



EMERGING LAND TENURE ISSUES AMONG DISPLACED YAZIDIS FROM SINJAR, IRAQ

How chances of return may be further undermined by
a discrimination policy dating back 40 years

November 2015

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ACRONYMS

CRRPD	Commission on the Resolution of Real Property Disputes
HLP	Housing Land and Property
HRW	Human Rights Watch
IDP	Internally Displaced People
IGC	Interim Governing Council
IOM	International Organization for Migration
IPCC	Iraq Property Claims Commission
IPRF	Iraqi Property Reconciliation Facility
ISF	Iraqi Security Force
ISIL	Islamic State of Iraq and Levant (also known as ISIS and often referred to as <i>Daesh</i> , abbreviation of the group's name in Arabic)
KDP	Kurdistan Democratic Party
KRG	Kurdistan Regional Government
KRI	Kurdistan Region of Iraq
MOA	Ministry of Agriculture
MOF	Ministry of Finance
MoMPW	Ministry of Municipalities & Public Works
NGO	Non-governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
UNAMI	United Nations Assistance Mission for Iraq
YPG	Known as the People's Protection Units - the main Kurdish force in Syria

PREFACE



As the Resident and Humanitarian Coordinator for the United Nations in Iraq, we welcome this important study of the critical issues impacting the return of the Yazidi population to their communities.

The costs of the anti-ISIL struggle in Iraq are enormous. More than 3.2 million Iraqis have been forced to abandon their homes, jobs, schools, and neighborhoods, often carrying with them only their children and the clothes they were wearing when they fled. Entire towns and districts have been destroyed.

As the leader in the international campaign against ISIL, the Government of Iraq is fighting to liberate captured areas while simultaneously meeting the needs of displaced persons.

The United Nations agencies, funds and programmes are supporting the Government in this struggle with humanitarian, stabilization, and development assistance. In Dahuk and northern Ninewa Governorates, hundreds of thousands of displaced persons are living in seventeen camps, of which approximately 90% are Yazidis. Through the coordinated efforts of the Humanitarian Country Team, including UN Habitat, food, temporary housing, health, specialized protection support, education, water, sanitation, and winter supplies are being provided to these displaced persons, and planning is underway to help the Government respond to their longer-term needs before and after they come back to their damaged towns and villages.

The international community salutes the steadfastness of the Yazidi people. We wish to thank UN Habitat for their leadership on this issue and we congratulate everyone in the humanitarian and development community for tireless efforts throughout this crisis.

A blue ink signature of Lise Grande, written in a cursive style.

Lise Grande

Deputy Special Representative of the Secretary General
Resident/Humanitarian Coordinator
UNDP Resident Representative

PREFACE



© *Ali Arkady*

I receive this report with strong gratitude. I hereby thank you and your team for your remarkable work. On behalf of the Yazidi community I look forward to all efforts that address the effects caused by ISIL's occupation of Sinjar and all lands of Iraqi minorities.

The importance of this report lies in that it makes recommendations to resolve the situation after the liberation of the occupied territory and the return of the displaced to their homes. It remains critical that organisations working on humanitarian issues coordinate with the Federal Government of Iraq and the Kurdistan Regional Government in order to deliver the legal and governmental mechanisms proposed in this report. We believe the response should begin immediately, regardless of the liberation of all occupied territory.

It is clear to all that the hardship of the Yazidi people, as covered in this research, is worthy of consideration by all concerned. We are certain your organisation will spare no effort in addressing this.

Finally, I reiterate my sincere thanks for your attention and make it known that our people are always looking towards the international community as a remedy for their suffering.

A handwritten signature in red ink, appearing to read 'Vian Dakhil'. The signature is stylized with a large, sweeping flourish at the top.

Dr Vian Dakhil

Member of Iraqi Parliament

EXECUTIVE SUMMARY

The escalation of violence which led to the takeover of Mosul by ISIL fighters in early June 2014 caused the movement of over 3 million Iraqi to neighbouring governorates and central and south Iraq.¹ Over 275,000 people from Sinjar are estimated to be currently living in IDP camps, unfinished buildings and rented accommodation in the Kurdistan Region of Iraq (KR-I).

One particular community was particularly affected by ISIL's occupation: the Yazidi religious minority notoriously suffered – and is still suffering – innumerable atrocities deliberately targeting their community. An estimated 250,000 Yazidis² were forced to abandon their homes to flee to Mount Sinjar and seek subsequent refuge in the Kurdistan region of Iraq or leave the country. Meanwhile, unoccupied Yazidi settlements were either systematically demolished or seized by ISIL fighters and allocated to its supporters. Some 6,000 homes are thought to have been destroyed or burned down in the district of Sinjar. Most displaced Yazidis are living today in IDP camps scattered on the outskirts of cities and towns of Kurdistan.

Since Peshmerga, Yazidi Protection forces and YPG (People's Protection Units) forces managed to recapture much of the northern parts of Sinjar (including the sub-districts of Rabiya in Talafar district and Sinooni in Sinjar district) in late 2014, the prospect of mass returns to the areas of Sinjar, Zummar, Rabiya and al-Qosh is becoming more likely. While on-going clashes and shifts of the frontline may result in new waves of displacement, there is evidence that a growing number of IDPs are spontaneously returning to their areas of origin as soon as they feel that the security situation allows. Aside from the presence of unexploded ordnance, widespread physical destruction, on-going sectarian violence and the loss of personal documentation, specifically the lack of records and legal evidence related to ownership of housing, land and property (HLP) may prevent many IDPs from settling back in their former properties – some of which have been in the meanwhile usurped, booby trapped or deliberately demolished.

The present report aims to provide a better understanding of how the convergence of several circumstances, related to past discriminatory policies, forced relocation, double displacement and lack of tenure security may seriously affect the prospects of return of the Yazidi IDP community to their homeland in Sinjar. The discriminatory policy that affected the land tenure rights of ethnic minorities in northern Iraq can be traced back to the alienating demographic policy that followed the signing of the Algiers Agreement in 1975 which saw the large-scale attempt to enforce the Arabisation (*ta'rib*) of the northern areas inhabited by Iraqi minorities. This translated into the deportation of hundreds of thousands of Yazidi from the ancestral villages in the mountains to collective townships in the plains that go by the name of *mujamma'at*.

