural and gender issues...”¹⁷⁸ In some instances it may be necessary to carry out physical¹⁷⁹ or psychological¹⁸⁰ examinations of the victims to gather evidence.

Finally, when issuing its public report,¹⁸¹ the commission should do so in a “reasonable period of time”¹⁸² and the report “should contain, at a minimum”¹⁸³ the following: 1) “the scope of inquiry and terms of reference;”¹⁸⁴ 2) “the procedures and methods of evaluating evidence;”¹⁸⁵ 3) “a list of all witnesses, including age and gender, who have testified, except for those whose identities are withheld for protection, and exhibits received as evidence;”¹⁸⁶ 4) “the time and place of each sitting...;” 5) “the background of the inquiry, such as relevant social, political and economic conditions;”¹⁸⁷ 6) “the specific events that occurred and the evidence upon which such findings are based;”¹⁸⁸ 7) “the law upon which the commission relied;”¹⁸⁹ 8) “the commission’s conclusions based on applicable law and findings of fact;”¹⁹⁰ and 9) “recommendations based on the findings of the commission.”¹⁹¹ The State in turn should then reply publicly to the commission’s report and indicate which steps it intends to take in response to the report.¹⁹²

The purpose of these types of investigations is threefold: 1) to clarify the facts and establish “acknowledgement of individual and State responsibility for victims and their families,¹⁹³ 2) identify “measures needed to prevent recurrence,”¹⁹⁴ and 3) facilitate “prosecution or ... disciplinary sanctions for those indicated by the investigation as being responsible and...[demonstrate] ... the need for full reparation and redress from the State, including fair and

¹⁷³ *Istanbul Protocol*, *supra* note 155 at ¶ 108(b).

¹⁷⁴ *Istanbul Protocol*, *supra* note 155 at ¶ 108(c).

¹⁷⁵ *Istanbul Protocol*, *supra* note 155 at ¶ 108(d).

¹⁷⁶ *Istanbul Protocol*, *supra* note 155 at ¶ 109.

¹⁷⁷ *Istanbul Protocol*, *supra* note 155 at ¶ 117 (emphasis added).

¹⁷⁸ *Istanbul Protocol*, *supra* note 155 at ¶ 117 (emphasis added).

¹⁷⁹ *Istanbul Protocol*, *supra* note 155 at Section V.

¹⁸⁰ *Istanbul Protocol*, *supra* note 155 at Section VI.

¹⁸¹ *Istanbul Protocol*, *supra* note 155 at ¶ 118.

¹⁸² *Istanbul Protocol*, *supra* note 155 at ¶ 118.

¹⁸³ *Istanbul Protocol*, *supra* note 155 at ¶ 118.

¹⁸⁴ *Istanbul Protocol*, *supra* note 155 at ¶ 118(a).

¹⁸⁵ *Istanbul Protocol*, *supra* note 155 at ¶ 118(b).

¹⁸⁶ *Istanbul Protocol*, *supra* note 155 at ¶ 118(c).

¹⁸⁷ *Istanbul Protocol*, *supra* note 155 at ¶ 118(e).

¹⁸⁸ *Istanbul Protocol*, *supra* note 155 at ¶ 118(f).

¹⁸⁹ *Istanbul Protocol*, *supra* note 155 at ¶ 118(g).

¹⁹⁰ *Istanbul Protocol*, *supra* note 155 at ¶ 118(h).

¹⁹¹ *Istanbul Protocol*, *supra* note 155 at ¶ 118(i).

¹⁹² *Istanbul Protocol*, *supra* note 155 at ¶ 119.

¹⁹³ *Istanbul Protocol*, *supra* note 155 at ¶ 78(a) (emphasis added).

¹⁹⁴ *Istanbul Protocol*, *supra* note 155 at ¶ 78(b) (emphasis added).

adequate financial compensation and provision of the means for medical care and rehabilitation.”¹⁹⁵

3. UN Investigation Needed

As indicated above, after the September 1 attack on Ashraf, UNAMI condemned the events and Deputy Special Representative Gyorgy Busztin called on the Iraqi government “to ensure that a thorough, impartial and transparent investigation into this atrocious crime is conducted without delay and that the results of the investigation are made public.”¹⁹⁶

Under normal circumstances, calling on a State party to investigate an atrocity would be eminently reasonable. In this case, however, the UN must carry out the investigation, not the Iraqi Government. The reason is simple: Iraq’s unwillingness to secure the Residents’ safety since 2009 and its history of murdering and mistreating them indicates its obvious bias against the Residents. In addition, Iraq never carried out an investigation regarding the other attacks at Ashraf and Liberty. Why therefore should Iraq be entrusted to carry out an investigation now, especially if it would be self-implicating?

After the previous attacks against the Residents, the UN did not conduct a substantial or independent investigation into the events, nor did place into the public domain whatever action it took. Here, the UN has said it will conduct an “assessment”;¹⁹⁷ but this must rise to the level of an investigation and be consistent with the internationally-recognized standards discussed above. In addition, it must be independent, impartial, swift, and thorough. Although UNAMI might normally initiate such an investigation, given its location within the highly politicized context of Iraq, it might be more effective to have the Office of the High Commissioner for Human Rights investigate what occurred. The Residents have repeatedly urged UNAMI to initiate an investigation and interview the 42 survivors. But, thus far, no investigation is underway by UNAMI or any other organ of the UN.

The US Government must also continue its prior commitment to support an independent investigation by the UN. On September 6, the US Department of State issued a press release in which it stated “We...reiterate our support for the United Nations Assistance Mission (UNAMI) and its efforts to conduct an independent fact finding investigation into this terrible event and to document what took place.”¹⁹⁸ Such public support for an investigation must not cease unless and until an investigation has started and been completed.

II. BROKEN PROMISES – PAST COMMITMENTS TO RESIDENTS VIOLATED

¹⁹⁵ *Istanbul Protocol*, *supra* note 155 at ¶ 78(c) (emphasis added).

¹⁹⁶ UNAMI News Release, *UNAMI delegation visits Camp Ashraf to assess the situation following reports of massacre*, Sep. 3, 2013, <http://unami.unmissions.org/Default.aspx?tabid=2790&ctl=Details&mid=5079&ItemID=1884772&language=en-US>.

¹⁹⁷ *See Clashes*, *supra* note 147.

¹⁹⁸ US Department of State Press Release, *Situation at Camp Ashraf in Iraq*, Sep. 6, 2013, <http://www.state.gov/r/pa/prs/ps/2013/09/213919.htm>.

The Iraqi Government, United Nations, and the United States all made numerous promises to the Residents, the majority of which have been broken. These commitments can be placed into two groups: those relating to the Residents' safety and security and those relating to their property.

A. Safety and Security

As indicated above,¹⁹⁹ when the US handed over control of Camp Ashraf on February 20, 2009 to the Iraq Government, it stated that it had received "full assurances" that the Iraqis would provide for the safety and security of the Residents. However, the Iraqi Government twice attacked Ashraf in July 2009 and April 2011, which resulted in numerous deaths and scores of injured Camp Residents.

After the Iraqi Government unilaterally decided the Residents had to be relocated to Camp Liberty, it entered into an MOU with the UN, discussed in section IV(A)(4) below, which put forth several items for which the Iraqi Government would be responsible. These included, *inter alia*, providing safety and security for the Residents and ensuring that Camp Liberty would meet international human rights standards. Toward this end, the Residents also received reassurances from SGSR Kobler and the US Government. SRSK Kobler reaffirmed the above commitments²⁰⁰ and stated in writing that the UN would provide 24/7 monitoring of Liberty. For its part the US Government, through Secretary Clinton, stated that, "officials from [the] U.S. Embassy [in] Baghdad will visit regularly and frequently."²⁰¹ This US support was reaffirmed nine months later in a briefing in Washington in which the State Department Spokesperson said, "The United States ... reiterates its commitment to support the safety and security of the [R]esidents throughout the process of their relocation outside of Iraq."²⁰²

As discussed below,²⁰³ however, terrible conditions in Camp Liberty abound. The conditions not only are an ongoing challenge for the Residents, they also violate international human-rights standards and provide no safety or security for the Residents. Consequently, Camp Liberty has now been attacked on two separate occasions this year.²⁰⁴ These attacks have left 10 Residents dead and over 150 wounded. The attacks have arisen because the Iraqi Government has failed to protect the Residents, as have the UN and US. Contrary to its stated written commitment, the UN has not monitored²⁰⁵ the Camp on a 24/7 basis, and it has been many months between visits by US government personnel.

B. Property

¹⁹⁹ See *supra* section I(A).

²⁰⁰ See *infra* section IV(A)(4).

²⁰¹ US Department of State, *Press Statement - Hillary Rodham Clinton*, Dec. 25, 2011, <http://www.state.gov/secretary/rm/2011/12/179695.htm>.

²⁰² US Department of State, *Press Statement - Victoria Nuland*, Aug. 29, 2012, <http://www.state.gov/r/pa/prs/ps/2012/08/197002.htm>.

²⁰³ See *infra* section IV(A)(5).

²⁰⁴ See *infra* section IV(A)(7).

²⁰⁵ See *infra* section IV(A)(5).

As discussed above,²⁰⁶ some 100 Residents had remained behind at Ashraf to address issues with their property that they had accumulated over the course of their quarter-century presence in Iraq. They were present at Camp Ashraf because UNAMI secured an agreement from the Iraqi Government, which SRSG Kobler memorialized in writing²⁰⁷ (discussed in section IV(A)(6) below). In the agreement, the Iraqi Government was supposed to provide the “protection for the property and remaining [100] residents in ... [Ashraf] ... until the issue of property ... [was] ... settled completely.”²⁰⁸

Despite such promises, however, the Iraqis breached the agreement. Not only did the Iraqi Government fail to protect the Residents’ property, they oversaw or orchestrated the destruction of much of it through targeted explosions of the Residents’ living facilities, cars, fuel tankers, and other possessions. Consequently, the Residents lost \$10 million worth of property and had to endure yet another broken promise by the Iraqis.

