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Craig Douglas Albert Ph.D.

*Augusta University*

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# NO PLACE TO CALL HOME: THE IRAQI KURDS UNDER THE BA'ATH, SADDAM HUSSEIN, AND ISIS

CRAIG DOUGLAS ALBERT, PH.D. \*

## I. INTRODUCTION

The Kurds are the largest ethnonational group without their own state.<sup>1</sup> They are often considered a people in search of their homeland or a people without a state.<sup>2</sup> Although Kurds are situated in four distinct states—Iraq, Syria, and Turkey—the largest swath of Kurdish territory, referred to as “Kurdistan,” is in Iraq.<sup>3</sup> It is in this region where some of the most egregious crimes against the dignity of an ethnic people have been committed.

This paper argues that Iraq has violated Kurdish dignity throughout recent history by utilizing examples from three main phases of dispossession: Iraq’s Ba’athist’s attempts to “Arabize” or “Iraqify” the Kurds through the 1970s; Saddam Hussein’s efforts to eradicate the Kurds through the 1980s, culminating with the *al-Anfal* campaigns; and presently, the Islamic State’s (ISIS) bid to gain control of Kurdish territory, and the Iraqi government’s inability to protect the Kurds from ISIS. It uses this historical structure to show that the Iraqi treatment of Kurds has been purposeful and systematic. This paper asserts two main points: first, it confirms that the case of the Iraqi Kurds constitutes an example of a dignity taking, adding breadth and depth to the burgeoning field of dignity takings; second, it seeks to expand upon the notion that the denial of self-

\* Associate Professor of Political Science, Augusta University. Dr. Albert received his B.A. in Political Science at Augusta State University in 2001. He received his M.A./Ph.D. from the University of Connecticut, 2009. Dr. Albert’s area of concentrations were International Relations, specifically ethnic conflict, as well as American Politics. He publishes frequently on ethnic conflict and the Scholarship of Teaching and Learning. In 2013, he testified before a joint sub-committee of the House Foreign Affairs Committee in the US Congress on the Threat of Chechen Extremism. He currently directs the Model United Nations Program for Augusta University. The author wishes to thank his research assistants during the course of this project: Kirsten Fitzgerald; Charles Murdorf; Emily Williamson; and in memory of Rowan Feldhaus. You may follow Dr. Albert on Twitter and Facebook: @DrCraigDALbert.

1. Sarah Leduc, *The Kurds: The World’s Largest Stateless Nation*, FRANCE 24 (July 30, 2015), <http://www.france24.com/en/20150730-who-are-kurds-turkey-syria-iraq-pkk-divided> [<https://perma.cc/NU62-M8FP>].

2. See generally KEVIN MCKIERNAN, *THE KURDS: A PEOPLE IN SEARCH OF THEIR HOMELAND* 4 (2006) (“[T]he Kurds are the largest ethnic group in the world without their own state.”).

3. DAVID MCDOWALL, *A MODERN HISTORY OF THE KURDS* 3 (3d ed. 2004).



determination is a dignity taking. Further, it contends that the denial of self-determination to a particular group with the *will and capacity* for self-governance should be included as an example of infantilization.

## II. DIGNITY TAKINGS EXPANDED: SELF-DETERMINATION AS INFANTILIZATION

Although the concept of a dignity taking is relatively new to the takings literature, it has already achieved substantial scholarly impact. Bernadette Atuahene originally defined dignity takings as occurrences “when a state directly or indirectly destroys or confiscates property rights from owners or occupiers whom it deems to be sub persons without paying just compensation or without a legitimate public purpose.”<sup>4</sup> Atuahene conceptualizes sub persons as those who are infantilized or dehumanized.<sup>5</sup> The processes of dehumanization and infantilization seek to deny recognition of an individual or group’s humanity or full mental capacity.<sup>6</sup> In a recent article, Atuahene updated her conceptualization, identifying that “[a] dignity taking occurs when a state directly or indirectly destroys or confiscates property rights from owners or occupiers and the intentional or unintentional outcome is dehumanization or infantilization.”<sup>7</sup>

Dehumanization is the state’s failure to recognize either an individual or a group’s humanity.<sup>8</sup> In other words, a dehumanized person’s *being* or *essence* is invisible, and the person is classified as an unfit participant of the social contract.<sup>9</sup> Dehumanization can result from an outright denial of an individual or group’s humanity, for example, by equating them to animals, insects, or inanimate objects.<sup>10</sup> For example, this can be seen in commonly reported claims that Russian President Vladimir Putin degraded Chechens in exclaiming that he would “flush them all down the toilet,” which symbolically relegates Chechens to nothing more than human ex-

4. BERNADETTE ATUAHENE, WE WANT WHAT’S OURS: LEARNING FROM SOUTH AFRICA’S LAND RESTITUTION PROGRAM 3 (2014).

5. *Id.* at 30.

6. *Id.*

7. Bernadette Atuahene, *Dignity Takings and Dignity Restoration: Creating a New Theoretical Framework for Understanding Involuntary Property Loss and the Remedies Required*, 41 LAW & SOC. INQUIRY 796, 817 (2016) [hereinafter Atuahene, *Dignity Takings and Dignity Restoration*]; see also Bernadette Atuahene, *Takings as a Sociolegal Concept: An Interdisciplinary Examination of Involuntary Property Loss*, 12 ANN. REV. L. & SOC. SCI. 171, 178 (2016).

8. ATUAHENE, *supra* note 4, at 31 (“When an individual or community’s humanity is invisible, they are no longer regarded as humans having the mental acumen, soul, or agency necessary to enter into the social contract.”).

9. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 7, at 801.

10. ATUAHENE, *supra* note 4, at 31.

crement.<sup>11</sup> Similarly, Atuahene asserts that “[d]ehumanization will result from the use of deadly force since death is the most extreme form of extinguishing one’s humanity.”<sup>12</sup>

Infantilization, on the other hand, restricts an individual or group’s autonomy through the refusal to acknowledge and respect its full capacity to reason.<sup>13</sup> This is most clear when a regime refuses to acknowledge a person or group’s capacity for autonomy and self-governance.<sup>14</sup> Accordingly, although an individual or group’s humanity is recognized, their ability to determine their own future, through autonomous rule, is not. In these instances, individuals are kept under the authority of another without consent or through forced consent. Atuahene clarifies the concept poignantly: “Most commonly, infantilization involves treating adults as if they were minors, and thus placing them under the authority of another. The social contract requires an individual’s consent to be governed, so until children develop the mental faculties necessary to consent, they are unequal citizens.”<sup>15</sup>

Dehumanization is based upon the loss of human worth whereas infantilization is the restriction or denial of autonomy based upon the rejection of one’s capacity to reason.<sup>16</sup> As so conceptualized, this paper confirms the Iraqi Kurds as suffering a dignity taking because the Iraqi state has systematically and involuntarily taken property from the Kurds, while also denying these individuals’ humanity and worth. Kurds in Iraq have the unlucky distinction of facing both dehumanization and infantilization from the Iraqi regime. As evinced below, the Iraqi regime systematically removed Kurds from their property without just compensation and consent, and Iraq’s Kurdish population has continuously been the victim of indiscriminate mass killing, ethnic cleansing, and acts of genocide. These acts clearly fit within Atuahene’s understanding of dehumanization and closely resemble her example of communist-era expropriations to the extent that communist regimes systematically used deadly force to carry out forced transfers of property.<sup>17</sup> Furthermore, Iraq has failed to grant Kurdi-

11. *Putin’s Chechen Remark Causes Stir*, BBC NEWS (Nov. 12, 2002), <http://news.bbc.co.uk/2/hi/europe/2460305.stm> [<https://perma.cc/5JXW-5UMX>].