In line with the discriminatory policy of the time, those forcibly relocation in newly laid out collective townships were denied the right to register the assigned parcels in their names – a discriminatory course of action that was maintained even after the fall of the regime in 2003. Any attempt to settle the long-standing property issues of the hundreds of thousands of Yazidi claimants has been further inhibited by the political impasse concerning the implementation of Article 140 of the 2005 Iraqi Constitution, which was originally intended to solve the issue of the disputed land but essentially froze any land allocation processes in Sinjar. The mayors of the northern sub-districts of Nineveh interviewed for this report, estimate that hundreds of thousands of IDPs may be expected to return to their homes in the coming months – pending security improvement and the reassurance that peoples land tenure issues may be resolved. Many factors and sensitive issues need to be addressed.

According to those interviewed for this report, the only way to unravel the current predicament is to call for a separation of the case of the Yazidi minority from Sinjar from the broader political discourse of the implementation of Article 140 and set in motion a series of steps that consist firstly of the immediate granting of occupancy rights to those displaced by ISIS; then the repossession of State-owned land owned by MOF and MOA; the subsequent transfer or property to the municipal authorities; and finally land titling to applicants. The compensation process for the unlawful relocation dating back to 1975 that was set about in 2006 but not fully executed should also be resumed.

¹ IOM (2015). "Iraq IDP Crisis - 25 April 2015" in *DTM Dashboard* and OCHA "Iraq Crisis Situation Report No. 47 (3 June - 9 June 2015)"

² OHCHR (2014). "Iraq: Immediate action needed to protect human rights of Yazidis in grave danger", in *News & Events*

RESEARCH OBJECTIVES & METHODOLOGY

This is the first of an upcoming series of reports focusing on land tenure rights and challenges concerning Iraqi minorities – specifically the Yazidis, Shabaks and Christians. It captures information drawn from field surveys and interviews with public officials conducted in early 2015 by a group of local researchers and human rights activists supported by UN-Habitat Iraq in IDP camps located in the Kurdistan region of Iraq and site visits to the newly liberated areas of Sinjar.

The present document focuses on the land tenure plight of the Yazidi community residing in Sinjar and aims to:

- Provide a better understanding of how the convergence of several circumstances, related to a discriminatory policy dating back 40 years, denied access to ancestral land, forced relocation in collective townships and unresolved lands claims is affecting the human rights of Yazidi IDPs in Iraq;
- Assess how the lack of tenure security will affect the prospects of return of the Yazidi community to their homeland in Sinjar once it has been liberated from ISIL fighters;
- Identify legal challenges and political hindrances that affect this particular caseload of claims;
- Explore potential legal and land administration solutions applicable to the Yazidi caseload.
- Provide a practical “way forward” that aims to facilitate the return of thousands of displaced households to the newly liberated areas.

During their field work, researchers separately interviewed more than 500 Yazidi households residing in the IDP camps of **Khanke** (District of Sumel, in Dohuk), **Chamishku** (District of Zakho, in Dohuk Governorate), **Essian** (District of Shikan, in Ninewa Governorate), and in the gathering centre of **Ba’adra** (District of Shekhan, in Ninewa Governorate). Interviews were facilitated by community representatives and were conducted in Arabic and Kurdish.

In the same period, a small group of UN-Habitat researchers also reached the liberated areas of Sinjar with the purpose of visually documenting the physical devastation that occurred during their occupation by ISIL. Field work aimed at visually recording the physical damage to properties included visits to the towns of **Borek** (officially known as *Yarmouk*), **Dhola**³ (also known as *Qadisiyah*), **Duguri**⁴ (*Hiteen*), **Guhbal**⁵ (*Al-Andalus*), **Sinjar**, **Sinooni**⁶ and **Zorava** (*Al-Aroba*) located north of Mount Sinjar (see Figure 1, below). Directors of Municipalities and Heads of concerned sub-districts were consulted in the process.

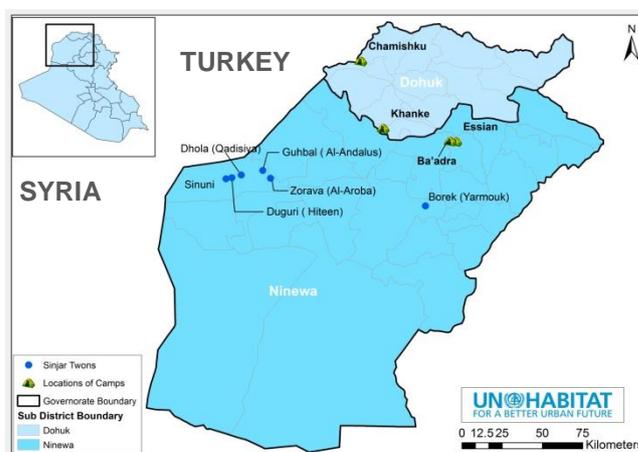


Figure 1: Governorate of Ninewa, sites of interviews and field visits.
© UN-HABITAT

All persons interviewed for this report were informed beforehand of the purpose of the interview, its voluntary nature, and the ways in which the data would be collected and used. No compensation was provided and efforts were made not to raise expectations among respondents.

The present document builds also upon the initial findings of the *Rapid Assessment of Housing, Land and Property Issues*, completed by the UN-Habitat team and partners in November 2014 among 774 internally displaced households in Baghdad, Basra, Dohuk and Erbil, whose aim was to provide a first crucial understanding of issues related to the possible return of IDPs to their former properties. The findings of the Rapid Assessment were summarised in a two-page *Infosheet* produced in December 2014 and shared with key partners and government officials.

³ Also spelled Dohula

⁴ Also spelled Dokarey

⁵ Also spelled Ghobal or Kohpl Yazidi

⁶ Also spelled Sinuni or Sununi



1. CONTEXT

The governorate of Ninewa (also Nineveh), is located in northern Iraq on the border with Syria and adjacent to Dohuk, Erbil, Salah al-Din, and Anbar governorates. It is the Iraq's third largest (37,323 sq. km)⁷ and second most populated governorate of Iraq, with 3,237,918 people in 2009.⁸ Its capital, Mosul, is the country's second largest city with over one million inhabitants.⁹ Secondary towns include Tal Afar, Sinjar, Al Hadr and Al-Qayyarah. Inhabited by Arabs, Kurds, Assyrians, Yazidis, and Shabaks for centuries, the governorate of Ninewa is a cultural mosaic. The plethora of ancient temples, churches, and mosques which dot the plains surrounding Mosul and the mountain areas of Sinjar attest the province's rich ethnic and religious diversity.