In looking cumulatively at the long list of promises made by Iraq, UN, and US, the Residents can no longer trust anything the Iraqi Government says or does and the Residents have serious questions about whether the UN and US can be trusted. In short, the UN and US appear to have treated this situation as an issue to be managed rather than a problem to be solved.

III. VIOLATIONS OF INTERNATIONAL LAW

There are four main sources of international law governing the conduct of the Iraqi Government with respect to the massacre at Ashraf. These include the jurisprudence regarding Crimes Against Humanity pursuant to customary international law,²⁰⁹ the International Covenant on Civil and Political Rights (ICCPR),²¹⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),²¹¹ and the Fourth Geneva Convention.²¹²

A. Crimes Against Humanity

Crimes against humanity refer to specific acts that are so horrendous that they “shock the conscience of mankind and warrant intervention by the international community.”²¹³ As such, crimes against humanity fall into a special class of international obligations called *jus cogens*

²⁰⁶ See *infra* section I(A).

²⁰⁷ Special Representative of the Secretary General Martin Kobler, UNAMI, *Final Arrangement for the Relocation of Camp Ashraf Residents*, September 6, 2012 (on file with authors) [hereinafter *Kobler September 6, 2012 Letter*].

²⁰⁸ See *infra* note 348.

²⁰⁹ This law is derived from three sources: UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998 [hereinafter *Rome Statute*] and the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia [ICTY] and the International Criminal Tribunal for Rwanda [ICTR].

²¹⁰ *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 [hereinafter *ICCPR*].

²¹¹ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Dec. 10, 1984, UNTS vol. 1465, entered into force Jun. 26, 1987 [hereinafter *CAT*].

²¹² 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, 75 UNTS 287, entered into force Oct. 21, 1950 [hereinafter *Fourth Geneva Convention*].

²¹³ Prosecutor v. Tadić (Case No. IT-94-1-A), Judgment, 15 July 1999, at ¶ 653.

norms.²¹⁴ These norms²¹⁵ are absolute and cannot be derogated from by any State,²¹⁶ thus making them more obligatory than the treaties States sign.²¹⁷

Crimes against humanity are criminal acts that, when committed in certain circumstances, become international crimes. Although there is no treaty defining crimes against humanity, there are five requirements that are accepted under customary international law. These requirements are derived from and reflected in jurisprudence of international tribunals.²¹⁸

The first requirement is the existence of a “widespread or systematic attack” in the context of which the criminal act took place.²¹⁹ Second, the criminal act must be part of the overall attack.²²⁰ Third, the criminal act must deliberately target a civilian population.²²¹ Fourth, the perpetrator of the act must know that the particular criminal act is part of the attack. Finally, the criminal act must be a prohibited act. International tribunals have enumerated their own lists of prohibited acts, which include: (1) murder, (2) extermination, (3) enslavement, (4) deportation or forcible transfer of population, (5) imprisonment in violation of fundamental rules of international law, (6) torture, (7) rape or other forms of sexual violence, (8) persecution against an identifiable group on certain grounds, (9) enforced disappearances, (10) apartheid, and (11) other inhumane acts designed to cause great suffering or death.²²²

The Iraqi Government’s attack at Camp Ashraf on September 1 meets all five of these requirements. Therefore, the massacre is a crime against humanity.

²¹⁴ See M. Cherif Bassiouni, *International Crimes: Jus Cogens and Obligatio Erga Omnes*, 59 *Law and Contemporary Problems* 63-74 (Fall 1996), <http://scholarship.law.duke.edu/lcp/vol59/iss4/6> [hereinafter *Jus Cogens*].

²¹⁵ *Jus Cogens*, *supra* note 214 at 68 (noting the additional *jus cogens* norms as prohibitions on aggression, genocide, war crimes, piracy, slavery and slave-related practices, and torture).

²¹⁶ *Jus Cogens*, *supra* note 214 at 65, 67.

²¹⁷ Dunoff et. al (eds.), *International Law: Norms, Actors, Process : A Problem-Oriented Approach* 59-59 (2006) (noting “Articles 53 and 64 of the Vienna Convention [on the law of treaties] suggests the existence of a hierarchy of norms in international law. By definition, *jus cogens* norms are deemed to be so fundamental to the existence of a just international legal order that states cannot derogate from them, even by agreement. By contrast, other norms of general international law may be modified by agreement, at least with respect to the relations of the parties to the agreement”).

²¹⁸ International tribunals formed to adjudicate international crimes include the International Military Tribunal at Nuremberg (1945), the International Criminal Tribunal of the Former Yugoslavia (ICTY) (1993), the International Criminal Tribunal for Rwanda (ICTR) (1994), and the International Criminal Court (2002). All three of these latter tribunals include a definition of crimes against humanity in their governing statutes.

²¹⁹ Margaret McAuliffe deGuzman, *The Road From Rome: The Developing Law of Crimes Against Humanity*, 22 *HUM. RTS. Q.* 335, 337 (2000) [hereinafter *The Road From Rome*].

²²⁰ *Prosecutor v. Tadić* (Case No. IT-94-1-A), Judgment, July. 15, 1999, at ¶¶ 248 & 251.

²²¹ *The Road From Rome*, *supra* note 219 at 360.

²²² See *Rome Statute*, *supra* note 209 at Article 7(1)(a–k). The ICTY and ICTR have identical lists that are slightly shorter than the ICC. The ICTY and ICTR only enumerate: (1) murder, (2) extermination, (3) enslavement, (4) deportation, (5) imprisonment, (6) torture, (7) rape, (8) persecution on political, racial and religious grounds, and (9) other inhumane acts. See *Statute for the International Criminal Tribunal for the Former Yugoslavia*, art. 5, S.C. Res. 808, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/Res/808 (1993) [hereinafter *ICTY Statute*]; *Statute for the International Criminal Tribunal for Rwanda*, art. 3, S.C. Res. 955, U.N. SCOR, 49th sess. 3453d mtg., U.N. Doc. S/RES/955 (1994) [hereinafter *ICTR Statute*].

1. Iraq's Attack Against the Residents.

A criminal act can only be considered a crime against humanity if it occurs in the context of a widespread or systematic attack on a civilian population. "Attack" is understood to mean a "course of conduct involving the multiple commissions of acts."²²³ The use of "or" is meant to be disjunctive: both characteristics are not required; however, "attacks" are often both widespread and systematic.²²⁴ The term "widespread" refers to the scale of the course of conduct and the number of victims.²²⁵ However, customary international law does not require a minimum number of victims to constitute a crime against humanity.²²⁶ The widespread characteristic may be shown though the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude."²²⁷ The term "systematic" refers to the organization of the course of conduct. There is no requirement in customary international law that a policy to commit the acts exist, but existence of such a policy may be relevant to showing a course of conduct.²²⁸

Pursuant to a policy to expel the Residents, Iraq has engaged in a series of actions against them. These assaults collectively comprise a systematic course of conduct that meets the definition of "attack," as they are both widespread and systematic. The course of conduct is widespread because the assaults have been numerous. Since 2009, the Residents have suffered three attacks on their Camps where Iraq's direct involvement is explicit. The course of conduct is systematic because Iraq has been acting pursuant to a policy, which shows that the assaults have been organized. Through its public statements, Iraq has made its desire to eradicate the Residents from Iraq through use of force abundantly clear.²²⁹ These statements are backed up by the sworn testimony of Tahar Boumedra, former Chief of the Human Rights Office at UNAMI, who has personal knowledge that the Iraqi Government wanted to make life "unbearable" for the Residents.²³⁰ This policy has been carried out through a series of targeted assaults against Camp Ashraf and Liberty. The assaults were systematically conducted either to cause immediate death or induce such strong trepidation in the Residents that they would feel compelled to leave Iraq

²²³ *Rome Statute*, supra note 209 at Article 7(2)(a) (emphasis added).

²²⁴ William A. Schabas, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 44 (2004).

²²⁵ M. Cherif Bassiouni, INTERNATIONAL CRIMINAL LAW: VOLUME 1 SOURCES, SUBJECTS, AND CONTENTS 471 (2008) [hereinafter *International Criminal Law*].

²²⁶ *International Criminal Law*, supra note 225, at 471.

²²⁷ Prosecutor v. Blaškić (Case No. IT-95-14-T), Judgment, 3 March 2000, at ¶ 206.

²²⁸ The ICC has added a policy requirement to its definition of crimes against humanity, even though a policy requirement is not a norm of customary international law. This additional element requires that the criminal act take place in furtherance or pursuant to a State or organizational policy. See *Rome Statute*, supra note 209, at Article 7(2)(a). Therefore, a pre-requisite requirement for jurisdiction under the ICC is the existence of a policy, which can be inferred from past actions constituting the "attack". Iraq is not a party to the ICC, therefore there is no policy requirement necessary to show that Iraq has committed crimes against humanity. However, because Iraq has a policy of using force to physically eradicate the Residents from its country, there is evidence to show that this policy requirement would nevertheless be met because Iraq's massacre on Camp Ashraf on September 1st was pursuant to that policy.

²²⁹ *Submission by Residents of Camp Ashraf and Camp Liberty to the United Nations*, Petition for Relief, page 46, June 20, 2013, <http://www.perseus-strategies.com/news/documents/SubmissiontoUnitedNation-CampsLibertyandAshraf-6-20-13.pdf> [hereinafter *Residents' UN Petition*].

²³⁰ Affidavit of Mr. Tahar Boumedra, ¶ 6, submitted with the *Petition for Relief*, <http://www.perseus-strategies.com/news/documents/SubmissiontoUnitedNation-CampsLibertyandAshraf-6-20-13.pdf> [hereinafter *Boumedra Affidavit*].

for fear that their physical safety and security were at stake. In addition, Iraq has targeted the Residents in other ways that are intended to make life intolerable, including preventing access to water, food, and medical attention.²³¹ These acts demonstrate Iraq's disregard for the safety and security of the Residents, its desire to expel them from Iraq, and its willingness to use fatal force to pursue this goal.