12. ATUAHENE, *supra* note 4, at 31.

13. *Id.* at 32.

14. *Id.*

15. ATUAHENE, *supra* note 4, at 32.

16. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 7, at 801.

17. ATUAHENE, *supra* 4, at 31–32 (“[A]lthough the stated purpose of most communist-era expropriations was to redistribute property and to create egalitarian societies—to the extent that communist states systematically used deadly force to carry out the forced transfers of property—dehumanization occurred.”).

stan full sovereignty and, in most cases, autonomous self-rule despite the fact that the region and its inhabitants have expressed a willingness and capacity for self-governance.<sup>18</sup> Currently under threat from ISIS, Iraq has been unable or unwilling to protect its own population, let alone the Kurds. Iraq's reliance on the Kurds to fight their own military campaign against ISIS and simultaneous refusal to grant the Kurds more autonomy or outright sovereignty is, at worst, active infantilization and, at best, passive infantilization.

Infantilization's meaning ought to include a state's active or passive denial of a group's right to self-determination when a willingness and capacity to self-govern is present. If a people wish to govern themselves and can do so without creating the conditions for a failed or rogue state, then denying this right (especially in the case of ethnonational groups that have a distinct identity) denigrates that group's capacity, and hence rationality, for self-rule. Unless the regime can justify that a failed state or rogue state is likely to result from the recognition of another group's self-determination—therefore likely to cause more conflict, death and destruction—then not granting that right is a clear violation of human dignity.

Expanding the concept to the denial of self-determination also fits within the original depth of Atuahene's conceptualization of infantilization as demonstrated when she writes, "infantilization involves treating adults as if they were minors, and thus placing them under the authority of another."<sup>19</sup> In this case, a regime is treating an entire ethnonational group as if it were a minor, not having the capacity or reason to effectively self-govern. Because the Kurds have suffered involuntary property loss (including physical structures, ancestral territory, and ownership of the self), mass killings, and the denial of self-determination, Kurdistan clearly exists as an illustrative case-study of when a dignity taking has occurred. The Iraqi regime has systematically played the role of an authoritative adult, and the Iraqi Kurds represent the non-consenting minor. Under this view, it becomes clear that the denial of national self-determination is a form of infantilization.

Self-determination is generally conceptualized as groups comprising ethnic nations that exist under the sovereignty of another entity and that seek greater self-rule, autonomy, or independence.<sup>20</sup> The concept implies a group's capacity, willingness, and ability to be self-governed. Self-

18. See generally MCDOWALL, *supra* note 3, at 323–40 (discussing the history of Kurdish attempts at autonomous self-government in Iraq between 1968 through 1975).

19. ATUAHENE, *supra* note 4, at 32.

20. Kathleen Gallagher Cunningham, *Understanding Strategic Choice: The Determinants of Civil War and Nonviolent Campaign in Self-Determination Disputes*, 50 J. PEACE RES. 291, 292 (2013).

determination concerns a controlled group seeking to gain control of its destiny from an authoritative center that is reluctant to resolve the claims of the group in question.<sup>21</sup> To understand the denial of national autonomy as a form of infantilization, the national right to self-determination must be clearly situated in the context of human rights and international law. In other words, self-determination must be recognized as a basic human right as codified by the Charter of the United Nations (1947), which declares self-determination as a necessary condition for universal peace.<sup>22</sup> In its purpose and principles, the UN Charter asserts, as its second purpose, “[t]o develop friendly relations among nationals based on respect for the principle of equal rights and self-determination of peoples.”<sup>23</sup> The United Nations further elaborates on the concept of inherent right of national self-determination in its Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.<sup>24</sup>

This declaration on principles of international law refers to the sovereign’s requirement to respect a people’s right to self-determination in non-ambiguous terms. It states, “[e]very State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.”<sup>25</sup> This right to self-determination is further codified in international law through the UN Declaration of Indigenous Rights, which ensures indigenous peoples the right of self-determination within existing states; protections against genocide and ethnocide; protections for their own cultures, institutions of governance, special relationship to the land, and traditional economic activities; and representation on all bodies making decisions about them.<sup>26</sup> Although one can debate what groups qualify as ingenious versus a national minority versus a stateless nation, international law categorically rejects any discrimination or repression of these individuals and requires a state to protect collective group rights.

If it is a duty of the sovereign to allow self-determination, then denying that right without reason conflicts with international law. Philosophical-

21. *Id.*

22. U.N. Charter art. 1, ¶2.

23. *Id.*

24. G.A. Res. 2625 (XXV) (Oct. 24, 1970).

25. *Id.*

26. Prosper Nobirabo Musafiri, *Right to Self-Determination in International Law: Towards Theorisation of the Concept of Indigenous Peoples/National Minority?* 19 INT’L J. MINORITY & GROUP RTS. 481, 492 (2012).

ly, protecting this right maintains a sovereign's legitimacy. If the sovereign denies this right and seeks to impose its will with force upon its own people in violation of self-determination, it loses legitimacy. A national minority or indigenous group (including ethnonational groups), as Musafiri writes, has "a right to self-governance in circumstances where the dominant culture would otherwise conflict with their own."<sup>27</sup> Thus, it is a well-established concept in international law that a people have the right to self-determination. As Juan Carlos de las Cuevas explains, "international law seems to accord a great deal of recognition to the principle of self-determination, by granting this right to all of mankind and forbidding states from departing from it."<sup>28</sup> Of course, there has been considerable academic and diplomatic debate about how and when a people should be allowed self-determination, especially when doing so may create instability, conflict, and war or when it is deemed that a people are not capable of self-governance.<sup>29</sup> Many critics blame self-determination for instigating violent conflict—especially when self-governance would result in a failed or rogue state.<sup>30</sup>

Self-determination has its limits, however. Especially when achieving it involves violence. Velasco writes, "[t]he tragedy of human history, however, is that secessionist aspirations have often incarnated in violent form; and self-determination has been blamed for fueling the violence."<sup>31</sup> However, this paper is arguing for self-determination when there is a willingness and a capacity for self-governance and doing so would not create war. Moreover, when a regime is already at war against a people, refusal to grant self-determination is beyond rationality because no valid argument can be made that doing so will create undue conflict. Thus, it is a form of infantilization and an affront to human dignity not to grant self-determination in these instances of deadly conflict.

When a people desire self-determination, the denial or refusal of that right is a clear example of infantilization, and it further develops Atuahene's original conceptualization of infantilization. To then deny self-determination to any group that has the capability and willingness to self-

27. *Id.* at 532.

28. Juan Carlos de las Cuevas, Comment, *Exceptional Measures Call for Exceptional Times: The Permissibility under International Law of Humanitarian Intervention to Protect a People's Right to Self-Determination*, 37 HOUS. J. INT'L L. 491, 500 (2015).

29. Kyle Beardsley et al., *Resolving Civil Wars before They Start: The UN Security Council and Conflict Prevention in Self-Determination Disputes*, 47 BRIT. J. POL. SCI. 675, 675 (2015).