The governorate is divided into nine districts: Sinjar, Tel Afar, Tel Kaif, Al-Shikhan, Al-Hamdaniya, Makhmur, Mosul, Hatra (or Al Hadar), and Al-Ba'aj. Prior to 1976, it was part of the so-called Mosul province which included present-day Dohuk Governorate. There are still some pending administrative issues between Ninewa and Dohuk and Erbil governorates over the boundaries of some districts. The most relevant topographic feature is the Sinjar Mountain (*Jebel Shingar*), a 75 km-long mountain that runs on an east-west axis that crowns the Mesopotamian plains of north-western Iraq.

The region is famous for being the location of the ancient Mesopotamian city of Nineveh, established as early as 4000 BC, where the trade routes between the Mediterranean Sea and the Indian Ocean cross the Tigris River. Nineveh later became the capital of the Neo-Assyrian Empire (911-609 BC). Another famous site is the ancient Assyrian city of Nimrud

(1250 - 610 BC), located 30 km south of Mosul. Mosul itself was home to the shrine and mosque of the Nabi Yunus (Prophet Jonah) and the famous Museum of Mosul, both of which were destroyed by ISIL between mid-2014 and early 2015.

Agriculture is a key component of Ninewa's economy, particularly in the production of cereal, as well as sugar cane, sunflowers, vegetables and herbs. Industrial activities consist mainly of cement, sugar, textiles, and beverage factories. Other activities include commercial retail stores, small factories and privately owned businesses, cereal crushing plants, and steel and timber producing plants. The governorate has been severely affected by successive years of drought, with 47% of all cropland impacted during the years from 2009 to 2010. In many rural areas water supplies are becoming insufficient for either human or agricultural use.¹⁰

Ninewa ranks among some of the poorest governorates in Iraq. Food insecurity grew significantly in the last decade due to prolonged drought. In 2011, 26% of the population lived below the poverty line of US\$ 2.5 per day, more than double the national level (11.5%). The literacy rate of 75.5% is lower than the national average. Rural intermediate school enrolment rates are among the worst in Iraq.¹¹ The proportion of the population with sustainable access to an improved water source is 80.6%, while only 67.3% of the population is connected to the public water network, which is the lowest percentage in the country. Ratios of water connection are particularly poor in Tel Afar, Sinjar, Al-Ba'aj and Hatra districts. Energy supply is also

⁷ UN Joint Analysis and Policy Unit (June 2015). "Ninewa Governorate Profile".

⁸ CSO (2009), "Iraq's governorates by area and their relative share of area and population 1997 and 2009"

⁹ Some sources cite Mosul as the third city of Iraq, after Baghdad and Basra. The lack of a recent census makes it

difficult to confirm exact numbers. Furthermore, it is estimated that some 500,000 people fled the city. Source: UN Human Rights Council / UNAMI (2014). "Report on the Protection of Civilians in the Armed Conflict in Iraq: 6 July to 10 Sept 2014"; p. 4.

¹⁰ UN Joint Analysis and Policy Unit (June 2015). *Op. cit.*

¹¹ *Ibid.*

largely unreliable and subject to prolonged power cuts.¹²

Adding to the above figures of deprivation, Ninewa has also the highest number of displaced inhabitants in the country, a record reached in 2008 following widespread sectarian violence – long before the current IDP crisis. The escalation of violence which led to the takeover of Mosul by ISIL fighters in early June 2014, caused the movement of over 3 million Iraqis to neighbouring governorates and central and south Iraq.¹³ Over 275,000 IDPs from Sinjar are estimated to be currently living in camps, open air spaces, unfinished buildings and rented accommodation in the Kurdistan Region of Iraq (KRI).

One particular Iraqi community was particularly affected by ISIL's occupation: the **Yazidi religious minority** notoriously suffered – and is still suffering – innumerable atrocities deliberately targeting their community. An estimated 250,000 Yazidis¹⁴ were forced to abandon their homes to flee to Mount Sinjar and seek subsequent refuge in the nearby Kurdistan region of Iraq or leave the country. More than half (133,000) are from the north sub-district alone. Meanwhile, unoccupied Yazidi settlements were either demolished or seized by ISIL fighters and allocated to its supporters. Some 3,000 homes are thought to have been destroyed in the district of Sinjar and the liberated collective townships to the north of Mount Sinjar. Several thousand houses have been burned. Most displaced Yazidis are living today in camps scattered on the outskirts of cities and towns of Kurdistan.

Since Peshmerga, Yazidi Protection forces and YPG (People's Protection Units) forces managed to recapture much of the northern parts of Sinjar (including the sub-districts of Rabiya¹⁵ in Talafar district and Sinuni in Sinjar district) in late 2014, the prospect of mass returns to the areas of **Sinjar, Zummar, Rabiya** and **al-Qosh** is becoming more likely. While on-going clashes and shifts of the frontline may result in new waves of displacement, there is evidence that a growing number of IDPs are spontaneously returning to their areas of origin in

other areas of Iraq as soon as they feel that the security situation allows.

Aside from the presence of unexploded ordnance, widespread physical destruction, on-going sectarian violence and the loss of personal documentation, specifically the lack of records and legal evidence related to ownership of housing, land and property (HLP) may prevent many IDPs from settling back in their former properties – some of which have been in the meanwhile usurped, booby trapped or deliberately demolished.



Figure 2: Demolished homes in the Yazidi collective township of Gubbal/ Al-Andalus, located north of Mount Sinjar, 2015
© UN-HABITAT/Mr. Mohamed Al Rubai'y

The present report aims to provide a better understanding of how the convergence of several circumstances, such as the discriminatory policies adopted by the previous regime which led to denied access to ancestral land, the forced relocation in 1975 of villagers in collective townships built on land that was never officially regularised, the political impasse concerning the Dispute Areas, the recent displacement in 2014 and the lack of tenure security dating back to their first displacement may seriously affect the prospects of return of the Yazidi IDP community to their homeland in Sinjar. Ultimately, the report aims to suggest viable land administration solutions and applicable tools.

Who are the Yazidi

The Kurdish-speaking¹⁶ Yazidi (also Yezidi) people have inhabited the mountains of north-western Iraq for centuries. The region is dotted by their holy

¹² UN Joint Analysis and Policy Unit (June 2015). *Op. cit.*

¹³ IOM (2015). "Iraq IDP Crisis - 25 April 2015" in *DTM Dashboard* and OCHA "Iraq Crisis Situation Report No. 47 (3 June - 9 June 2015)"

¹⁴ OHCHR (2014). "Iraq: Immediate action needed to protect human rights of Yazidis in grave danger", in *News & Events*

¹⁵ Also spelled Rabiya

¹⁶ Actually, almost all Yazidis speak their native *Kurmanji*, northern Kurdish, with the exception of some village clans where Arabic is spoken.