2. The Massacre was Committed as Part of the Widespread and Systematic Attack.

The second requirement for a crime against humanity is that the particular criminal act in question must have occurred in the context of the widespread or systematic attack.²³² Based on the nature of the events, there is conclusive evidence that the massacre on September 1 was committed as part of the Iraqi Government's widespread and systematic course of conduct because the act was consistent with Iraq's prior behavior and emblematic of its policy to remove the Residents from Iraq. The details of the massacre, particularly the fact that each victim was shot in the head, undeniably proves that the action was intended to physically eradicate the Residents.

3. The Residents Are a Civilian Population.

The third requirement for a crime against humanity is that the crime must be committed against a civilian population. A civilian is defined in the Geneva Conventions as either any person who is not a member of armed forces²³³ or a person "taking no active part in hostilities."²³⁴

The Residents are civilians because they are not members of any armed forces, nor were they taking an active part in any hostilities. They were also designated as protected persons under the Fourth Geneva Convention, which is focused on protecting civilians in a time of war. In fact, the Residents were defenseless, having given up all weapons in their possession a decade ago after the Coalition's invasion of Iraq.²³⁵ And, apart from being on the receiving end of the September 1 attack, there were no other hostile activities taking place that involved the Residents in Ashraf or Liberty.

4. Iraq Participated in or Had Constructive Knowledge of the Massacre and the Context in Which the Massacre Took Place.

The fourth requirement for a crime against humanity is knowledge of the attack. For this to be present, the perpetrator must have actual or constructive knowledge of the particular act in question, and knowledge that the act took place in the context of a widespread or systematic attack (e.g., the course of conduct). However, the perpetrator does not need to know all the

²³¹ See *infra* section IV(A)(5).

²³² Prosecutor v. Tadić (Case No. IT-94-1-A), Judgment, July. 15, 1999, at ¶ 271

²³³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relation to the Protection of Victims of International Armed Conflicts (Protocol I), Article 50, 8 June 1977, 1125 U.N.T.S. 3.

²³⁴ *Rome Statute*, *supra* note 209 at 3(1).

²³⁵ See *infra* section IV(A)(2).

“precise details” of the course of conduct or the particular act.²³⁶ “Constructive knowledge” is that which a reasonable person in the same situation *should* have; it does not matter whether the individual actually possessed the knowledge.²³⁷ In general, the perpetrator does not have to act with a discriminatory intent,²³⁸ or share the same intention as the other individuals carrying out the course of conduct.²³⁹

There is overwhelming evidence suggesting the Iraqi Government carried out the September 1 massacre. The Attackers spoke Arabic with Iraqi accents, wore uniforms virtually identical to those of the Golden Division, and were let into the Camp by Iraqi police as Colonel Nahad stood by and watched. Consequently, there is every reason to believe that the Iraqi Government had actual knowledge of the massacre and knew that the massacre was taking place in the context of its widespread and systematic attack against the Residents. Because Iraqi forces—both the military and police—are under the command of the Iraqi Government, it is impossible that Iraqi forces could have acted without the knowledge and authorization of the Iraqi Government.

Even if one accepts as true the position of the Government—it claims it was not involved in the massacre²⁴⁰—or if one believes the Attackers themselves were rogue Iraqi officials acting independently of the Government, Iraq is still responsible for the deaths because their officials alone imprisoned the Residents and they had exclusive responsibility for ensuring the health and welfare of prisoners in an Iraqi prison. Beyond this, Camp Ashraf has within and directly around it an over 1,200 strong Iraqi police and military force split up into eight different units. Some of the headquarters and outposts of these units are located just steps away from the Attackers’ entry points.

Based on these facts, it is impossible that any of the Attackers could have entered Camp Ashraf or its perimeter without first being seen by many of the eight different units of the Iraqi military and police forces—which are under direct control of the Government of Iraq. For these reasons, any claim made by the Iraqi Government that somehow it was possible for all eight units to have missed the incursion or to have each, independently, decided to cooperate with the Attackers without coordination, could only be characterized as utterly deceitful. As Retired US Army Col. Wesley Martin, the former Senior Antiterrorism/Force Protection Officer for all Coalition Forces and Former Commander of Camp Ashraf stated: without the use of “science fiction ... [t]here is no way anybody could come in or leave [Ashraf] without engagement of the Iraqi forces. ... [I]t was an Iraqi assault.”²⁴¹

²³⁶ *Rome Statute*, supra note 209 at Article 7(1).

²³⁷ BLACK’S LAW DICTIONARY 404 (3d Pocket ed. 1996) (defining constructive knowledge as “knowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person”).

²³⁸ The ICTR is the only tribunal that required a perpetrator of crimes of against humanity to act in a discriminatory way. See e.g. *The Road From Rome*, supra note 219 at 364. However, other iterations of the crimes against humanity definition in the ICTY and the ICC only require discriminatory intent to prove one of the one specific prohibited act: persecution.

²³⁹ Prosecutor v Kunarac, Kovac, and Vuvokic (Case No. IT-96-23-A & IT-9623/1-A), Judgment, 12 June 2002, ¶ 103.

²⁴⁰ *52 Iranian Exiles Killed*, supra note 131.

²⁴¹ James Morrison, *Embassy Row: Broken Promises on Iranian Dissidents*, WASHINGTON TIMES, Oct. 13, 2013, <http://www.washingtontimes.com/news/2013/oct/13/embassy-row-broken-promises-on-iranian-dissidents/#ixzz2hipOp7ka>.

5. The Specific Acts Committed During the Massacre Include 52 Murders and Torture Against the 42 Survivors.

The final requirement for a crime against humanity is that the act in question must be prohibited. Although some debate exists as to which acts are prohibited under customary international law, all tribunals agree that murder and torture are prohibited acts.²⁴²

During the massacre, the Iraqi Government executed 52 Residents and subjected the remaining 42 survivors to emotional torture. Iraq's extra-judicial murdering of 52 people with gunshots to the head speaks for itself: such actions are murder *per se* and leave no doubt that the Attackers meant to kill.

As described below,²⁴³ the 42 survivors, including the Hostages, endured the torturous pain of witnessing their friends and comrades being executed at point blank range, along with the fear that they too could be executed at any moment. And the four survivors who obtained physical injuries as a result of the Attackers attempting to kill them endured torture as well.

6. Other Prohibited Acts May Include Extermination, Forced Transfer, and Persecution on Political Grounds.

Although the scope of this report is focused squarely on the events of September 1, prior assaults and actions taken against the Residents by the Government of Iraq also constitute crimes against humanity. As has been discussed before in a previous submission to the UN, the moving of the Residents from Camp Ashraf to Camp Liberty beginning in 2012 constitutes a forced transfer.²⁴⁴ Individuals *may not* consent to having their rights under international law be violated. Thus, claims by the UN and US that the relocation was consensual—which is disputed by the Residents who argued they were told unless they moved they would be massacred—are irrelevant. In addition, Iraq has (1) prevented the transfer of life-saving equipment from Camp Ashraf to Camp Liberty, (2) restricted access to water, food, and medicine for the residents at Camp Liberty (which has resulted in the deaths of wounded and ill residents), and (3) made consistent threats to the security and well-being of all the Residents. These actions arguably constitute extermination²⁴⁵ and persecution on political grounds.

B. International Covenant on Civil and Political Rights and Convention against Torture

Iraq is a party to the ICCPR.²⁴⁶ Rights under the ICCPR apply equally to citizens,

²⁴² *Rome Statute*, *supra* note 209 at Articles 7(a), 7(f); ICTY Statute, *supra* note 222 at Articles 5(a) & 5(f); and ICTR Statute, *supra* note 222 Articles 3(a) & 3(f).

²⁴³ *See infra* section III(B)(2).

²⁴⁴ *Residents' UN Petition*, *supra* note 229 at 15.

²⁴⁵ *Rome Statute*, *supra* note 209, at Article 7(1)(a) Elements (defining extermination as “inflicting conditions of life calculated to bring about the destruction of part of a population”).

²⁴⁶ 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).

asylum-seekers, and refugees alike.²⁴⁷ The Human Rights Committee (HRC), the treaty body charged with offering general recommendations and comments as authoritative interpretations of the ICCPR's meaning, has held "the general rule is that each one of the rights of the [ICCPR] must be guaranteed without discrimination between citizens and aliens."²⁴⁸ It has 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."²⁴⁹

1. Right to Life – Article 6

Article 6(1) of the ICCPR is the key provision guaranteeing the right to life. In relevant part it reads: "Every human being has the inherent right to life. ... No one shall be arbitrarily deprived of his[/her] life."²⁵⁰ The content of Article 6 has been expounded upon by the HRC, which has described Article 6 as "the supreme right."²⁵¹ The HRC has also stated that this right includes the right not to be killed by the State. In its General Comment 6, the HRC stated:

The protection against arbitrary deprivation of life ... is of paramount importance. The Committee considers that State parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity.²⁵²

Under this human-rights law framework, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has noted²⁵³ that a "State killing [outside the context of armed conflict] is legal only if it is required to protect life (making lethal force proportionate) and there is no other means, such as capture or nonlethal incapacitation, of preventing that threat to life (making lethal force necessary)."²⁵⁴ As such, "a targeted killing in the sense of an intentional, premeditated and deliberate killing by law enforcement officials cannot be legal because, unlike in armed conflict, it is never permissible for killing to be the sole objective of an operation."²⁵⁵ When killing by the State occurs, the State has a duty to investigate such killing,²⁵⁶ and by extension, the State has as a duty to punish those offenders responsible for State killing.²⁵⁷

²⁴⁷ 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*].

²⁴⁸ *Alternatives to Detention*, *supra* note 247.

²⁴⁹ *Alternatives to Detention*, *supra* note 247 (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, ¶¶ 2 and 1 respectively).

²⁵⁰ *ICCPR*, *supra* note 210 at Article 6(1).