30. *Id.* at 677.

31. Zoilo A. Velasco, *Self-Determination and Secession: Human Rights-Based Conflict Resolution*, 16 INT'L COMM. L. REV. 75, 77 (2014).

govern is to deny a basic human right and should be an instance of a dignity taking, specifically as a form of infantilization. The foundation for this has already been discussed by Richland, who argues that a group's dignity "is to be found in precisely the place they have always insisted it is—in their (self-) determination."<sup>32</sup> In fact, Richland goes so far as to say that, in the case of the Hopi people, proper "reparations" or dignity restoration—explained below—can happen only when a nation's inherent sovereignty is recognized.<sup>33</sup> Richland believes that the U.S.'s disparate acts of dispossession and the failure to recognize the self-determination of the Hopi people forms a pattern of ongoing indignity and dispossession and thus should be characterized as dignity takings.<sup>34</sup> In this Article, I will build upon his contribution.

### III. THE DEHUMANIZATION AND INFANTILIZATION OF THE IRAQI KURDS

#### *A. Ba'athist Arabization of Kurdistan in the 1970s*

Much of the antagonism between the Kurds and Iraq results from arguments over Kurdistan's vast oil reserves.<sup>35</sup> The point of contention has generally followed a pattern: the Kurds negotiate for autonomy to control and have greater access to Kurdistan's oil; negotiations falter and eventually lead to rebellion and conflict; the Iraqi regime pursues harsh policies against Kurdish rebels and civilians; and then argues that it will maintain the Kurdish lands as a punishment against the Kurdish rebellion. Eventually, Kurdish politicians start a movement toward negotiation, and the cycle begins again. Baghdad, throughout its regime cycles in the twentieth century, has used two main arguments to deny Kurdistan full autonomy: first, a divided Kurdistan would hinder the Iraqi nationalist movement, which sought to create a greater Iraq that would be the center of the Arab world.<sup>36</sup> This mirrored similar Arabization policies throughout the Middle East in the 1960s and 1970s. Second, and perhaps more practically, Iraq wanted to

32. Justin B. Richland, *Dignity as (Self-) Determination: Hopi Sovereignty in the Face of US Dispossession*, 41 LAW & SOC. INQUIRY 917, 922 (2016).

33. *Id.*

34. *Id.* at 934.

35. Erin Banco, *The Curse of Oil in Iraqi Kurdistan*, GLOBAL POST INVESTIGATIONS (Jan. 17, 2017), <https://gpinvestigations.pri.org/the-curse-of-oil-in-iraqi-kurdistan-1c9a9a18efd1> [<https://perma.cc/U6AT-YMT3>].

36. Craig Douglas Albert, *A History of Violence: Ethnic Group Identity and the Iraqi Kurds*, 17 IRAN & CAUCASUS 215, 217 (2014).





maintain control of the economic potential of Kurdistan. The Ba'athist Revolution of July 1968 illustrates this process.

The Ba'ath Party took power from the Qasim Regime that had controlled Baghdad since its own July Revolution of 1958.<sup>37</sup> The Ba'ath Party held a radical Arabist ideology partly founded upon hostility toward non-Arab Kurds, who are culturally and linguistically related to the Persians.<sup>38</sup> The Ba'ath Party also sought to secure its newfound position in Baghdad and therefore sought cooperation with the Kurds.<sup>39</sup> Taking advantage of a potential ethnic-civil war between Kurdish groups in the late 60s and early 70s, and needing to quickly consolidate its position, the Ba'ath, under the direction of Saddam Hussein (who was then second-in-command of Iraq), reached a peace accord with Kurds.<sup>40</sup> The March 11, 1970 peace accord, known as the "March Manifesto," established the cornerstone for future relations between the Kurds and Iraq<sup>41</sup> and recognized the dignity of the Kurds, if only briefly. By most accounts, the peace accord was not a Ba'athist attempt to legitimize the Kurds' autonomy but rather a plan to co-opt them until the party fully securitized its position.<sup>42</sup> This accord is an instance of infantilization. Saddam pretended to recognize the Kurds' right to self-rule while the maneuver actually bought time to better situate Ba'ath forces to assert authority and dominance over Kurdish lands and people. However, much worse was to come.

The peace accord quickly collapsed, partly due to burgeoning Kurdish alliances with Iraqi enemies, certain Kurdish elitist insistence on greater independence, and the Ba'athist rejection of Kurdish nationalism. The Iraqi regime seemingly tried once more to establish a permanent agreement on federal relations with Kurdistan by publishing the Autonomy Law of 1974.<sup>43</sup> However, rival Kurdish organizations could not agree on the law's terms.<sup>44</sup> Some argued it was the closest Kurdistan had ever come to self-

37. *Id.*

38. *See generally* HUMAN RIGHTS WATCH, GENOCIDE IN IRAQ: THE ANFAL CAMPAIGN AGAINST THE KURDS (1993), <https://www.hrw.org/reports/pdfs/i/iraq/iraq.937/anfalfull.pdf> [<https://perma.cc/SYQ4-X3LJ>].

39. MCDOWALL, *supra* note 3, at 324–25.

40. *Id.* at 326–28.

41. *Id.* at 327 ("The accord reached and issued on 11 March as the government's policy on the Kurdish issue . . . has remained the Kurds' favoured foundation stone for future relations with the rest of Iraq.").

42. *Id.*

43. *See id.* at 335–37 ("The terms of the Autonomy Law set out the Baath position, one that went further than any previous legislation, but which fall short of Kurdish demands regarding Kirkuk and regarding the real seat of power.").

44. *See id.* at 335–36 (discussing how provisions of the Autonomy Law allowed Baghdad to retain powers that could effectively strip the Kurds of self-control).

actualization, while others believed that it did not go far enough in recognizing Kurdish self-determination and that it was dictatorially implemented.<sup>45</sup> After its proposal, Saddam Hussein gave the Kurds two weeks to accept the Autonomy Law.<sup>46</sup> The Kurdish factions could not agree and war broke out in 1974 and 1975.<sup>47</sup> Finally, during the war and its aftermath, Iraq began the dispossession of its Kurdish population to resolve its Kurdish problem.

The tyrannically imposed Autonomy Law appeared to grant substantial autonomy to the Kurds, but it actually centralized power, even in the autonomous zones throughout Kurdistan. Put simply, the law created more control disguised as autonomy. Yildiz argues that the law's autonomous region accounted for less than half of what the Kurds recognized as Kurdistan.<sup>48</sup> It created legal limitations that substantially qualified autonomy. Central authority figures were authorized to give general guidance to local Kurdish officials, and perhaps the most telling was a state minister being authorized to attend all meetings of all autonomous bodies.<sup>49</sup> Further, all decisions made by local Kurdish bodies could be contested by Iraq's Minister of Justice and could be suspended by the Iraqi Court of Cassation.<sup>50</sup>

Taken together, these qualifications of the Autonomy Law of 1974 highlight why the law's label was nothing but a misnomer. It clearly demonstrated the Ba'athist contempt for Kurdish autonomy and their belief that the Kurds lacked the capacity for self-governance. Certainly, from Iraq's perspective, Iraq was attempting to parent its unruly children. To make matters worse, the Ba'ath enacted this law after the Kurds believed they were making headway with the Kurdish rights outlined in the March Manifesto. The unilateral implementation of the Autonomy Law of 1974 was a dignity taking disguised as a "dignity giving" spectacle.