Figure 3: Shrine of the founder of the Yazidi faith, 1909.
© Gertrude Bell

places, shrines and ancestral villages. Yazidis practices a monotheistic religion that is said to be 4,000 years old¹⁷ which includes many rituals common to the region by virtue of coexistence with other ancient religions, for instance Zoroastrianism and Manichaeism. Some rituals and practices, such as animal slaughtering, circumcision and the prohibition to eat pork are consistent with Islam; baptism with Christianity; and the virtues of holy water and the worship of the sun with Mandaicism. Yazidis also share a number of celebrations and shrines with other religions in the area. The name may stem from the Persian *izēd* (angel, deity) or *yazāda* (divine being). In Kurdish, the word *Yazdan* translates into God, whereby Yazidi means ‘worshipper of God’. During the 11th and 12th century, the community was exposed to the teaching and organizational reforms of Shaykh Ādi bin Musafir, a Sufi mystic who strengthened the hierarchical system of clerics and laymen.¹⁸ Since then the religion appears to have closed itself to outsiders, with no conversion of proselytes permitted. Because of the blend of various belief systems, known religiously as syncretism, and a misunderstanding of Yazidi theology, they have been often branded as heretics, apostates or unfairly “devil worshippers” and thus have historically been subject to sharp persecution.

The holiest Yazidi site is the valley of Lalish, site of the tomb of Shaykh Ādi, which contains not only many shrines but also numerous landmarks such as *pirrā selāt* (Şerāt Bridge) and Mount Arafat.

¹⁷ Minority Rights Group International (2014). “Yezidis”, in *World Directory of Minorities and Indigenous Peoples*.

¹⁸ Maisel Sebastian (2008). *Social Change amidst Terror and Discrimination: Yezidis in the New Iraq* - Policy Brief. The Middle East Institute, No. 18.

¹⁹ Minority Rights Group International (2014). *Op. cit.*

Iraqi Yazidis are concentrated in **Jabal Sinjar** (known in Kurdish as *Shingal*) and **Sheikhan**, north-east of Mosul. According to current statistics, there are approximately 500,000 Yazidis in the country.¹⁹ Other than in Iraq, Yazidi communities are found in south-eastern Turkey (in the villages of Tur Abdin, southeast of Diyarbakir), Syria (with two main groupings in the Al-Jazira and Kurd Dagh areas)²⁰, Armenia, Georgia, and Azerbaijan. A large Yazidi diaspora community – mostly from Turkey and Iraq – can also be found in Germany and other European countries where they claimed political asylum.²¹

Traditionally, the Yazidi community was largely composed of farmers and herdsman organized in tribes. For ethnic reasons, Yazidis are caught between Arabs and Kurds and have always remained on the fringes of Iraqi society. Many attempts to define their ethnic identity have been politically motivated. Isolated geographically, and accustomed to discrimination, the Yazidis forged an insular culture, reinforced also by the fact that Yazidi culture and religion are transmitted orally. Important cultural features of Yazidism include the system of caste and the traditional preference for living in Yazidi-only communities, which needs to be understood when reflecting upon their current displacement and settlement patterns.



Figure 4: Yazidi women during a ceremony to celebrate the Yazidi New Year in Lalish, 2007. © AFP/David Sim

The Yazidis currently have a (limited) quota for seats in the Iraqi parliament, Kurdistan’s regional parliament, and some provincial councils in both Kurdistan and the rest of Iraq.

²⁰ Allison Christine (2004), *Op. cit.* and Maisel Sebastian (2013). “Syria’s Yezidis in the Kurd Dagh and the Jazira: Building Identities in a Heterodox Community”, in *The Muslim World*, Vol 103, Blackwell Publishing Ltd

²¹ Maisel (2008), *Op. cit.*

2. LAYERS OF HLP RIGHTS VIOLATIONS IN RECENT HISTORY

The surveys conducted among a large segment of Yazidis residing in the camps of **Khanke** (District of Sumel, in Dohuk), **Chamishku** (District of Zakho, in Dohuk Governorate), **Essian** (District of Shikan, in Ninewa Governorate), and the centre of **Ba'adra** (District of Shekhan, in Ninewa Governorate), found that the majority of Yazidis from Sinjar do not possess any official documentation of the homes they inhabited prior to ISIL's violent takeover in 2014. This issue, which actually predates the recent crisis, is the result of a discriminatory policy dating back 40 years and may constitute a serious obstacle to people's safe return to Sinjar and the future chances of stabilization of these areas.

The wave of forced displacement of 1975

The discriminatory policy that affected the land tenure rights of ethnic minorities in northern Iraq can be traced back to the signing in 1975 of what is known as the Algiers Agreement²² whereby the Iraqi and Iranian governments finally settled their border and navigation rights along the disputed median waterway of Shatt al-Arab – conditional on Iran's withdrawal of its support to the Iraqi Kurds' resistance movement, which at the time was fighting the Ba'ath party regime. Following the agreement, the regime executed an alienating demographic policy which saw the large-scale attempt to enforce the **Arabisation** (*ta'rib*) of the northern areas inhabited by Iraqi minorities, in an effort to lessen the threat of enemies (real or perceived) to the Ba'ath Party's dominance in Iraq through ethnic "dilution". This translated into the displacement of hundreds of thousands of Kurds and other minorities from their homes, in parallel to an attempt to repopulate these areas with Arabs transferred from central and southern Iraq.

In contradiction with Art. 5 of the 1970 provisional Iraqi Constitution that gave national and legal rights to all ethnic minorities in Iraq, in the summer of 1975 the severe application of the regime's discriminatory policy triggered the deportation of thousands of Yazidi villagers from their mountain

villages to the plains below. The new settlements were known by the Arabic world *mujamma'at* (singular: *mujamma*) or "collectives". Deriving from an Arabic root that stands for the "gathering in one place of things that are scattered around", it was sometimes referred to as *mujamma'at qasria*, standing for "forced collectives" which distinguishes them from *mujamma'at sakania*, the low cost housing complexes built throughout the Arab region²³.

During the deportation process, 148 rural hamlets to the north and south of Mount Sinjar, 38 in Sheikhan area, as well as numerous human settlements in the Ninewa Plain were forcibly vacated.²⁴ Relocation instructions also targeted the largest Yazidi neighbourhoods located at the centre of Sinjar district, such as the Burj, Barbarosh, Brshuja (Bursehi), Josqi and a large section of Sarai (Tal Afar). Reportedly, in parallel to the deportation process, the government ordered the destruction of village landmarks, homes, orchards and water sources in an effort to consolidate the displacement. By the late 1970s the Iraqi government had forcibly evacuated as least a quarter of a million Kurds Yazidi, Assyrians, and Turkmans. Community representatives estimate that during this period almost 100,000 Yazidis alone were coercively relocated to 11 collective townships provided by the government to the south and north of Mount Sinjar (5 and 6 respectively).