²⁵¹ Sarah Joseph, et al., THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 109 (2000) (citing to General Comment 6, ¶1) [hereinafter *Joseph, et al.*]

²⁵² *Joseph, et al.*, *supra* note 251 at 109 (emphasis added).

²⁵³ Phillip Alston, *The UN Special Rapporteur on Extrajudicial Executions Handbook*, Chapter 2 [hereinafter *Handbook*].

²⁵⁴ *Handbook*, *supra* note 253 at ¶¶ 31, 32.

²⁵⁵ *Handbook*, *supra* note 253 at ¶ 33.

²⁵⁶ *Joseph, et al.*, *supra* note 251 at 114 (citing to General Comment 6, ¶ 1, "States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life").

Here, the Iraqi Government flagrantly violated Article 6. Based on the statements from those who survived the massacre, it is abundantly clear that the Iraqi Government not only failed in its duty to protect the Residents from arbitrary killing, it in fact caused their deaths through use of its own security forces. Such “premeditated and deliberate killing by law enforcement officials” where murder is the “sole objective” is a *per se* violation of Article 6. The Iraqi Government must therefore investigate to determine who the perpetrators are and hold them to account.

2. Torture - ICCPR Article 7, 10 and CAT

ICCPR Article 7 in pertinent part reads, “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁵⁸ Article 7 prohibits these actions and affords one of the few absolute rights in the ICCPR from which no restrictions or derogations are permitted.²⁵⁹ The prohibited actions relate not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.²⁶⁰ Similarly, torture in the form of physical or mental pain is also prohibited without restriction²⁶¹ under CAT,²⁶² a treaty to which Iraq is a party.²⁶³ CAT also prohibits the extradition, expulsion, or *refoulement* of individuals where such individuals would foreseeably face torture.²⁶⁴ Relatedly, the HRC has recognized the State duty to prevent *incommunicado* detention in order to minimize the risks of breaching Article 7.²⁶⁵ And where this detention exceeds a period of 15 days, a breach arises under Article 10(1).²⁶⁶ When allegations of Article 7 treatment arise, a State has the duty to investigate both under Article 7 and CAT,²⁶⁷ and to punish offenders.²⁶⁸

Here, three forms of torture are present as a result of the Iraqi Government’s actions. First, those that were killed were shot arbitrarily and then had to watch their friends being executed in front of them, knowing this would soon be their fate. Second, all 42 of the Residents who survived the massacre endured either the terrible pain of having witnessed their friends and comrades being executed at point blank range to the head or the pain of having discovered their

²⁵⁷ *Joseph, et al.*, *supra* note 251, at 117.

²⁵⁸ *ICCPR*, *supra* note 210.

²⁵⁹ *Joseph, et al.*, *supra* note 251, at 140 (citing to HRC’s General Comment 20, ¶5, “The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority”).

²⁶⁰ *Joseph, et al.*, *supra* note 251, at 148.

²⁶¹ *Joseph, et al.*, *supra* note 251, at 150 (citing to CAT, Article 2).

²⁶² *Joseph, et al.*, *supra* note 251, at 141 (citing to HRC’s General Comment 20, ¶5) & 155 (citing to *Quinteros v. Uruguay* (107/81)).

²⁶³ United Nations Treaty Status: CAT, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en (noting that Iraq acceded to the treaty on July 7, 2011).

²⁶⁴ *Joseph, et al.*, *supra* note 251, at 162 (citing to CAT, Article 3 and General Comment 20).

²⁶⁵ *Joseph, et al.*, *supra* note 251, at 175 (citing to HRC’s General Comment 20, ¶11).

²⁶⁶ *ICCPR*, *supra* note 210 Article 10(1) reads: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

²⁶⁷ *Joseph, et al.*, *supra* note 251, at 177 (citing to HRC’s General Comment 20, ¶14 and CAT Articles 12-14).

²⁶⁸ *Joseph, et al.*, *supra* note 251, at 179 (citing to HRC’s General Comment 20, ¶15 and CAT Articles 4).

bodies, not to mention the fear that they too could be executed at any moment. Finally, four of the survivors suffered physical injuries as a result of the Iraqi forces attempting to kill them.

Equally concerning is the fate of the seven Hostages; they still remain unaccounted for and detained. Here, too, it appears that the Iraqi Government not only failed to prevent *incommunicado* detention of the Hostages, but also actively facilitated their confinement. The surviving Residents are deeply concerned over the Hostages' fate; they believe the Hostages will undoubtedly be *refouled* to Iran where they are certain to face further torture and ultimately death by execution. Given that the Hostages' detention has exceeded 15 days, the Iraqi Government has now breached ICCPR Article 10(1). The Iraqi Government must therefore put an end to the detention and investigate who the perpetrators are and hold them to account.

3. Arbitrary Detention – Article 9

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.²⁶⁹

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

The UN Working Group on Arbitrary Detention (the Working Group)—an independent and impartial body of experts appointed by the UN Human Rights Council whose mandate is to investigate detentions imposed arbitrarily or inconsistently with international human rights standards—discussed the case of the Residents in two separate opinions.²⁷⁰ Due to a lack of due process protections and proper living conditions, the Working Group found the Government of Iraq to be in breach of its international legal obligations.²⁷¹

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

²⁶⁹ *ICCPR*, *supra* note 210, at Article 7.

²⁷⁰ *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*].

²⁷¹ *Opinion No. 16/2012*, *supra* note 270, at ¶ 17-18; and *Opinion No. 32/2012*, *supra* note 270, at ¶ 30.

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.²⁷²

The Working Group reaffirms this rationale and considers that the same applies to the residents of Camp Ashraf. Indeed, the residents of both Camp Liberty and Camp Ashraf are effectively deprived their liberty without any legal justification.²⁷³

Furthermore, the Working Group found that the conditions in the camps violate the Principles from the Working Group's *Deliberation No. 5 Regarding the Situation of Immigrants and Asylum Seekers* (Deliberation No. 5 Principles).²⁷⁴ These Principles parallel UNHCR's Guidelines²⁷⁵ relating to the detention of asylum-seekers, which provide for the minimum standards and conditions under which asylum-seekers must live while awaiting refugee processing and resettlement.²⁷⁶ 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 authority²⁷⁷ ...

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

²⁷² *Opinion No. 16/2012*, supra note 270, at ¶ 16; and *Opinion No. 32/2012*, supra note 270, at ¶¶ 30-31.

²⁷³ *Opinion No. 32/2012*, supra note 270, at ¶ 31 (emphasis added).

²⁷⁴ UN Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, 28 December 1999, E/CN.4/2000/4.

²⁷⁵ 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).

²⁷⁶ The Principles and Guidelines 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.

²⁷⁷ *Opinion No. 32/2012*, supra note 270, at ¶ 25.

prolonged administrative custody without the possibility of administrative or judicial remedy.²⁷⁸

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 custody²⁷⁹ ...

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 arbitrary.²⁸⁰

C. Fourth Geneva Convention

Given the overwhelming evidence, it is extremely unlikely that the Iraqi Government did not authorize, participate in, and directly facilitate the September 1 massacre. However, even if Iraq were to successfully make these claims, the Government cannot avoid the fact that it is still ultimately responsible for the safety and security of the Residents at Camp Ashraf and Liberty. Coalition Forces gave the Residents protected status as civilians under the Fourth Geneva Convention.²⁸¹ 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 allowing the September 1 massacre to take place, regardless of whether Iraqi forces were involved, the Iraqi Government failed to protect the Residents, and thus breached its obligations under the Fourth Geneva Convention.

IV. BACKGROUND

A. Ashraf/Liberty

1. US Invasion

As indicated above, the Residents have been living in Iraq for the past quarter-century. After Operation Iraqi Freedom began in March 2003, Coalition Forces took control of Camp Ashraf following the Coalition Forces' severe bombing of the Camp.²⁸² Ashraf Residents, following the orders of their leaders,²⁸³ did not fire a single shot at Coalition Forces, nor did they

²⁷⁸ *Opinion No. 32/2012, supra* note 270, at ¶ 33.

²⁷⁹ *Opinion No. 32/2012, supra* note 270, at ¶ 34.

²⁸⁰ *Opinion No. 32/2012, supra* note 270, at ¶ 35.

²⁸¹ *See supra* note 11.

²⁸² *See Vick, supra* note 8.

²⁸³ *See Patterns – 2004, supra* note 9.

resist in any way.²⁸⁴ News reports indicate that Coalition attacks had been planned well in advance as part of a purported agreement whereby Iran agreed to support US efforts as long as the US supported Iran's desire to destroy Camp Ashraf and the Residents.²⁸⁵ Notwithstanding any such agreement, Coalition Forces reached a ceasefire with the Residents 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.

2. US Presence (2003-2009)

Subsequently, seven different US agencies, including the State, Defense, Justice, Treasury, and Homeland Security Departments as well as the CIA, FBI, and Defense Intelligence Agency, investigated the Camp Ashraf Residents. The 16-month investigation included exhaustive interviews with each Resident. American investigators concluded there was no evidence that any of the Residents had ever committed an act of terrorism.²⁸⁶ Based on the results of the investigation, Coalition Forces granted Residents of Camp Ashraf protected status as civilians under the Fourth Geneva Convention.²⁸⁷ In a letter dated July 21, 2004, by the US 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.”²⁸⁸

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.”²⁸⁹ 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. 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

²⁸⁴ See *Vick*, *supra* note 8.

²⁸⁵ See *Vick*, *supra* note 8 (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”).

²⁸⁶ 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.

²⁸⁷ See *Proclamation*, *supra* note 11; *Miller Letter*, *supra* note 11.

²⁸⁸ See *Proclamation*, *supra* note 11; *Miller Letter*, *supra* note 11.