The war and its immediate effects are clear examples of the dehumanization that accompanies dignity takings. Iraq went to war with more than 90,000 fighters, 1200 tanks and armored cars, and 200 aircraft.<sup>51</sup> Kurdish forces numbered about 60,000 *Peshmerga*, or guerilla fighters (literally

45. See *id.* at 337 ("They and others joined the National Front in Baghdad, arguing that the Autonomy Law was the best they could hope for and should be supported. Other Leftist Kurds believed that Saddam Husayn was no longer serious about an agreement. The Autonomy Law, for them, was by dictat.")

46. KERIM YILDIZ, *THE KURDS IN IRAQ: THE PAST, PRESENT AND FUTURE* 20 (2004).

47. See MCDOWALL, *supra* note 3, at 337–38.

48. YILDIZ, *supra* note 46, at 21.

49. *Id.* at 21.

50. *Id.*

51. *Id.* at 23.

translated as *those who confront death*), and about the same number of irregular forces, all temporarily supported with Iranian artillery and anti-tank missiles.<sup>52</sup> The Kurds' only chance to defend their territory was with the help of Iran and hope of assistance from the United States. U.S. assistance never came. Iraq and Iran eventually negotiated the Algiers Agreement of 1975, which ended Iran's support of the Kurds, and settled other non-Kurdish related issues between the two states.<sup>53</sup> Iraqi forces took immediate advantage of this.

The Iraqi army created a security zone surrounding Kurdish regions bordering Turkey, Syria, and Iran, measuring 600 miles in length<sup>54</sup> and about 19 miles deep.<sup>55</sup> Within this security zone, the Iraqi military destroyed an estimated 1500 villages.<sup>56</sup> Additionally, the Iraqi government resettled at least 600,000 people (including women and children) to *mujama'at*, or collective camps.<sup>57</sup> The resettlement campaign deported Kurds from their ancestral homelands to Arab dominated areas, and according to Human Rights Watch, many Kurds died in the relocation efforts, although there are no exact figures available.<sup>58</sup> Summary execution without trial awaited any Kurd caught inside Kurdistan after resettlement.<sup>59</sup>

The Iraqi government brought ethnic Arabs into razed Kurdish villages to transition formerly Kurdish provinces into Arab dominated districts. The most telling evidence of this displacement includes interviews with Arabs who were relocated, sometimes forcibly, into the Kurdish lands. In an interview conducted by Human Rights Watch, an Arab tribesman stated: "We moved because there was an order from the government to move to this village. Whether I was happy or unhappy, I had to obey that order. During the last regime, if the government gave an order to the people to do something, they had to obey."<sup>60</sup> A leader from Kis Qal'a village said:

The eviction and expulsion happened in one day, and on the same day they brought the Arabs . . . They came and ordered us to leave Kis Qal'a. We could choose where we wanted to go, but the only condition

52. *Id.*

53. *Id.* at 23.

54. *Id.*

55. MCDOWALL, *supra* note 3, at 339 ("[T]he regime created a security belt along the Iranian and Turkish borders, which progressively widened from 5 km to eventually 30 km in places.")

56. YILDIZ, *supra* note 46, at 24.

57. MCDOWALL, *supra* note 3, at 339.

58. *See generally* HUMAN RIGHTS WATCH, *supra* note 38.

59. MCDOWALL, *supra* note 3, at 339 ("Anyone caught returning to their ancestral homesteads was summarily executed, without regard for age or sex.")

60. HUMAN RIGHTS WATCH, CLAIMS IN CONFLICT: REVERSING ETHNIC CLEANSING IN NORTHERN IRAQ 12-13 (2004), <https://www.hrw.org/reports/2004/iraq0804/iraq0804.pdf> [<https://perma.cc/249F-CRZA>].

was that it had to be above the town of Atrush [located inside the then just declared Kurdish autonomous zone]. The ones who came to expel us were the heads of Shaikhan district, with the police and [Ba'athists]. The expulsion was peaceful, but we were ordered to leave.

...

We were settled in a remote area . . . . We arrived at the end of April, in a field of grass. We had to build our own houses from mud.<sup>61</sup>

The Ba'ath made it almost impossible to own property deeds in traditional Kurdish territory. Jaji Muhammad Ya'qub Hussain claims: "There were 188 villages in Shaikhan. The government cancelled all of the property certificates of the Kurds and the other nationalities in the villages . . . . The law of 1975 Arabized the whole area, and brought the Arabs to all of the Kurdish villages."<sup>62</sup> In the most telling example of ethnic dilution by the Iraqi regime, the Ba'ath encouraged Arabs to start taking Kurdish wives in an attempt at ethnic assimilation or ethnic dispersion, to guarantee an Arab majority in all regions and thereby negate the need for Kurdish autonomy.<sup>63</sup> Additionally, the war created at least 200,000 Kurdish refugees within Iran alone, with an undetermined total killed.<sup>64</sup>

The Iraqi regime dehumanized the Kurds by creating a security zone, forcibly resettling the Kurds, killing all those who refused to obey these policies, razing villages, refusing land deeds, and encouraging ethnic assimilation bordering on ethnic cleansing. The Iraqi regime also demonstrated its contempt for Kurdish self-rule by refusing their rights to their ancestral homeland, refusing greater autonomy, and redrawing traditional Kurdish territories and Arabizing the provinces. Each of these policies denies the inherent human right of self-determination and forces a group wishing for self-governance to live under the authoritative centralized control of "outsiders." This is the first occurrence in what has become a pattern of dignity takings.

61. *Id.* at 30.

62. *Id.* at 29. Although the Arabs interviewed believed that the Iraqi government had compensated the Kurds, "[i]n all likelihood, Iraqi government propaganda asserted that all displaced families had been compensated, but such compensation did not actually take place." *Id.* at 32.

63. See MCDOWALL, *supra* note 3, at 340 ("Other distasteful measures included financial rewards to Arabs who took Kurdish wives, a deliberate encouragement of ethnic assimilation, the transfer of Kurdish civil servants, soldiers and police out of Kurdistan, the removal of Kurdish faculty from the new university in Sulaymaniya and the Arabizing of some place names. Undoubtedly Baghdad also resorted to arrests, torture and executions to ensure its writ went unchallenged.").

64. *Id.* at 339.

### B. The Spoils (*Al-Anfal*)

According to McKiernan, *Anfal* is an Arabic term taken from the Quran in which followers of Mohammed raided and pillaged lands of non-believers; it specifically refers to the spoils of war captured from infidels.<sup>65</sup> *Al-Anfal* represents the culmination of violence against the Kurds by Saddam Hussein, his Tikriti Ba'ath compatriots, and the Iraqi military. *Al-Anfal* was Saddam's attempt to punish the Kurds for their disobedience and constant rebellions against his vision for Iraq. *Al-Anfal* eliminated an estimated 182,000 Kurds.<sup>66</sup> The full, eight-phase campaign took place between March 1987 and April 1989,<sup>67</sup> but the deadliest crimes occurred in 1988. The Iraqi regime orchestrated *Al-Anfal* to suppress ethnic rebellion in Northern Iraq and to stop Kurdish fighters from assisting Iran in its war with Iraq (1980–1988).<sup>68</sup> In effect, the Iraqi regime treated the Kurds as animals. As one victim reports: “The Iraqis wanted us to bow down. Saddam, especially, wanted us to bow down like dogs.”<sup>69</sup> This report demonstrates the dehumanization as experienced by the dispossessed.