In conformity with the Arabisation policy of the time, the new collective townships were assigned Arabic names, but most are also identified by their local name. Some Arab villages were incorporated into larger administrative units, to include the new Yazidi settlements. Some administrative boundaries within and outside the district of Sinjar were recoded following the Revolutionary Command Council Resolution No. 1379 of 1 Jan 1978. Of the eleven new Yazidi townships that were created under close government control, many remained underserved and lacking in basic infrastructure for years.

Collective social control through urban planning

The establishment of the semi-urban *mujamma'at* in Iraq goes back to the 1970s, when Iraqi president Ahmad Hassan al-Bakr promoted a socialist-inspired reorganization of the land, in the belief that the modernization of villages would instigate progress in agriculture. Formalised by the 1970's Article 117

²² *Encyclopaedia Britannica* (2014), "Iraq: Foreign policy 1968-80".

²³ Genat Melisande (2013). "Iraq", in *Niqash*.

²⁴ According to survey interviews conducted by UN-Habitat researchers in early 2015.

Table 1: Summary of the 1975 deportation of villagers to government controlled townships in Sinjar

Location	Sub-District	Collective township in Arabic	Collective township in local language	No. of original villages
North of Mount Sinjar	Shemal (the North)	<i>Al Tam'eem</i>	Khana Sor (also Khansour)	16
		<i>Hiteen</i>	Dkory (also Duguri or Dkora)	9
		<i>Qadisiyah</i>	Dhola (also Dohula)	9
		<i>Al-Yarmouk</i>	Burke (also Borak)	16
		<i>Al-Andalus</i>	Guhbal (also Kohpl Yezidi)	10
		<i>Al-Aroba</i>	Zorava (also Zarafah)	4
North Sub-district centre		<i>Sinuni</i>	Sinooni (also Sinuni)	2
South of Mount Sinjar	Qahtaniya	<i>Al-Qahtaniya</i>	Ker Uzair (also Giruzer or Karizir)	12
		<i>Al-Jazirah</i>	Siba Sheikh Kidir	27
		<i>Al-Adnaniyah</i>	Krzk	13
	Qairawan	<i>Baath</i>	Tal Qassab	16
		<i>Al Waleed</i>	Tal Banat	12
Total no. of villages from where inhabitants were relocated/deported				146

Law, the idea was influenced by Soviet projects of collectivisation and agrarian transformation, in addition to interpretations of socialist ideology from Egypt and Syria. The government setup a process of confiscation that affected 64% of the privately-owned land throughout the country, followed by the set up of a complex system of collectivisation (which was consequently abandoned in 1983).²⁵ The *mujamma'at* represent the structural territorial units around which the 1975 Land Reform was organised²⁶ and have become an important feature of contemporary landscape in northern Iraq.²⁷

It appears that in the early years people were mostly encouraged rather than forced to move to the new collective townships, which offered a more “modern” life-style, with new houses, electricity, water and sanitation. Many were built adjacent to old villages, close to agricultural land.²⁸ Whereas from 1975 onwards, the political situation encouraged Saddam Hussein to increase control over the population. Displacement was made compulsory. In the so-called “second generation” collective townships,²⁹ their efficient spatial design contributed to enforce control. Town planning and housing were conceptualised in Baghdad and reproduced systematically throughout the northern region and

Kurdistan. While differing in size, the *mujamma'at* were designed according to a modular pattern and typology, which produced a repetitive landscape which remains highly recognisable today. Initially gated, the *mujamma'at* were deliberately located along the highways between cities to make them easier to build and control. Their wide grid-system streets, which divide the neighbourhoods in orderly blocks, could be easily patrolled by the army.³⁰ It soon became obvious that the forced resettlement was not a development intervention but a security project.³¹



Figure 5: Location to the collective town of Tam'eem on the main road between Bara and Sinooni, adjacent to the village of Khana Sor. © UN-Habitat (Source of satellite imagery: Google Earth)

²⁵ Recchia Francesca (2012). “From Forced Displacement to Urban Cores: The Case of Collective Towns in Iraqi Kurdistan”, in *Architextures South Asia*

²⁶ The same name was used for the collective farms that were developed during the agrarian reform in Egypt.

²⁷ Recchia (2012). *Op. cit.*

²⁸ Wachtmeister A., Shekhani A and Recchia F., “Spatial Design and Social Control: Collective Towns in Iraqi Kurdistan”, in *ArteEast*.

²⁹ The interpretation of the collective townships in terms of “generations” was proposed by Kurdish urban planner Azad Shekhani interviewed in: Recchia, 2012, *Op. cit.*

³⁰ Wachtmeister et al (no date), *Op. cit.*

³¹ Zanger Maggy (2002) “Refugee in their own country”, in *MER222 – Middle East Research and Information Project*.

Table 2: Estimated population by District and breakdown by ethnic/religious groups

	Overall Population (rounded figures)	Population breakdown by location	Breakdown in ethnic/religious groups				
			Yazidis	Arabs	Kurds	Shia Turkmen	Christians
Shimal District	147,970		132,970	11,000	4,000	-	
6 major collectives towns in addition to Sinooni		124,285	124,285	-	-	-	
40 villages (22 Yazidi , 1 mixed village and 17 Arab)		23,685	12,685	11,000	-	-	
Qahtaniya District (Ker Uzair)	87,000		84,000	3,000		-	
Ker Uzair, Siba Sheick Khedri (or Khidir) & Krzrk		69,000	69,000	-	-	-	
62 villages		18,000	15,000	n/a	n/a	n/a	
Qirawan District	74,000		30,000	32,000	6,000	6,000	
<i>Tal Qasab</i> (Baath)		18,000					
<i>Tal Banat</i> (Al-Waleed)		14,000	12,600			1,400	
Qairawan City Centre		16,000		(15,500)			
52 Arab & Yazidi villages*		26,000					
Sinjar District	30,000		2,200	7,500	18,000	1,500	50 families
TOTAL	339,000		249,170				

Note: The above figures have been drawn from visits to local administrative offices and interviews with Heads of each sub-district. They represent the most up-to-date population numbers available – in the case of Shimal sub-district, they were recorded in July 2014, a month prior to ISIL occupation.

* Yazidi villages include: old Tal Banat village (5,000 inhabitants), Old Tal Qasab village (1,500) and Kojo village (1,700 Yazidis, many of which were reportedly murdered or kidnapped by ISIL in August 2014).