²⁸⁹ 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) [hereinafter *DLA White Paper*].

displacement inside Iraq.²⁹⁰

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.”²⁹¹ It reaffirmed this view in its report issued for the January-June 2008 timeframe.²⁹²

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 immediate steps to improve security for all the refugees and Internally Displaced Persons (IDPs) in Iraq and end discriminatory practices.”²⁹³ 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.²⁹⁴

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. For example, 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 . . . [Residents] from the country.”²⁹⁵

Such pressure from Iran on the Iraqi Government was affirmed by the US Department of Defense in its quarterly report to the US 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.”²⁹⁶

Similarly, Iraqi Government officials 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 that Residents must return to Iran or go to other countries.²⁹⁷ On March 27, 2009, the Iraqi National Security Advisor stated that the Government of Iraq planned to move the Residents of Camp Ashraf to

²⁹⁰ Ted Loud, *DLA White Paper*, *supra* note 289, at ¶ 10 (emphasis added) (citing to UNHCR’s letter).

²⁹¹ *Human Rights Report, UN Assistance Mission for Iraq, April 1 – June 30, 2007*, at ¶ 45 (emphasis added).

²⁹² *Human Rights Report, UN Assistance Mission for Iraq, January 1 – June 30, 2008*, at ¶ 78.

²⁹³ European Parliament, *Resolution of 12 July 2007 on the Humanitarian Situation of Iraqi Refugees*, at 6.

²⁹⁴ European Parliament, *Resolution of 24 April 2009 on the Humanitarian Situation of Camp Ashraf Residents* [hereinafter *European Parliament Resolution of 24 April 2009*].

²⁹⁵ These comments were reported on Jul. 10, 2008, on Press TV, an English-language news agency of the Iranian regime.

²⁹⁶ *Measuring Security and Stability in Iraq*, December 2008, Report to U.S. Congress by U.S. Department of Defense, Jan. 9, 2009, at 5.

²⁹⁷ *Iraq Repeats Pledge to Close Iran Opposition Camp*, ASSOCIATED PRESS, Jan. 23, 2009.

remote areas in the country and added, “[t]he Residents should understand . . . that their days in Iraq are numbered and we are literally counting down.”²⁹⁸

The US-Iraq Status of Forces Agreement (SOFA) went into effect on February 20, 2009. Under SOFA, security control over all detainees in Iraq was turned over to the Government of Iraq. The US Government repeatedly said it had received “full assurances” that the people of Camp Ashraf would continue to be protected and would 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.”²⁹⁹

3. 2009 and 2011 Attacks on Ashraf

Despite the above pronouncement of ensuring proper treatment for Ashraf Residents, the Iraqi Government not only restricted the free flow of food, maintenance and medical supplies, and denied Camp Residents the ability to move without restriction in and out of the camp. It also carried out attacks on Ashraf on two occasions.

Beginning with the transfer of Ashraf from the Americans to the Iraqis, the Iraqi Government intermittently blocked supplies from reaching Ashraf. This blockading of the camp included actions such as preventing supplies and necessities like food,³⁰⁰ drinking water,³⁰¹ fuel, and construction materials³⁰² from entering Ashraf. Ashraf Residents were also denied the ability to seek medical treatment.

Most concerning 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.³⁰³ According to Amnesty International, video of the attack appeared to show Iraqi troops “deliberately driving military vehicles into crowds or protesting Camp Residents.”³⁰⁴ The attack resulted in 13 deaths³⁰⁵ and the detention of 36 individuals.³⁰⁶

²⁹⁸ *Iraq to Move Iranian Opposition Group: Official*, ASSOCIATED PRESS, Mar. 27, 2009.

²⁹⁹ U.S. Department of Daily Press Briefing, Mar. 30, 2009.

³⁰⁰ Henrik Hermansson, *Iraq Abuses UN Refugee Process to Imprison Iran Dissidents*, SCOOP INDEPENDENT NEWS NEW ZEALAND, Jan. 25, 2012.

³⁰¹ *With Local Control, New Troubles in Iraq*, N.Y. TIMES, Mar. 15, 2009.

³⁰² European Parliament Resolution of 24 April 2009, *supra* note 294.

³⁰³ *Iraq Authorities Must Investigate Excessive Use of Force in Camp Ashraf*, Amnesty International, Aug. 13, 2009 [hereinafter *Iraq Authorities Must Investigate*]. See also *Iran exiles 'killed in Iraq raid'*, BBC NEWS, Jul. 20, 2009 (displaying video of the attack).

³⁰⁴ *Iraq Authorities Must Investigate*, *supra* note 303.

³⁰⁵ *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 [hereinafter *Anniversary of April 8 Camp Ashraf Massacre*]. See also *Spain to Investigate Deaths of Iranian Exiles in Iraq*, BBC NEWS, Jan. 4, 2011.

³⁰⁶ *Iraq Authorities Must Investigate*, *supra* note 303.

On April 8, 2011, Iraqi security forces again forced their way into Ashraf and attacked Camp Residents,³⁰⁷ 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.”³⁰⁸ This attack left 37 Camp Residents dead, including eight women.³⁰⁹ Over 300 Camp Residents were also injured.³¹⁰

4. 2011 MOU

Following these deadly attacks, the Iraqi Government stated its intention to close Camp Ashraf by the end of 2011.³¹¹ 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.

On September 13, 2011, after receiving applications from all Ashraf Residents for asylum, UNHCR declared the Residents to be “asylum seekers under international law”³¹² which entitled them “to benefit from basic protection of their security and well-being.”³¹³ Furthermore, UNHCR stated, “[it]... would work together with the Government of Iraq and the United 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.”³¹⁴ 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.”³¹⁵

The Iraqi Government then declared that for the Residents to be processed for asylum they would first have to relocate to a new location. As part of this process the UN and Iraq had to find a new location where 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).³¹⁶ Mr. Boumedra told SRSK Kobler this and it was even confirmed in an independent assessment carried out by an expert.³¹⁷ Nevertheless, SRSK Kobler decided Camp Liberty met international humanitarian standards and as such he had to convince the Residents and the international community that the Camp was suitable. Mr. Boumedra states that SRSK Kobler accomplished this by putting forth false reports, selectively chosen

³⁰⁷ *Iraq: Investigate Deadly Violence at Camp Ashraf*, AMNESTY INTERNATIONAL, Apr. 8, 2011.

³⁰⁸ *Iraq: Investigate Deadly Violence at Camp Ashraf*, AMNESTY INTERNATIONAL, Apr. 8, 2011.

³⁰⁹ *Anniversary of April 8 Camp Ashraf Massacre*, *supra* note 305.

³¹⁰ Kate Allen, *Camp Ashraf is a Barometer of Iraq’s Human Rights*, THE GUARDIAN, Apr. 14, 2011.

³¹¹ *Iraq Wants to Shut Down Camp Ashraf*, CNN, Apr. 12, 2011.

³¹² 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*].

³¹³ *UNHCR Refugee Status Claims*, *supra* note 312.

³¹⁴ *UNHCR Refugee Status Claims*, *supra* note 312.

³¹⁵ *UNHCR Refugee Status Claims*, *supra* note 312.

³¹⁶ *Boumedra Affidavit*, *supra* note 230 at ¶13.

³¹⁷ *Boumedra Affidavit*, *supra* note 230 at ¶¶ 13, 18.

photographs, and misinformation to the Residents and international community.³¹⁸

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 rendered legal opinions concluding that, absent any justification or consent by the Residents, their relocation would constitute a forcible relocation 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 insisted that the new camp would be safe and secure.

On December 21, 2011, Iraq agreed to extend its deadline for Ashraf closure to April 2012.³¹⁹ 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.³²⁰ The Residents of Camp Ashraf were not provided a copy of the agreement in advance of it being signed and ultimately the Residents were not a party to the agreement.³²¹ SRSG Kobler had promised the Residents that he would not sign the MOU without their consent.³²² 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 to 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 Mr. Boumedra, SRSG Kobler changed the original draft of the MOU at the last minute to meet the demands of the Iraqi Government to the detriment of the Residents.³²³ 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:

[...] The safety and security of Camp Liberty.

...

[...] The transit locations meet humanitarian and human rights standards.

³¹⁸ *Boumedra Affidavit*, *supra* note 230 at ¶¶ 4, 15, 18, 20, 34.

³¹⁹ *Monitoring Human Rights: From Ashraf to Hurriya*, United Nations Assistance Mission for Iraq, <http://unami.unmissions.org/Default.aspx?tabid=4297&language=en-US> [hereinafter *Monitoring Human Rights*].

³²⁰ *Monitoring Human Rights*, *supra* note 319.

³²¹ *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").

³²² 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*].

³²³ *The Untold Story of Camp Ashraf*, *supra* note 322.

...

[...] 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.

[...] 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 [Ashraf] 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.³²⁴

...

[...] Commit to non-refoulement of the individuals of Camp New Iraq to Iran.

In a letter to the Residents sent on December 28, 2011, SRSK Kobler explained that he had signed the MOU with the Residents’ “security and safety uppermost in mind.”³²⁵ SRSK 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 SRSK Kobler wrote:

Given the short time available, it was not possible to address all your requests.³²⁶

...

The Government of the Republic of Iraq has undertaken to ensure the safe and secure transfer of the residents of Camp Ashraf to Camp Liberty and from Camp Liberty to other countries.³²⁷

...

The UN will conduct 24/7 monitoring at the Camp until the last of the residents leaves Iraq.³²⁸

³²⁴ *Memorandum of Understanding between the Government of the Republic of Iraq and the United Nations*, Dec. 25, 2011 (emphasis added) (on file with authors).

³²⁵ Letter from SRSK Kobler to Residents, Dec. 28, 2011 (on file with authors) [hereinafter *Kobler December 28 Letter*].

³²⁶ *Kobler December 28 Letter*, *supra* note 325.

³²⁷ *Kobler December 28 Letter*, *supra* note 325 at ¶ 3.

³²⁸ *Kobler December 28 Letter*, *supra* note 325 at ¶ 4 (emphasis added).

...