*Al-Anfal*'s specific purpose was to cleanse the region of all saboteurs, who the regime defined as including all males between the ages of fifteen and seventy.<sup>70</sup> It was Saddam's attempt to destroy Kurdistan. The statistics concerning those killed and the property destroyed by the regime are staggering. Exact figures are disputed, but government forces destroyed anywhere from 3000<sup>71</sup> to 4000 villages,<sup>72</sup> displacing up to 1.5 million Kurds either internally or internationally.<sup>73</sup> A member of the Kurdish *Peshmerga* details his account of the destruction:

Ah, since 1961, we have struggled! We have faced many difficulties. All of Saddam's oppression operations, all the chemical bombings, all the mass graves. Many people for example, know of Halapja. No one defended us. More than 5,000 Kurds died at Halapja, from Saddam's chemical attacks. And there were so many Halapjas. So many villages

65. MCKIERNAN, *supra* note 2, at 38.

66. Jennifer Trahan, *A Critical Guide to the Iraqi High Tribunal's Anfal Judgment: Genocide Against the Kurds*, 30 MICH. J. INT'L L. 305, 306 (2009).

67. Michael J. Kelly, *The Anfal Trial Against Saddam Hussein*, 9 J. GENOCIDE RES. 235, 235 (2007).

68. YILDIZ, *supra* note 46, at 25-26.

69. Hajee Muhammad Abdullah Ismail, *The Happy Warrior, in HELL IS OVER: VOICES OF THE KURDS AFTER SADDAM* 34 (Mike Tucker ed., 2004).

70. Carole A. O'Leary, *The Kurds of Iraq: Recent History, Future Prospects*, MIDDLE E. REV. INT'L AFF., Dec. 2002, at 17, 18.

71. Albert, *supra* note 36, at 219.

72. DENISE NATALI, *THE KURDS AND THE STATE: EVOLVING NATIONAL IDENTITY IN IRAQ, TURKEY, AND IRAN* 58 (2005).

73. Albert, *supra* note 36, at 219.

destroyed. So many lives destroyed. The hell of Chemical Ali. And Kurdish people are still suffering from diseases and cancer, from Saddam's chemical attacks.<sup>74</sup>

The Iraqi elites' intent was to exterminate the Kurds during *Al-Anfal* and to make Kurdistan uninhabitable. One witness of *Al-Anfal* recounts the destruction of land and property:

In 1991, after the safe haven was established in Kurdistan, I returned to my village. My village was gone. There was death everywhere. Dead sheep and goats. Dead chicken. Dead cattle. All the livestock of the village was dead and rotting. And the beautiful stone houses were in ruins . . . . Roofs were torn down and walls shelled, mortared, bulldozed. My village was destroyed, like 4,500 other Kurdish villages. And the water was poisoned; Saddam poisoned all the wells of my village.<sup>75</sup>

Ali Hassan al-Majid, a cousin of Saddam Hussein, was in almost total command of the campaign; after *Al-Anfal*, he became known as Chemical Ali. In official documents concerning the operations, Iraqi government officials made clear that Kurdish villages were to be evacuated (read as "cleansed") and demolished so that no house was left standing.<sup>76</sup> Chemical Ali allegedly backed up his orders with personal threats, insisting that if he found any house intact after the operations, he would hold the section commander responsible.<sup>77</sup> A Human Rights Watch report details the intent and efficacy of Iraqi regime forces. It quotes an intelligence officer:

I got two IFAs [East German-built military trucks] full of explosives from a warehouse in Erbil. I commandeered 200 bulldozers from civilians of Erbil—by force, with no payment. We started destroying mud villages with bulldozers, and dynamiting the cement structures. We used military engineers for this.<sup>78</sup>

The report also notes that troops entered villages at dawn, filled water wells to make them unusable, and destroyed electricity supplies.<sup>79</sup> Intelligence officials inspected the villages by helicopter and if any structure were still standing, the section commander would have to return to finish the job *and* risk disciplinary action.<sup>80</sup> The report stunningly states: "Many

74. Muhammad Salim Dosky, *Fighting Spirit*, in *HELL IS OVER: VOICES OF THE KURDS AFTER SADDAM*, *supra* note 69, at 29, 31.

75. Ismail, *supra* note 69, at 33, 35.

76. HUMAN RIGHTS WATCH, *supra* note 38, at 59.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

villages [were] not so much demolished as pulverized.”<sup>81</sup> The report also states that Kurds were not to be killed unless they actively resisted but, in a strange twist of logic, Chemical Ali ordered that, if resistance did occur, the entire village and all inhabitants were to be killed in reprisals.<sup>82</sup> Furthermore, the regime prohibited farming and grazing animals in the security zone. Regime documents order that any person or animal found in the security zone must be killed immediately.<sup>83</sup> Fawcett and Tanner note that killings were much more regularized than Ali acknowledged.<sup>84</sup> They cite regime sources that describe the operation’s intent to systematically eliminate people and property within the prohibited security villages.<sup>85</sup> Ali Hasan al-Majid admitted that the Iraqi military units would surround and attack villages, round up and relocate inhabitants, and bulldoze them into mass graves.<sup>86</sup>

Al-Majid states in his own words: “Yes, I’ll certainly look after [the Kurds]. I’ll do it by burying them with bulldozers. That’s how I’ll do it.”<sup>87</sup> Montgomery publishes accounts of Iraqi officials. One official document states: “We are sending to you the families . . . who surrendered to our forces in the area of Sofi Raza on April 15, 1988. Please take the necessary measures against them according to the directives of the Northern Bureau and acknowledge their arrival.”<sup>88</sup> Montgomery notes that this document identifies the murder of 139 families, 307 individuals.<sup>89</sup> After reviewing the official Iraqi archives, Montgomery concludes that “necessary measures” refers to the execution of captives and notes that the names therein represent certificates of death for those individuals.<sup>90</sup>

Iraqi officials attempted to make it impossible for Kurds to return to their homes by deploying chemical weapons in up to 250 villages and towns in the late 1980s.<sup>91</sup> One bystander illustrates the resulting death:

The next day, we moved out. Unbeknownst to us, the area had been previously attacked by the Iraqis with chemical weapons. One of my grand-

81. *Id.*

82. *Id.*

83. *Id.* at 81.

84. JOHN FAWCETT & VICTOR TANNER, THE BROOKINGS INSTITUTION—SAIS PROJECT ON INTERNAL DISPLACEMENT, THE INTERNALLY DISPLACED PEOPLE OF IRAQ 9 (2002).

85. *Id.*

86. *Id.*

87. Bruce P. Montgomery, *The Iraqi Secret Police Files: A Documentary Record of the Anfal Genocide*, 52 ARCHIVARIA 69, 70 (2001).

88. *Id.* at 89.