Table 3: Breakdown of population by settlement

Present Location	Town name in Arabic	Town name in local language	Households	Population
North of Mount Sinjar	<i>Al Tam'eem</i>	Khana Sor (also Khansour)	5,136	31,161
	<i>Hiteen</i>	Dkory (also Duguri or Dkora)	3602	23,439
	<i>Qadisiyah</i>	Dhola (also Dohula)	2273	13,516
	<i>Al-Yarmouk</i>	Burke (also Borak)	3054	18,259
	<i>Al-Andalus</i>	Guhbal (also Kohpl Yezidi)	2144	13,281
	<i>Al-Aroba</i>	Zorava (also Zarafah)	1283	7,831
North centre	<i>Sinooni</i>	Sinooni	2752	16,798
Remaining 40 villages		Barra	394	2,393
		Karshabak	571	3,455
		Kharuka	364	1,955
		Hardan	309	1,917
South of Mount Sinjar	<i>Al-Qabtaniya</i>	Ker Uzair (also Giruzer or Karizir)	n/a	28,000
	<i>Al-Jazirah</i>	Siba Sheikh Kidir	n/a	23,000
	<i>Al-Adnaniyah</i>	Krzrk	n/a	18,000
	<i>Qairawan</i>	Qairawan district centre	n/a	16,000
	<i>Baath</i>	Tal Qassab	n/a	18,000
	<i>Al Waleed</i>	Tal Banat	n/a	14,000
Sinjar district centre	<i>Sinjar</i>	Sinjar	n/a	30,000

It also appears that infrastructure investments could not keep pace with resettlement and many new compounds lacked even the most basic services. These circumstances have led some analysts to define the *mujamma'at* as “open air prisons”.³²

Villagers were moved to newly subdivided land – broadly ranging from 300 to 450 *donum*³³ – where each household was assigned a parcel, given grants or loans to buy construction material and forced to build under the supervision of engineers. Particularly in the *mujamma'at* close to cities, houses were typically constituted of two rooms, a kitchen and a bathroom. The geometric and standard design was totally alien to people, used to the traditional mud and stone dwellings and irregular and narrow street patterns of their mountain villages. Although parcels did not offer sufficient space for animal husbandry activities, some communal courtyards were cultivated or used for livestock.

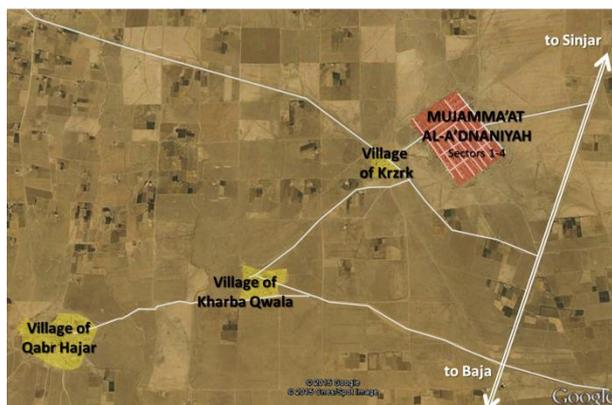


Figure 6: Location to the collective town of Al A'Dnaniyah on the main road between Baba and Sinjar, adjacent to the village of Krzrk. © UN-Habitat (Source of satellite imagery: Google Earth)

The *mujamma'at* model, which initially responded to a logic of rationalisation and cost-effectiveness, was successively turned into one of the most efficient political tools that the former regime used to manage the tensions with the Kurdish population of Iraq.³⁴ Designed to cut the logistical and material support to the Peshmerga fighters in the mountains, they served their strategic purpose.

The economic cost of such an operation is difficult to estimate, but it was certainly very expensive for the country. Besides the actual logistics of relocating

such a large number of people, the annihilation of the villages destroyed the agriculture sector in the targeted regions. If prior to the centralisation of land ownership, agriculture was at the core of these areas' economy, the nationalisation of oil resources gave the regime the power to increase people's reliance on the state and became an instrument to buy people's loyalty and guarantee a tightly knit system of control.³⁵ The government progressively introduced the allocation of subsidised food rations to all its citizens – generating a culture of economic dependency, whose detrimental effects are still visible today.

Life in the new townships

The forced relocation of Yazidis villagers, typically farmers and cattle and sheep herders, disrupted their rural way of life and impacted heavily on their economic situation. In the new collective townships, each Yazidi household was assigned an empty piece of land measuring 450 square meters (15 m x 30 m deep) and given 400 Iraqi dinars (the approximate equivalent of US\$ 1,200 of today) – ostensibly not an adequate compensation for the loss of their original homes and farming land, and not even sufficient to construct the most basic type building in the new townships. The lack of resources coupled with the fear that the authorities that might relocate them again induced the new settlers to invest the bare minimum in the construction of their homes. Most houses were thus built in mud bricks or cheap concrete blocks.³⁶ The use of more modern materials and construction techniques appeared only after 2003, as the economic situation started to improve.

In the process of relocation, people were deliberately not kept together according to their tribal affiliations. One village group was merged in the *mujamma'at* with a group from other distant villages – often with a different tribal system, way of life and culture. This became a powerful tool to socially disrupt communities and limit the endurance of habitual networks of tribal solidarity.³⁷ Because tribes that had kept a distance from one another, and maybe historically had feuds, were now living as neighbours reportedly, the level of social conflict was very high in the *mujamma'at*, particularly in the larger ones.³⁸

³² Recchia (2012). *Op. cit.*

³³ In use in many areas previously ruled by the Ottomans, in Iraq one *donum* is roughly equivalent to 2,500 square meters.

³⁴ Recchia (2012). *Op. cit.*

³⁵ *Ibid.*

³⁶ For this reason, the physical destruction of Yazidi homes and property by ISIL fighters was relatively easy – as depicted in the images illustrating this report – whereby in most cases they just used heavy military vehicles rather than explosives.

³⁷ Wachtmeister et al (2010). *Op. cit.*

³⁸ *Ibid.*

The damage to their orchards and water sources led to the loss of thousands of acres of farming and grazing land. Unable to move their cattle to the new townships, villagers were forced to sell all their livestock. Many thus lost their sole source of income and thus their ability to sustain themselves. In their new settlements Yazidis became completely dependent on supplies and basic services provided (or often not provided) by the central government. As a result of the lack of job opportunities in the region, the overall economic conditions of the Yazidis collapsed and poverty rapidly spread throughout the community. Almost the entire Yazidi community lived in a state of poverty and illiteracy.³⁹

While the new settlements were gradually provided with electricity and water points, people remained completely dependent on the economic support from the government.⁴⁰ Destitution was compounded by the absence of public facilities during the early years of displacement. According to the Head of Qahtaniya sub-district, the first primary school in his area was built in 1980 and the first

medical centre (a simple room building staffed by one medical assistant) was provided many years later.