As “asylum seekers”, you will be eligible under international law to enjoy basic protections and well-being. UNHCR is able to accept applications from residents who have not yet submitted applications for refugee status at any point. The Government of the Republic of Iraq has undertaken in the MoU to afford you protection against any expulsion or involuntary repatriation to Iran (the principle of *non-refoulement*).³²⁹

As you may have seen in the press, the Government of the United States has also committed itself to visit Camp Liberty regularly and frequently.³³⁰

...

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.³³¹

The transfer of the Residents began in February 2012. However, given that the Residents movements were under an MOU which lacked their consultation and consent, the Residents and Mr. Boumedra maintain that the relocation was not voluntary. To the contrary, they were forcibly evicted and relocated.³³²

5. Move to Camp Liberty and Its Conditions

At present, 3,174 Residents (including several women and children under age 18) are at Camp Liberty and 240 have relocated to third countries.³³³ However, the conditions³³⁴ in the Camp have not met relevant provisions of international law or the requirements set out in the MOU, let alone the expectations of the Residents.

Camp Liberty is significantly smaller than Camp Ashraf³³⁵ and is smaller than the Residents were told it would be.³³⁶ Residents are living in containers and the Camp lacks any recreational or sport facilities. The residents are thus forced to remain in these containers.

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

³²⁹ *Kobler December 28 Letter*, *supra* note 325 at ¶ 6.

³³⁰ *Kobler December 28 Letter*, *supra* note 325 at ¶ 7.

³³¹ *Kobler December 28 Letter*, *supra* note 325 at ¶ 9.

³³² *Boumedra Affidavit*, *supra* note 230 at ¶ 4.

³³³ Secretary-General Press Release, *Statement attributable to the Spokesperson for the Secretary-General on Trust Fund to Support the Relocation of Camp Hurriya Residents outside of Iraq*, Oct. 23, 2013, <http://www.un.org/sg/statements/index.asp?nid=7225>.

³³⁴ Where not supplied from independent sources, the information on Camp conditions has been given by Camp Residents.

³³⁵ Camp Ashraf is 36 sq. km (13.9 sq. mi) and Camp Liberty is 0.658 sq. km. (0.254 sq. mi.).

³³⁶ *First Exiles to Leave Iraq's Camp Ashraf Slam New Site*, CNN, Feb. 18, 2012.

security forces.³³⁷ The Residents report, however, that there are several police posts inside the Camp, with a 24-hour presence of 150 police guards armed with heavy machine guns.³³⁸

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 from Ashraf, which are needed to carry out repairs and unload supplies for daily living. This has forced the Residents to do things manually, which is exhausting given the extreme heat, which often reaches 50 °C (122 °F).

Further, dilapidated bathroom facilities and a broken sewage system³³⁹ require daily maintenance work by the Camp Residents, leaving only about half of the facilities working at any given time and raising concern about the potential for infectious disease to develop and spread.

This situation 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.

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. Residents are forced to run generators 24 hours a day. Lack of proper parts and maintenance as well as looting have created a situation in which there are a limited number of working generators. 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. 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, the Iraqi Government barred the transfer of these 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 (3,960 gallons). Because the Iraqi

³³⁷ *First Exiles to Leave Iraq's Camp Ashraf Slam New Site*, *supra* note 336.

³³⁸ *Anniversary of April 8 Camp Ashraf Massacre*, *supra* note 305.

³³⁹ *Joint Written Statement*, *supra* note 18 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").

Government prohibits Camp Residents from purchasing fuel inside Iraq,³⁴⁰ the Residents are forced to purchase from outside the country at a cost of \$1 US dollar per liter bringing the yearly cost to the prohibitive amount of roughly \$5.475 million US dollars.

Making matters worse is the lack of adequate cooling systems in the camp.³⁴¹ Camp Residents were originally prohibited from transferring their 300 air conditioner units from Ashraf to Liberty³⁴² and thus had to rely on the broken or inadequate units at Liberty. 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 infestations 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.³⁴³

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 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.³⁴⁴ 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.³⁴⁵

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

³⁴⁰ 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*].

³⁴¹ *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) [hereinafter *Current and Former Officials and Lawmakers Demand Improvements*].

³⁴² *Rendell Speech*, *supra* note 340.

³⁴³ *Rendell Speech*, *supra* note 340.

³⁴⁴ *Joint Written Statement*, *supra* note 18, at 2-3.

³⁴⁵ *Id.*

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 or 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.

Adding to these challenging conditions are serious due process violations. The Iraqi Government has prohibited all lawyers from accessing the Camp,³⁴⁶ 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.

Furthermore, UNAMI has not conducted “24/7 monitoring at the Camp”³⁴⁷ despite SGSR Kobler’s commitment that it would. Residents report that UNAMI’s “monitoring” consists of a hotline the Residents can call, but it only works during business hours. At other times of the day and night, the Residents have to contact UNHCR and ask its staff to contact UNAMI, a process that can be very lengthy in duration. Such a system is a far cry from the promised permanent presence and related deterrent effect such a system would have provided, and isn’t anywhere close to a 24/7 basis; the system in place defeats the purpose of helping to secure the Residents’ safety and security.

6. Communiqué from UNAMI to Residents Regarding Ashraf Property

In order to address the Residents’ challenges with transferring and selling their property, the Government of Iraq and UNAMI came to an agreement on the timeline and procedures for settling this issue. SGSR Kobler detailed this agreement to the Residents in a letter dated September 6, 2012. In pertinent part the letter states:

- A. 200 persons ... [shall] ... remain in CNI [Camp Ashraf] to guard the property and to handover the camp in an orderly way.
- B. If the issue of property is not solved till end [sic] of September [2012] then a group of only 100 residents would [sic] remain in CNI as guardians of the property. The other 100 should move to CH [Camp Liberty] by end [sic] of September.
- C. The GOI should provide protection for the property and remaining residents in CNI and their [sic] until the issue of property is resettled completely.³⁴⁸

³⁴⁶ *Current and Former Officials and Lawmakers Demand Improvements*, *supra* note 341.

³⁴⁷ *Supra* note 328.

³⁴⁸ *Kobler September 6, 2012 Letter*, *supra* note 207 (emphasis added).

Because the property matter was not resolved by the end of September 2012, some 100 Residents remained living at Camp Ashraf to oversee this matter, per the agreement.

7. Attacks on Camp Liberty

Camp Liberty has been attacked by rocket fire on two occasions this year. On February 9, the *New York Times* reported³⁴⁹ 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,³⁵⁰ whose leader has also publicly declared allegiance to Iran's Supreme Leader.³⁵¹

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 Mr. Boumedra put forth after his resignation.³⁵² Both underscored the vulnerability of Liberty, particularly from aerial and missile attacks.³⁵³

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 then-better infrastructure and security fortifications relative to Liberty, provided a safer environment in which to process the refugee applications). The Residents have repeatedly asked for large protective T-walls, sandbags, bulletproof vests, and helmets to be brought into Liberty. However, the Iraqi Government has consistently denied these requests and obstructed efforts by the Residents to procure the safety materials themselves.

On June 15, Liberty was attacked for a second time this year. AFP reported³⁵⁴ 36 missiles were used which left 2 dead and 11 wounded; the Residents reported the actual number of injured exceeds 50.

B. Past Attacks on Ashraf and Liberty

³⁴⁹ Security Council, *Second report of the Secretary-General pursuant to paragraph 6 of resolution 2061 (2012)*, UN Doc. S/2013/154 (March 12, 2013) ¶ 50.

<http://unami.unmissions.org/LinkClick.aspx?fileticket=W28uahSVLLk%3d&tabid=2837&language=en-US> [hereinafter *Second Report of the Secretary-General*]. 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).

³⁵⁰ *Second Report of the Secretary-General*, *supra* note 349.

³⁵¹ 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 (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").

³⁵² *Boumedra Affidavit*, *supra* note 230 at ¶¶ 16, 17, 32.

³⁵³ *Boumedra Affidavit*, *supra* note 230 at ¶¶ 17, 32.

³⁵⁴ 'Deadly' Rocket Attack on Iran Exiles Near Baghdad, AFP, Jun. 15, 2013

1. Response of UN

After the past attacks on Ashraf and Liberty the UN's response took two forms: public calls of condemnation and private mischaracterizations of the events. Subsequent to the first attack on Ashraf in July of 2009, the UN issued no public statements, but it did issue a statement after the second attack on Ashraf in April 2011. At that time UNAMI expressed its "deep concern over the events" and called on the Iraqi Government to establish a commission of inquiry.³⁵⁵ The High Commissioner for Human Rights, Navanethem Pillay, also issued a statement with similar concerns and prescriptions.³⁵⁶

Despite such public concern, however, UNAMI acted quite differently in private. In a sworn affidavit, Mr. Boumedra testifies that it was his responsibility to carry out fact-finding after the 2009 and 2011 attacks on Camp Ashraf.³⁵⁷ 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."³⁵⁸ Consequently, the broader UN community and other governments briefed by UNAMI within Iraq were misinformed about the true nature of the attacks on Ashraf.

As it did after the attacks on Camp Ashraf, the UN issued statements subsequent to the attacks on Camp Liberty. After the February 9 attack, UNAMI called on the Iraqi Government to carry out an investigation and "ensure medical care for the wounded."³⁵⁹ UNHCR echoed these sentiments, labeling the attack "a despicable act of violence" and calling on the Iraqi Government to guarantee security for the Residents.³⁶⁰ After the April 29 attack, the UN issued no statements, presumably because no Residents were harmed. Finally, after the most recent attack on June 15, UNHCR condemned the attack, characterizing it as "horrific" and "unacceptable", and calling "on the Iraqi Government to take immediate measures to ensure the safety and security of the residents and to prevent any further such attacks."³⁶¹

³⁵⁵ UNAMI Press Release, *UNAMI Expresses Concern Over Events at Camp Ashraf*, Apr. 16, 2011, <http://unami.unmissions.org/Default.aspx?tabid=2854&ctl=Details&mid=5170&ItemID=3070&language=en-US>.

³⁵⁶ United Nations Office of the High Commissioner for Human Rights Press Release, *Pillay Condemns Iraqi Operation that Led to 34 Deaths, Calls for Inquiry*, Apr. 15, 2011, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10943&LangID=E>.