89. *Id.*

90. *Id.*

91. FAWCETT & TANNER, *supra* note 84, at 10.

daughters, and one of my sons, were so very hungry that they tried eating wild grass. Then, after several hours, they died clenching their stomachs, with boils on their faces.<sup>92</sup>

According to Human Rights Watch, this was the first instance in history where a government used chemical weapons against its own people.<sup>93</sup> Many Iraqi Kurds died in the chemical bombardments—innocent civilians as well as Kurdish *Peshmerga*. Another eyewitness recounts:

I had four brothers and three sisters; two sisters and two brothers remain alive. Both sisters are lame, from war wounds, suffered when Iraqi troops attacked Bawarky in Al Anfal, 1988. One is paralyzed, and the other has shrapnel wounds that crippled one of her legs. My paralyzed sister went into a state of physical and mental collapse during Al Anfal after her two sons died in the Iraqi Army's chemical attacks on Bawarky. All of my family's sheep and goats—over 1,000, total—died in the same chemical attacks.<sup>94</sup>

In the town of Halapja alone, in March 1988, the Iraqi military used multiple chemical weapons including Mustard Gas, Sarin, VX and Tabun, which immediately killed 7000 Kurds<sup>95</sup> and up to 5000 more from the deadly, lingering effects of exposure to chemical weapons.<sup>96</sup> Muhammad Mala Khader provides a first-hand account of Saddam's chemical weapons usage:

1988, with my men, we were attacked three times with chemical weapons. The Shaqlawa district, near Hawlerr, was the worst for me. I ordered my men to wrap themselves in rough burlap bags. We wrapped rags over our mouths, our eyes, and our noses. The Iraqi planes came, dropping napalm and chemical bombs. There were 300 Kurds in a nearby village. One hundred sixty died that day and one hundred forty survived and they live today but they are terribly handicapped, with disabilities from the chemical weapons.<sup>97</sup>

The Iraqi military attacked the city from the air using conventional cluster bombs indiscriminately, sending fighters and residents underground into fallout shelters. The regime then shelled the town with poisonous gas that descended underground into the shelters, killing fighters and civilians

92. Ahmed Hajee Mirkhan Bawarky, *Life Must Go On, in HELL IS OVER: VOICES OF THE KURDS AFTER SADDAM*, *supra* note 69, at 15, 20.

93. HUMAN RIGHTS WATCH, *supra* note 38, at 27.

94. Bawarky, *supra* note 92, at 15–16.

95. Kelly, *supra* note 67, at 237.

96. O'Leary, *supra* note 70.

97. Muhammad Mala Khader, *The Lion in Winter, in HELL IS OVER: VOICES OF THE KURDS AFTER SADDAM*, *supra* note 69, at 1, 5.



without distinction.<sup>98</sup> Ahmad Bhadey describes his experience of victims trapped in the fallout shelters:

I heard the jets before I saw them. The voice of the jets made an explosion in my ears . . . . One jet dove over each village. Each dropped one bomb . . . . These were chemical bombs Saddam attacked us with, the chemical death. The villagers were crammed together in bomb shelters. They died from the chemicals. I, myself, opened the large, heavy wooden door to one of the shelters. My Kurdish people lay inside, dead. The stench was unbelievable.<sup>99</sup>

Since the American-led Wars of 1991 and 2003, the Kurds were able to turn the tide. After the First Gulf War (1990–1991), the U.S. alliance created a safe haven and a no-fly zone in Iraqi Kurdistan. In effect, this created a de facto Kurdistan, which formed its own autonomous government, the Kurdistan Regional Government (KRG). Most of the Iraqi regime's atrocities ceased after this period, and with the Iraq War (2003–2011), the Kurds seemed hopeful that they might gain greater autonomy and perhaps independence. However, with the government of Iraq controlled by a divisive and non-inclusive leader, Nouri al-Maliki, and with the withdrawal of U.S. forces from Iraq, tragedy struck the Kurds once again.

### *C. The Islamic State and Iraqi Kurds: 2014–Present*

The self-proclaimed Islamic State (ISIS) occupies areas in Syria and Iraq. Its leader, Abu Bakr al Baghdadi, aims to create an Islamic Caliphate in the region. ISIS surprised both Kurdish forces and Iraqi regime elements by successfully attacking Mosul, Iraq's second largest city. By most accounts, the Iraqi military quickly capitulated and abandoned their posts as jihadists advanced.<sup>100</sup> Mosul is the largest town bordering the disputed territories between Kurdistan and Baghdad. The Kurds then had to defend both their homeland and the disputed territories (i.e., the territories that Kurdistan claims for itself but that Baghdad refuses to grant to them). Iraqi regime forces left the Kurds stranded.<sup>101</sup> ISIS elements quickly entered Kurdish villages and enclaves, leaving the *Peshmerga* to fight for them-

98. MCKIERNAN, *supra* note 2, at 39–40.

99. Sanan Ahmed & Ahmad Abdullah Bhadey, *Comrades in Arms*, in *HELL IS OVER: VOICES OF THE KURDS AFTER SADDAM*, *supra* note 69, at 37, 45.

100. Martin Chulov, *Isis Insurgents Seize Control of Iraqi City of Mosul*, *GUARDIAN* (June 10, 2014, 3:51 PM), <http://www.theguardian.com/world/2014/jun/10/iraq-sunni-insurgents-islamic-militants-seize-control-mosul> [https://perma.cc/X4SM-XNDH].

101. *Id.*

selves as the Iraqi military rapidly dissipated.<sup>102</sup> The regime seemed incapable of assisting the Kurds, and, according to news reports, entire companies of Iraqi soldiers hastily left their defensive positions, ran through the streets, and disposed of their uniforms (sometimes right down to their undergarments).<sup>103</sup> The Iraqi army's failure caused many Kurdish cities and villages to fall into ISIS's hands or to become contested by ISIS.

In August 2014, ISIS made a huge incursion into Kurdistan, overrunning Kurdish forces in Sinjar and Makhmou, and reaching as far as Gwer, fifteen miles from the Kurdish capital of Erbil.<sup>104</sup> In the Kurdish city of Zumar, the Iraqi military quickly abandoned their posts and allowed ISIS to acquire weapons that they then used to kill Kurds.<sup>105</sup> The Kurds faced ISIS-laid IEDs, TNT, and booby traps in Zumar and surrounding villages; as Barbarani writes: "A labyrinth of unexploded ordnance was strategically placed to wreak havoc among civilians and military personnel."<sup>106</sup> ISIS fighters fought with such brutality that Kurdish fighters and civilians lived in constant terror, resulting in lower morale: a disease that can cripple military forces. ISIS developed an efficient array of tactics including suicide bombers, mines, snipers and the use of US equipment captured from the Iraqi military by ISIS forces.<sup>107</sup>

Many Kurds believe that the conflict they now face with ISIS results from Baghdad's policies and the military's inefficacy. Iraq's failure to protect Kurdistan—regarded as intentional by the Kurds<sup>108</sup>—should qualify as a dignity taking. This assertion is bolstered by the fact that although much of Baghdad's economy derives from Kurdish controlled oil, the Kurds themselves receive little or no money in return, and the Kurdish government has been largely unable to pay its civil servants.<sup>109</sup> The Kurds insist that Baghdad does not care for their right to self-rule, which is demonstrated by the lack of economic redistribution from the center to the Kurdish periphery that generates much of their wealth in the first place.

102. Dexter Filkins, *The Fight of Their Lives*, NEW YORKER (Sept. 29, 2014), <https://www.newyorker.com/magazine/2014/09/29/fight-lives> [<http://perma.cc/TZ27-KFU4>].