As the collective townships gradually established themselves, their **urban footprint expanded upon the surrounding areas**, some connecting themselves with the nearby village. Their layout most often replicated the existing street grid and “formal planning” efforts followed suit in an effort to hinder informal development – this can be appreciated in the Master Plans depicted below and in the Annex.

In 2009 UNAMI reported that

The infrastructure of the Yezidi collective towns is inadequate and, at best, still weak. The streets of the collective towns and their feeder roads are not tarred. Most collective towns are without proper sewage. The greatest drawback is the lack of adequate supplies of potable water, which has to be delivered by truck. Recent years have seen no improvement in the infrastructure or health care of [...] Sinjar and al-Qahtaniya’s 11 collective towns [...] which is ironic considering that the improvement in service delivery was the postulated rationale for displacement in the 1970s.⁴¹

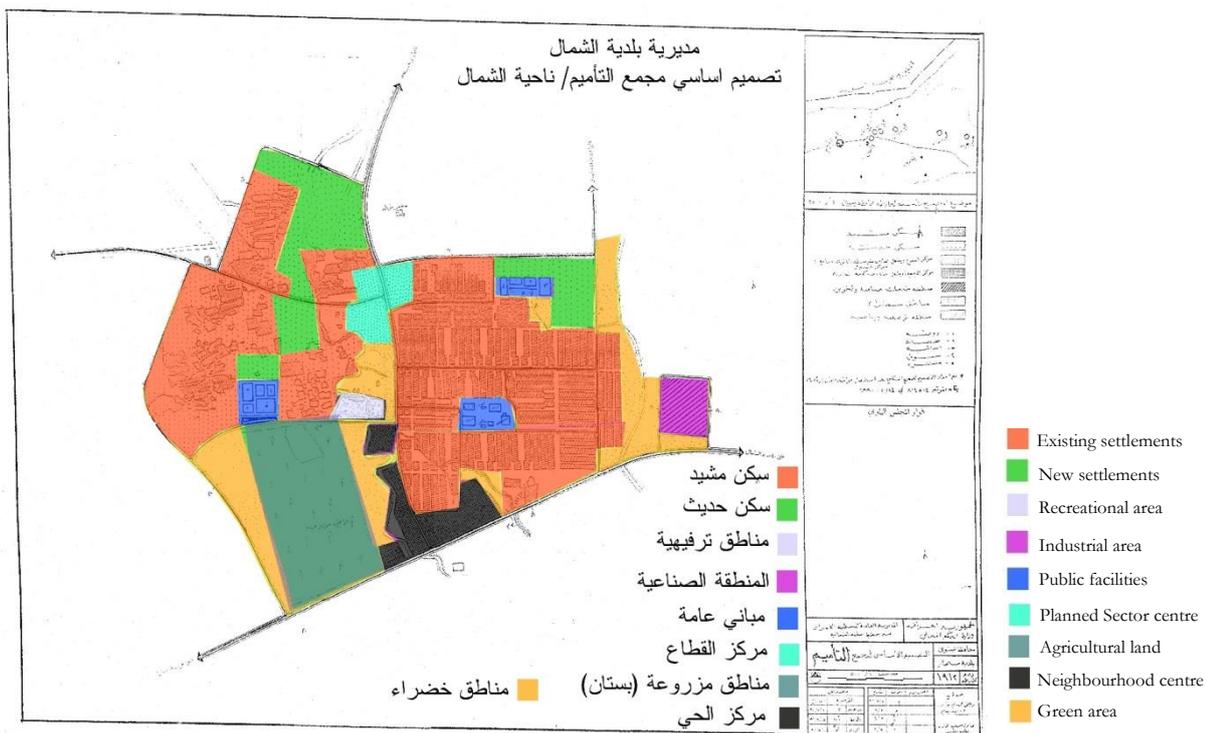


Figure 7: Master Plan of Tam'eem (also known by its local name Khansour), located to the North of Mount Sinjar. The footprint of the existing settlements, in orange, includes the planned mujamma'at with its grid layout and the spontaneously-developed village to the left-hand side of the map. In green, the new infill residential areas. (Source: local authorities - it should be noted that the copies of the plans scanned and provided to UN-Habitat were already colour-coded)

³⁹ Traditionally, literacy was not encouraged among the Yazidis, but schooling enrolment improved significantly after the 1950s. Maisel (2008), *Op. cit.*; pp. 2 and 6.

⁴⁰ Leezenberg Michiel (2006), “Urbanization, Privatization, and Patronage: The Political Economy of

Iraqi Kurdistan”, in Faleh A. Jabar and Hosham Dawod (2006). *The Kurds*, Saqi, London; p.5

⁴¹ UNAMI (2009). “Disputed Internal Boundaries: Sinjar district”.