³⁵⁷ *Boumedra Affidavit*, *supra* note 230 at ¶ 9.

³⁵⁸ *Boumedra Affidavit*, *supra* note 230 at ¶¶ 9, 10 (stating "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'").

³⁵⁹ UNAMI Press Release, *On the Situation in Camp Liberty*, Feb. 9, 2011, <http://unami.unmissions.org/Default.aspx?tabid=2854&ctl=Details&mid=5170&ItemID=982895&language=en-US>.

³⁶⁰ UNHCR Press Release, *UNHCR Chief Guterres strongly condemns deadly attack on Camp Liberty in Iraq*, Feb. 9, 2013, <http://www.unhcr.org/511642289.html>.

³⁶¹ UNHCR Press Release, *UNHCR Chief Guterres strongly condemns second deadly attack on Camp Liberty in Iraq*, Jun. 15, 2013, <http://www.unhcr.org/51bcbfea6.html>.

2. Lack of Any Investigation, Indictment, or Prosecution

Despite the repeated calls by the UN for Iraq to investigate the attacks on Ashraf and Liberty, the Iraqi Government has not indicted, prosecuted, or convicted a single perpetrator of any of the attacks, including those it acknowledged conducting in 2009 and 2011. This sends an unmistakable signal to Iraqi government officials and non-state actors that they can attack the Residents of Camp Liberty with impunity and without fear of reaction by Iraqi forces.

3. Iraq Intransigence to Secure Camp Liberty

Similarly, in contravention of its international legal obligations to provide protection, Iraq has refused every opportunity to offer safety and security for the Residents. Not only has it forbidden the Residents from having an adequate amount of large protective T-walls, sandbags, bulletproof vests, and helmets inside Liberty, it has also allowed attacks on Liberty to occur. It is worth noting that gaining access to Liberty requires going through seven security checkpoints to enter the “Red Zone” where Camp Liberty is located. None of the critical Iraqi facilities inside this same Red Zone have been successfully attacked, including the military academy, headquarters of the Iraqi Special Forces, or the airport. Iraq’s failure to investigate the attacks and provide security indicates its tacit approval for the murder and harming of the Residents. The only way to put an end to such impunity is through UN intervention.

V. RECOMMENDATIONS

A. Securing the Release of the Hostages

The Residents are extremely concerned about the wellbeing of their friends and family members that are being held hostage. There is good reason to believe they are undergoing torture and face the risk of *refoulement* to Iran. The UN and US should therefore ensure the Government of Iraq releases and returns them to Camp Liberty for UNHCR processing and resettlement. Both the UN and US have legal and moral obligations for the protection of these Residents.

B. Permanent Presence of UNAMI and UNHCR

It is clear that Camp Liberty is not safe for the Residents at present. The prior attacks indicate the Residents have no security and that the Camp is prone to attack and indiscriminate killing of the Residents at any given time. Had the September 1 Attackers gone into Liberty instead of Ashraf, there would have been a much larger massacre. Therefore, the only way to ensure the safety and security for the Residents is for the UN to meet the written commitment made by SRSK Kobler to provide a 24/7 presence of UN monitors in Camp Liberty until their departure—a commitment that is fully consistent with UNAMI’s mandate of being authorized to provide physical protection by all available means. This protection is particularly important given the Iraqi Government’s inability and unwillingness to provide for safety in either Camp Ashraf or Liberty. The US Government should also help ensure the Residents’ safety and security, as it has previously stated it would in writing.

C. Independent and Impartial UN Investigation

As discussed above,³⁶² given the history of the Iraqi Government's involvement in past attacks against the Residents along with its failure to investigate them, the only party in a position to carry out a credible, thorough, and legitimate investigation is the UN. This investigation must meet international standards,³⁶³ and be independent, impartial, swift, and thorough. If need be, the UN should set up a commission of inquiry to further investigate the atrocities committed on September 1. The US Government should support the UN investigation and take all required measures to help implement the UN's recommendations.

D. Use US Leverage to Provide the Residents Safety and Security

The US Government is in a position to use its leverage to resolve the Residents' situation. Toward this end, it should help ensure the hostages are released and all security measures are provided at Camp Liberty. Doing so could include following Chairman Menendez's recent suggestion that the US halt its arms sales to Iraq until "we get this [Ashraf and Liberty] situation in...place...[and ensure]...people's lives are saved."³⁶⁴

E. Expedited Group Determination of Refugee Status of Residents and Efforts to Resettle Abroad

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:

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.³⁶⁵

Given that all the Residents are similarly situated—they all have been forcibly displaced and live with a fear of persecution from Iran and now Iraq, and they all need to be processed urgently given the Camps' conditions and security threats—UNHCR should expedite their processing by

³⁶² See *supra* section IV(A)(3) and IV(B).

³⁶³ See *supra* section I(E).

³⁶⁴ *Senator Transcript, supra* note 5.

³⁶⁵ 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, 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).

pursuing a group refugee status determination. Simultaneously, UNHCR, the US, and international community should work to expedite the resettlement abroad of the remaining Residents before another attack occurs. Toward this end, given the breach of its written guarantees, the US Government has an obligation to accept a large number of the Residents as political refugees into the US.

Authored By:

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Appendix I Abbreviations

CAT	Convention against Torture
HRC	Human Rights Committee
IDP	Internally Displaced Persons
ICCPR	International Covenant on Civil and Political Rights
MEK	Mujahedin-e Khalq
MOU	Memorandum of Understanding
NCRI	National Council of Resistance of Iran
PMOI	People's Mojahedin Organization of Iran
RDF	Rapid Deployment Forces
SGSR	Secretary-General Special Representative
SOFA	US-Iraq Status of Forces Agreement
UN	United Nations
UNAMI	United Nations Assistance Mission for Iraq
UNHCR	United Nations High Commissioner for Refugees

Appendix II Letter from *Menschenrechtsverein Für Migranten* (Rights for Migrants)



Menschenrechtsverein
für Migranten e.V.

September 26, 2013

Mr. Jared Genser
Perseus Strategies, LLC
1824 Jefferson Place
Washington, D.C. 20036

Dear Mr. Genser,

I am writing as Executive Director of *Menschenrechtsverein Für Migranten* to commission your law firm to conduct an independent and impartial investigation into the killing of 52 residents of Camp Ashraf, Iraq, on September 1, 2013. We are an independent non-governmental organization, based in Germany, which advocates for freedom, democracy, and human rights in Iran.

To be clear, I understand that you will conduct your own investigation based on interviewing witnesses and requesting cooperation from the Government of Iraq to provide its own perspective on what occurred.

I also understand that in commissioning your firm to conduct this investigation, all judgments about the facts, applicability of relevant law, and recommendations are exclusively yours to make.

Sincerely,

Abas Safai Navai
Executive Director

Appendix III Letter to Iraqi Ambassador

Perseus Strategies
1146 19th Street, NW, Suite 500
Washington, D.C. 20036-3723



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M +1 202.320.4135

October 11, 2013

Ambassador Lukman Faily
Embassy of the Republic of Iraq
3421 Massachusetts Avenue, NW
Washington, D.C. 20007

Dear Ambassador Faily,

I am writing to ask for your assistance and to request a meeting to discuss the attack on Camp Ashraf, Iraq, of September 1, 2013, which resulted in the deaths of 52 residents.

By way of background, I am an international human-rights lawyer and I have been commissioned by a German non-governmental organization to produce a written report on the events of that day. The report will be independent and impartial and I very much want to make sure all perspectives on the events of that day are fairly reflected in our assessment.

To that end, I would be grateful if you might send me any and all information that you are willing to share about what occurred on that day. In addition, I would like to meet in person to discuss orally other information that you might be able to share. It is essential, if you wish to have your Government's perspective reflected in our report, that we hear back from you as soon as possible as our investigation is actively underway.

I look forward to hearing back from you at your earliest convenience.

With warm regards,

A handwritten signature in black ink, appearing to read 'Jared Genser', written in a cursive style.

Jared Genser

Appendix IV Phillips and Martin Statement

We the undersigned have conducted a thorough examination of the attached document titled, “Independent Report of the Events of September 1, 2013 at Camp Ashraf, Iraq.”

Based upon our Military Police experience (including tactical assault and law enforcement investigations) and our personal experience at Ashraf, we find this independent report to be very complete and a trustworthy analysis of the events leading up to and the execution of the attack. This report is a solid testimonial that this assault on Camp Ashraf could not have been accomplished without the support of Iraqi Government Forces already stationed at Camp Ashraf. This report further confirms the assault was in fact done by Iraqi Special Forces brought in for the occasion.

Since 2009 when the United States handed oversight and security of Camp Ashraf over to the Iraqi Government, the compound has been surrounded by Iraqi military forces. No one could leave or enter the compound without being engaged by Iraqi forces.

Special attention is drawn to the following issues and the sections where addressed in this report:

- Diyala Province Police Commander, General Jamil al-Shemeri, arrived at the Iraqi command overlooking the Residents’ area six hours prior to attack commencement (Section I(B)(2)).
- In a multiple-prong approach, the assault forces crossed over the Iraqi controlled embankment and entered the Residents’ compound (Section I(B)(1–2)).
- Assault force members were wearing an identical uniform of Iraqi Special Forces. Additional accessories to the standard green uniforms and white hats were face masks and weapon silencers. This organization is assigned to Iraqi Prime Minister/Minister of Defense/Minister of Interior Nouri al-Maliki (Section I(B)(2)).
- The assault was very professionally accomplished, displaying extensive preparation and coordination (Section I(B)).
- At no time, despite all the noise from the explosions and smoke rising out of the compound, was a protective response force dispatched from the Iraqi military base located immediately North of the Residents’ area. (Section I(B)) The Iraqi government had pledged to both the United Nations and the US State Department that it would ensure safety and security of the Residents (Section IV(A)(2)).
- American-made military explosives were among the ordnance used in this attack. Also used were tactics and knowledge gained through ten years of War on Terrorism in Iraq (Section I(B)(4)).
- After two hours of killing, the assault force departed to the North and re-entered the Iraqi government compound (Section I(B)(4)).
- Left behind were 52 dead residents. Of the murdered, six were killed in the medical facility while being treated for wounds just received. Also machine-gunned was the nurse administering treatment (Section I(B)(3)).
- Numerous residents were shot in the back of their heads while their hands were secured by handcuffs (Section I(B)(3)).