103. *Id.*

104. *Id.*

105. Sofia Barbarani, *Kurds Fighting to Secure Resource-Rich Iraq City from ISIS hold*, HAARETZ (Nov. 2, 2014, 4:27 PM) <http://www.haaretz.com/news/middle-east/.premium-1.624110> [<https://perma.cc/SBN7-QRNG>].

106. *Id.*

107. Patrick Cockburn, *War with ISIS: Islamic Militants Have Army of 200,000, Claims Senior Kurdish Leader*, INDEPENDENT (Nov. 16, 2014, 12:00 AM), <http://www.independent.co.uk/news/world/middle-east/war-with-isis-islamic-militants-have-army-of-200000-claims-kurdish-leader-9863418.html> [<https://perma.cc/TR9M-68YE>].

108. Filkins, *supra* note 102.

109. *Id.*

ISIS has also dispossessed Kurds. First, ISIS lays claims to Kurdish land by arguing that it reserves a right to reclaim all lands that were once officially under the control of Islam's historical Caliphates. Regardless of any Kurdish claims to ownership, ISIS does not recognize any other land claims than its own. A member of the Kurdistan Democratic Party, Sa'ed Mamuzein, stated, "ISIS terrorists have brought 218 families from Ramadi and Beiji to live in Kurdish-Shabak properties surrounding Mosul."<sup>110</sup> Mamuzein continued, "Shabak-Kurds have fled in fear of ISIS, leaving behind their belongings which are now seized by ISIS."<sup>111</sup> Rudaw Media Network notes that this is ISIS's attempt at ethnic cleansing around Mosul, taking all Kurdish property and lands and giving them to loyal Arabs; a policy familiar to the Kurds throughout Iraqi history.<sup>112</sup> Other Kurdish media outlets report that ISIS members are selling the captured Kurdish villages to Arabs for between five and ten thousand U.S. dollars.<sup>113</sup> Duman argues that one possible reason why ISIS is selling villages is to prevent the Kurds from ever returning home. One report argues that the war with ISIS has caused 372,000 Kurds to become Internally Displaced Persons (IDPs), with the Kurdish Yazidi minority representing ninety-one percent of that number.<sup>114</sup> Due to ISIS's Arabization policies, traditionally Kurdish areas now have a higher Sunni Arab presence.<sup>115</sup>

Second, the violence that ISIS uses to contest and gain back these areas is brutal, qualifying as a dignity takings. As Gulmohamad writes: "In general, [ISIS] has followed the policy of annihilating any resistance to its authority by terrorizing other rebel groups, civil activists[,] and journalists with cruel methods."<sup>116</sup> He notes that ISIS has carried out brutal attacks against the Kurds in Iraq because the Kurds disobeyed ISIS's authority by trying to help Syrian Kurds that ISIS massacred.<sup>117</sup> Most of the dehumanization by ISIS in Kurdistan has been against the Yazidis. ISIS executed Yazidis in mass numbers; up to 100,000 men, women, and children fled

110. *ISIS Evicting Kurdish Shabaks from Lands That Are Given to Arab Loyalists*, RUDAW (Nov. 21, 2014), <http://rudaw.net/english/middleeast/iraq/21112014> [<https://perma.cc/7YAB-PBKA>].

111. *Id.*

112. *Id.*

113. Yasin Duman, *Dispossession in Rojava and Possible Solutions*, KURDISHQUESTION.COM (Jan. 10, 2015, 12:00 AM), <http://kurdishquestion.com/oldarticle.php?aid=dispossession-in-rojava-and-possible-solutions-in-rojava> [<https://perma.cc/3NEJ-2SJB>].

114. CAMERON THIBOS, MIGRATION POLICY CTR., EUROPEAN UNIV. INST., 35 YEARS OF FORCED DISPLACEMENT IN IRAQ: CONTEXTUALIZING THE ISIS THREAT, UNPACKING THE MOVEMENTS 11 (2014).

115. *Id.* at 13.

116. *See generally* Zana Khasraw Gulmohamad, *The Rise and Fall of the Islamic State of Iraq and Al-Sham (Levant) ISIS*, GLOBAL SECURITY STUD., Spring 2014, at 1, 4.

117. *Id.* at 5.

their homes and were trapped on Mt. Sinjar in Iraq, facing a humanitarian disaster.<sup>118</sup> According to Fuccaro, Yazidis are the largest heterodox Kurdish group in the Mosul province.<sup>119</sup> To ISIS members, Yazidis are slaughtered because they are considered heretical because Yazidi Kurds do not believe in the same form of Islam as does ISIS.<sup>120</sup> Members of ISIS do not respect Yazidis nor think of them as human, and thus slaughter them at will. ISIS even attempted acts of genocide of the Yazidis on Mt. Sinjar.

In other ISIS attacks against the Kurds, reports have surfaced of brutality and dehumanizing tactics. Khudhur Rasha witnessed two Yazidi men executed and members of ten families, hands bound, taken by ISIS members.<sup>121</sup> According to the *New York Times*, Sami Hassan, a Yazidi, was working at a hospital when a wounded ISIS member arrived and demanded to know which sect he belonged to.<sup>122</sup> Hassan reported that he escaped through a window while being shot at.<sup>123</sup> Presumably, the ISIS member wanted to kill Hassan simply because he was a Yazidi Kurd. A Yazidi Minister of Parliament, Vian Dakhil, stated that ISIS was killing men, women, and children, and that some women were even being sold into slavery.<sup>124</sup> MP Dakhil said: “There is a collective attempt to exterminate the Yazidi people.”<sup>125</sup> In a report by Amnesty International, a Kurdish man stated: “They killed the 15 men and took the women and children and until now we do not know what happened to them, where they are or if they are dead or alive.”<sup>126</sup> A Yazidi woman noted her son had been abducted and killed: “We have had no news of him since we fled three days ago. If he was alive and well he would have contacted us.”<sup>127</sup>

118. Kenneth M. Pollack, *Iraq: Understanding the ISIS Offensive Against the Kurds*, BROOKINGS INST.: MARKAZ (Aug. 11, 2014), <https://www.brookings.edu/blog/markaz/2014/08/11/iraq-understanding-the-isis-offensive-against-the-kurds/> [https://perma.cc/2J9R-QU4P].

119. See Nelida Fuccaro, *Ethnicity, State Formation, and Conscription in Postcolonial Iraq: The Case of the Yazidi Kurds of Jabal Sinjar*, 29 INT’L J. MIDDLE E. STUD. 559 (1997).

120. Pollack, *supra* note 118.

121. Tim Arango, *Sunni Extremists in Iraq Seize 3 Towns from Kurds and Threaten Major Dam*, N.Y. TIMES (Aug. 3, 2014), [https://www.nytimes.com/2014/08/04/world/middleeast/iraq.html?\\_r=0](https://www.nytimes.com/2014/08/04/world/middleeast/iraq.html?_r=0) [https://perma.cc/ZYA4-9ZAJ].

122. *Id.*

123. *Id.*

124. Laura Smith-Spark, *Iraqi Yazidi Lawmaker: ‘Hundreds of My People are Being Slaughtered’*, CNN (Aug. 6, 2014, 4:22 PM), <http://www.cnn.com/2014/08/06/world/meast/iraq-crisis-minority-persecution/> [https://perma.cc/494C-6KJL].