- The minibus used to remove the seven hostages from Camp Ashraf was driven directly back to the Iraqi compound and remained parked outside an Iraqi building (Section 1(B)(4)).
- Even after being wounded, or already dead, residents were again shot in the head, face, or neck (Section I(B)(3)).

Our combined seventy years of military experience, to include working with the government of Prime Minister Nouri al-Maliki and the Mojahedin-e Khalq, convinces us that this is an accurate report.

We have not received any financial compensation or other type of incentive from any organization for this statement.

Signed, October 20, 2013:



Brigadier General (Ret.) David D. Phillips – Former Commandant, US Army Military Police Corps and former US Military Commander for Camp Ashraf



Colonel (Ret.) Wesley Martin – US Army Military Police, Former Senior Antiterrorism/Force Protection Officer for all Coalition Forces and Former Commander of Camp Ashraf

Appendix V Timeline of Major Events

MEK forms as a political opposition group in Iran.	1965	
	1981	Leader of Group is exiled to Paris and helps form the National Council of Resistance of Iran (NCRI), a wide spectrum of Iranian political groups and activists from diverse political orientations.
Under pressure from Iran, MEK members are forced to leave France and relocate to Iraq.	1986	
	2003	Coalition Forces invade Iraq.
MEK disarms and hands over all weaponry to Coalition Forces.	2003	
	Jul. 21, 2004	Coalition Forces give MEK protected status as civilians under the Fourth Geneva Convention.
The US-Iraq Status of Forces Agreement goes into effect, transferring safety and security of Residents from Coalition Forces to Government of Iraq.	Feb. 20, 2009	
	Jul. 28, 2009	Iraqi Government attacks Camp Ashraf for first time. The attack results in 13 Residents killed and the detention of 36 for 72 days. Several hundred are injured.
Iraqi Government attacks Camp Ashraf for the second time. 37 camp Residents are killed and over 300 are injured.	Apr. 8, 2011	
	Apr. 12, 2011	Iraqi Government says Camp Ashraf must be closed by end of 2011.
UNHCR declares all Residents in Ashraf to be “asylum seekers under international law” which entitles them “to benefit from basic protection of their security and well-being.”	Sep. 13, 2011	
	Dec. 21, 2011	Iraqi Government extends its deadline for Ashraf closure to April 2012.
UN and Iraqi Government sign MOU aimed at securing a humanitarian and peaceful resolution for the Residents of Camp Ashraf.	Dec. 25, 2011	
	Dec. 28, 2011	SRSR Martin Kobler writes letter to Residents explaining the MOU. Among other commitments, he states: “The UN will conduct 24/7 monitoring at the Camp until the last of the Residents leaves Iraq.”

<p>Transfer of Residents from Camp Ashraf to Camp Liberty starts. First group of transferred Residents find the camp conditions don't meet their expectations, the provisions set out in the MOU, or requirements under international law.</p>	<p>Feb. 17, 2012</p>		
<p>Tahar Boumedra, former Chief of the Human Rights Office for UNAMI and Adviser to the SRSG, resigns in protest over the UN's handling of Camp Ashraf and Liberty.</p>	<p>May 5, 2012</p>	<p>May 4, 2012</p>	<p>UN Working Group on Arbitrary Detention says Residents at Camp Ashraf are being detained in violation of international law.</p>
<p>SGSR Kobler details to the Residents in a letter the UN-Iraq agreement on resolving issues with Residents' property at Ashraf.</p>	<p>Sep. 6, 2012</p>	<p>Aug. 30, 2012</p>	<p>UN Working Group on Arbitrary Detention says Residents at Camp Liberty are also being detained in violation of international law.</p>
<p>Camp Liberty is attacked for the second time this year. 2 Residents are killed and over 50 are injured.</p>	<p>Jun. 15, 2013</p>	<p>Feb. 9, 2013</p>	<p>Camp Liberty is attacked by <i>Jaish al-Mukhtar</i>, a pro-government militant wing of Hizbullah in Iraq. 8 Residents are killed and more than 100 are injured.</p>
<p>The Iraqi Government forces the transfer to Camp Liberty of the remaining 42 Ashraf Residents.</p>	<p>Sep. 12, 2013</p>	<p>Sep. 1, 2013</p>	<p>Camp Ashraf is attacked for the third time. 52 Residents are executed with a gunshot to the head, 7 are taken as hostages, and 4 survivors are injured. \$10 million worth of property is also destroyed or stolen during the massacre.</p>
		<p>Oct. 30, 2013</p>	<p>The 7 hostages remain at large. Residents fear for their safety and security.</p>

Appendix VI List and Photos of Victims



EBRAHIM ASADI
Shot in the head - handcuffed



ABOLGHASEM REZVANI
Shot in the head and face



ARBAB MAHDAVIEH
Shot in the head - handcuffed



ARDESHIR SHARIFIAN
Shot in the head and body



AMIR MASOUD NAZARI
Shot in the head and heart-
handcuffed



AMIR AFZALI
Shot in the head - handcuffed



IRAG AHMADI
Shot in the face



BEHROOZ FATHOLLAH NEJAD
Shot in the face - handcuffed



BIJAN MIRZAEI
Shot in the face



HOJJAT GHOLAMPOUR
Shot in the head



HASSAN JABARY
Shot in the head



HOSSEIN ISFAHANI
Shot in the head - handcuffed



HOSSEIN RASOLY
Shot in the head - handcuffed



HOSSEIN MADANI
Shot in the head and face



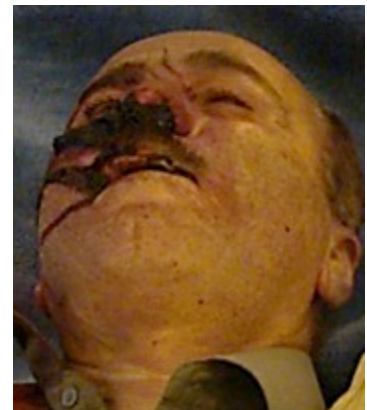
HOSSEIN MALAKI
Shot in the face



HAMID JAFARY
Shot in the head and face



HAMID SABERY
Shot in the head and heart



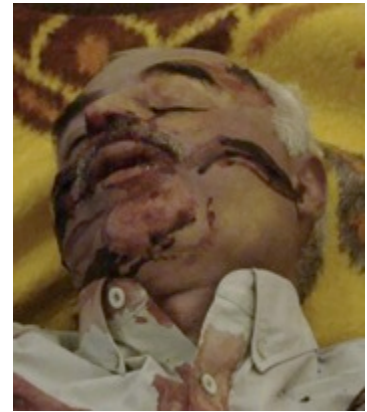
KHOSROW GILANI
Shot in the face



RAMIN GHASEMI
Shot in the head



RAHMAN MANNANI
Shot in the head - handcuffed



RAHIM TABARI
Shot in the head and face



ZOHRE GHAEMY
Shot in the head and face - at least
3 shots



ZHILA TOLOU
Shot in the head



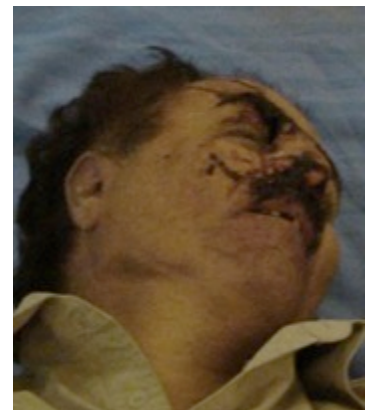
SAAID AKHAVAN HASHEMI
Shot in the head - handcuffed



SAEED SAEIDY
Shot in the eye - handcuffed



SAIED NORASI
Shot in the head



SAYED ALI BAGHERZADEH
Shot in the head



SHAHROKH OHADI
Shot in the head



SHAHRAM YASERI
Shot in the eye



ABBAS GARMABI
Shot in the head - handcuffed



ABDOLLAH SHIROZI
Shot in the neck



ALIASGHAR EMADI
Shot in the head and face



ALI ASGHAR MECANIK
Shot in the head



ALI HOSSEINI
Shot in the face



ALI GOLKAR
Shot in the head



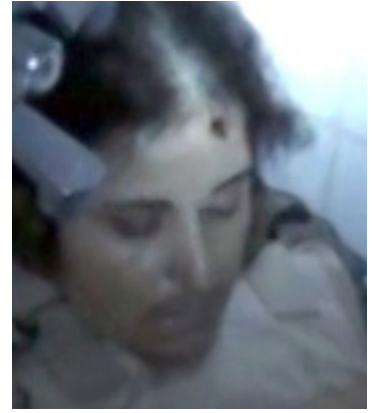
ALI MAHMOODI
Shot in the head - several shots



ALIREZA POUR MOHAMMAD
Shot in the head



ALIREZA KHOSHNEVIS
Shot in the head



FATEMEH KAMYAB
Shot in the head



FARIBORZ SHEIKHOESLAMI
Shot in the head and neck



KOOROSH SAEEDI
Shot in the head and heart



MAHBOOBEH SABZI
Shot in the head



MOHAMMAD JAFARZADEH
Shot in the head



MOHAMMAD GORGIE
Shot in the head - handcuffed



MOHAMMAD REZA SAFAVI
Shot in the head



MARYAM HOSSINYPOOR
Shot in the neck - handcuffed



NASER HABASHI
Shot in the neck



NASSER SARABI
Shot in the head and neck



NASER KARMANIAN
Shot in the neck - handcuffed



YASSER HAJIAN
Shot in the head