125. *Id.*

126. *Iraqis Displaced by ISIS Attacks in Sinjar ‘Desperate’ for Aid*, AMNESTY INT’L (Aug. 5, 2014, 12:00 AM), <https://www.amnesty.org/en/latest/news/2014/08/iraqis-displaced-isis-attacks-sinjar-desperate-aid/>.

127. *Id.*

To achieve justice where dignity takings have occurred, Atuahene argues that there must be a comprehensive remedy, which she calls “dignity restoration,” that compensates injured parties for both the economic harm and the dignity deprivation involved.<sup>128</sup> However, as Richland denotes, reparation is not always possible without granting full sovereignty to groups with collective identities.<sup>129</sup>

#### IV. CONCLUSION: FROM DIGNITY TAKINGS TO DIGNITY RESTORATION

In sum, dignity takings have occurred against the Kurds of Iraq. This paper has demonstrated that the Kurds have been the victim of involuntarily property takings in physical structures, in ancestral land attached to their cultural identity, and through the denial of self-ownership. The Kurds have been the victims of both dehumanization through regime-perpetrated violence and infantilization by the constant denial of self-rule. I argue that failure to grant self-determination constitutes infantilization when three conditions are present: 1) the will to self-govern; 2) the capacity to self-govern; and 3) when no greater conflict will result from granting sovereignty. If any of these three conditions are not present, infantilization has not occurred. In these cases, refusing to recognize sovereignty is not a result of denying reason and full mental capability to a collective group, but rather it is about maintaining some semblance of peace and stability. In 1996, Chechnya quickly devolved into a warlord society, with rampant anarchical conditions in major cities, resulting in warring factions, mass violations of human rights, and the rise of terrorist groups, creating an unstable and insecure environment.<sup>130</sup> Partly due to this result, Russia invaded again to restore law and order and effectively deny self-determination.<sup>131</sup> In this case, however, infantilization did not occur because Chechnya did not meet all three parameters.

Dignity restoration rests upon the principles of restorative justice; it seeks to rehabilitate the dispossessed and to reintegrate the group into society with an emphasis on process.<sup>132</sup> Socio-legal and institutional processes on behalf of the regime in power must be put in place to alleviate the damages done by a regime’s dehumanization and infantilization. Until this restoration is achieved, justice remains elusive.

128. ATUAHENE, *supra* note 4, at 4.

129. Richland, *supra* note 32.

130. See, e.g., TONY WOOD, CHECHNYA: THE CASE FOR INDEPENDENCE (2007).

131. See, e.g., CHECHNYA: FROM PAST TO FUTURE (Richard Sakwa ed., 2005).

132. ATUAHENE, *supra* note 4, at 4.

Perhaps the most appropriate dignity restoration is for the Iraqi regime and the international community to recognize a sovereign Kurdish nation-state. The current constitution of Iraq already recognizes Kurdish federal autonomy, and the Kurds are relatively freer than at any time in Iraq's contemporary memory. Article 117 of Iraq's constitution reads: "First: This Constitution, upon coming into forces, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region."<sup>133</sup> It further validates all decisions and laws passed in Kurdistan since 1992.<sup>134</sup> Article 141 reads:

Legislation enacted . . . shall remain in force, and decisions issued by the government . . . including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution.<sup>135</sup>

Such language implies that the Iraqi government believes that the Kurds are capable of self-rule. In fact, many scholars argue that Kurdistan is a *de facto* independent state.<sup>136</sup> For instance, Stansfield argues that "[t]he Kurdistan Region has already become a state-like entity" and illustrates that Kurdistan has become institutionalized territorially, politically, and economically.<sup>137</sup> Furthermore, Kelly argues, "Iraqi Kurdistan exists today in a *de facto* sense, but struggles to exist in a *de jure* sense."<sup>138</sup> Kelly even observes that one hardly encounters an Iraqi federal official in Kurdistan, noting that even customs issues and border posts are handled by Kurdish government officials.<sup>139</sup> Furthermore, the Kurdish *Peshmerga* are the only capable military forces defending the Kurds from ISIS, which shows that the *de facto* nature of Kurdistan should become a *de jure* acceptance.

Most of Iraqi Kurdistan provides for itself economically through agriculture and oil wealth.<sup>140</sup> However, much of Kurdistan's oil wealth is left untapped as the regional government and the federal regime try to cooperate. There is no final solution as to who should govern Kurdish oil and

133. Article 117, Section 1, *Dustūr Jumhūrīyat al-‘Irāq* [The Constitution of the Republic of Iraq] of 2005.

134. *Id.* art. 141.

135. *Id.*

136. Gareth Stansfield, *The Unravelling of the Post-First World War State System? The Kurdistan Region of Iraq and the Transformation of the Middle East*, 89 INT'L AFF. 259, 259–60 (2013).

137. *Id.* at 260.

138. Michael J. Kelly, *The Kurdish Regional Constitution Within the Framework of the Iraqi Federal Constitution: A Struggle for Sovereignty, Oil, Ethnic Identity, and the Prospects for a Reverse Supremacy Clause*, 114 PENN ST. L. REV. 707, 719 (2010).

139. *Id.* at 732.

140. *Id.* at 748.

who—the Kurds or the federal government—should profit from that supply. However, Voller notes that the Kurds have acted unilaterally concerning its oil reserves in an attempt to consolidate sovereignty and exhibit this self-rule to the international community.<sup>141</sup> The main source of unilateral action stems from Kurdistan’s parliament passing a regional Petroleum Law, ratified as the “Hydrocarbon Law” in 2009.<sup>142</sup> This law allows the Kurdish government to contract independently with international oil companies through Production Sharing Agreements (PSAs).<sup>143</sup> The Kurds now control their oil without needing support, agreement, or cooperation from Baghdad.

The Kurdish government has already signed several contracts through PSAs, including a substantial contract with ExxonMobil.<sup>144</sup> The Kurds have asserted their rights to Kirkuk by incorporating these areas in their PSAs with foreign firms. Furthermore, the Kurdish government demonstrates its capacity to govern itself through these unilateral actions. However, the Kurds argue their unilateral moves are legitimate, considering that the central government is not fulfilling its side of the oil sharing arrangement between the two camps.<sup>145</sup>

Accordingly, Kurdistan should receive seventeen percent of Iraq’s total oil revenue, but the Kurdish government contests that it only receives between ten and eleven percent.<sup>146</sup> Through their PSAs, the Kurds now have the capacity to pump approximately 45 billion barrels of oil and 99 to 201 trillion cubic feet of gas.<sup>147</sup> Combined with its military and political realities, Kurdistan’s political economy demonstrates that the Kurds already govern themselves and could be recognized as a sovereign entity by the international community as an effort toward full dignity restoration.

As a concept, dignity takings provide a useful framework to view regime practices and processes of dehumanization and infantilization. Dignity takings afford the scholar and practitioner a way to analyze crimes against certain individuals or groups of people using a unified socio-legal framework. By analyzing the Kurdish case, this essay has further devel-

141. Yaniv Voller, *Kurdish Oil Politics in Iraq: Contested Sovereignty and Unilateralism*, MIDDLE E. POL’Y, Spring 2013, at 68, 68.

142. *Id.* at 72.

143. *Id.*

144. *Id.* at 73.

145. *Id.*

146. *See generally* David Ottaway & Marina Ottaway, *How the Kurds Got Their Way*, FOREIGN AFF., May/June 2014, at 139.

147. *Id.*

oped the concept of infantilization, which is central to the concept of dignity takings.