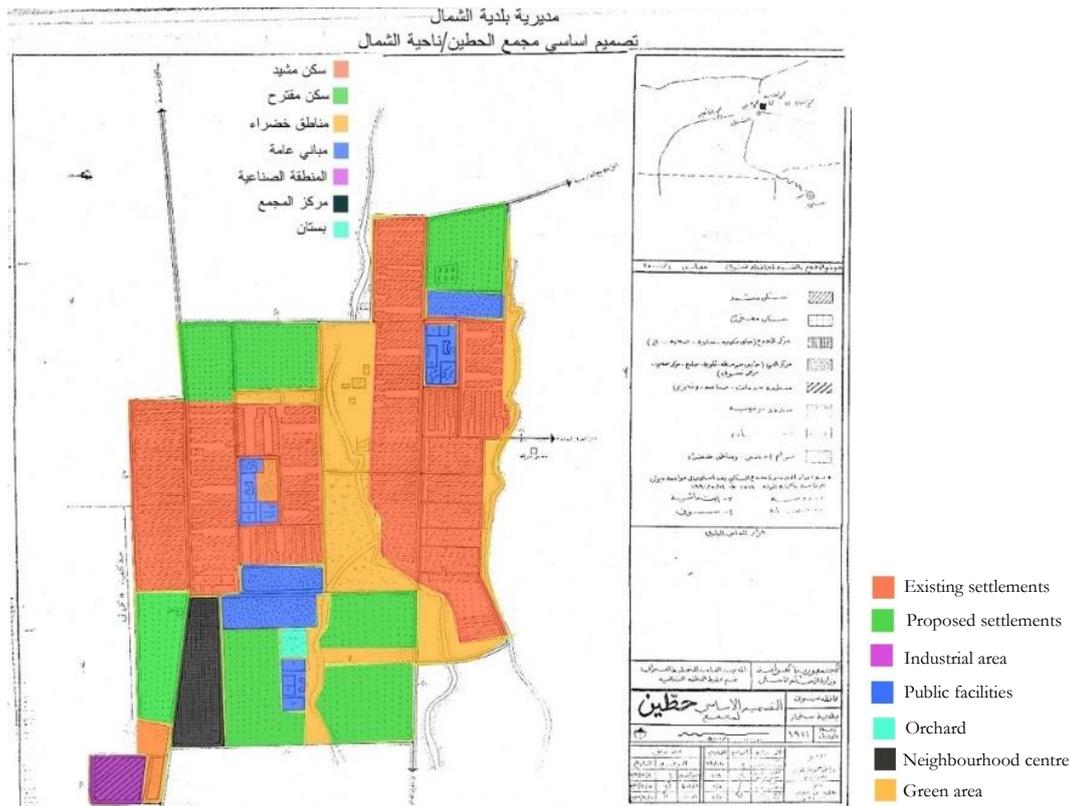


Figure 8: Master Plan of Hiteen (also known by its local name Dkory), settlement located to the North of Mount Sinjar. In orange the existing urban footprint; in green, the new expansion areas. (Source: local authorities)

Sinjari men traditionally leave their home to work as “labour migrants” in the large urban centres. Up until mid-2004, young Yazidi men from the collective towns migrated to Baghdad or Mosul in search of work, while their families continued to live in the collective towns. [...] [Today] Mosul has become a no-go area for Yazidis. As a result, labourers are now confined to seeking jobs in Dohuk, Erbil, and Sulaymaniya, as well as in other cities in the safe, legally KRG-administered region. Male breadwinners stay away from home for weeks or months on end, since frequent journeys from Sinjar to the Kurdish North are unaffordable and dangerous.⁴²

The full impact of the ethnic discrimination policies of the time

The 1974 law that granted the semi-autonomous status of the Kurdish provinces enabled the Kurds to teach in their mother tongue at school in areas where they represented the majority of the population; however, in areas such as Sinjar, the use of minority languages such as Kurdish, Aramaic, or Turkmen was prohibited. The government also

refused to register new-borns with Kurdish or other non-Arabic ethnic names – claiming that “foreign names” are alien to the heritage of Iraqi society and Islamic culture.⁴³

In line with the Arabisation policy, during the 1977 census officials coerced Yazidi individuals to “correct” their ethnicity and register as ‘Arabs’. Ironically, in the last decade there have been reported attempts to force Shabak and Yazidi communities to identify as ethnic Kurds – echoing the “nationality correction” policy of the former Baathist government.⁴⁴ Both groups have demanded for a long time the recognition of their unique ethnic identity.

Those households forcibly relocated in the newly laid out collective townships were **denied the right to register the assigned parcels in their names** – a discriminatory course of action that was maintained even after the fall of the regime – with very few exceptions. Being denied a *tapoo* (property document) meant that aside from not being able to

⁴² *Ibid.*

⁴³ Human Rights Watch (2003), *Iraq – Forcible Expulsion of Ethnic Minorities*, pp. 16-17.

⁴⁴ Human Rights Watch, Human Rights Watch (2009). *On Vulnerable Ground - Violence against Minority Communities in Nineveh Province's Disputed Territories*, NY; p. 27.

sell their plots, Yazidi families were excluded from applying for government construction loans. It is estimated that today up to some 250,000 Yazidis may lack land tenure documents. The only exceptions included the distribution of some residential parcels to a few dozen Yazidi families, victims of the Iran-Iraq war (1980-1988) residing in the Sinjar district centre, and a handful of government employees. In the meanwhile, Arab families moving into these areas were granted parcels of lands or allowed to buy and register property in their names – particularly officers of the ruling Ba’ath Party at the time.

Many were confident that upon the collapse of the regime life would improve for Iraqi minority groups. However, on top of the prolonged lack of security, recent sectarian violence and persecution, discriminatory laws active from the time of Saddam Hussein’s rule continue to make their lives very challenging.

On top of the aforementioned challenges, the political differences concerning the implementation of Article 140 of the 2005 Iraqi Constitution, which was intended to solve the issue of the disputed areas, essentially froze any land allocation processes in Sinjar – which in turn prevented the resolution of the long-standing property issues of Yazidis. This impediment is further clarified in the next section.

Yazidis residing in Sinjar before ISIL occupation

On the basis of the data provided by the three mayors of Sinjar District and Sinjar District Centre, the estimate number of Yazidis residing in the Sinjar area approximately add up to 249,000 people. Prior to their recent displacement, they mainly

concentrated in the centre of the city of Sinjar and the various collective townships to which they were deported in 1975. It should be noted that despite the fact that all families are still registered in their assigned collective townships, after 2003, some have made their way back to their original hamlets due to lack of space in their compounds and employment, to resume farming and breeding of livestock – considering that most of the Yazidi land of origin was never formally expropriated.

Current situation in partially liberated Sinjar

Upon the seizure of Sinjar in early August 2014 and the appalling human rights violations that followed, hundreds of thousands Yazidi survivors fled to Mount Sinjar to then seek refuge either in Kurdistan or abroad. In their absence, many homes were destroyed or usurped. In December 2014, Peshmerga and the Syrian Kurdish YPG fighters recovered the northern areas of Mount Sinjar and parts of Sinjar district centre, whereas the central district centre and the southern part, are as of June 2015 still under ISIL control. The scale of destruction of the latter areas cannot yet be quantified, but according to the Mayor of Qairawan it is very significant.⁴⁵

The evidence collected by the UN-Habitat Research team during field visits in Sinooni, Khana Sor/*Tam’eem*, Dkory/*Hiteen*, Dhola/*Qadisiyah*, Burke/*Yarmouk* and Kohpl/*Al-Andalus* paints a very bleak picture of destruction, looting and devastation. The physical obliteration of a large number of dwellings was relatively straightforward because of their poor construction. It appears that ISIL fighters did not even need to place explosives but only used any heavy machinery locally available.



Figure 9: Aftermath of ISIL’s occupation in Dkory/Hiteen, 2015.
© UN-HABITAT/Mr. Mohamed Al Rubai’y



Figure 10: Destroyed properties and assets in Sinooni, 2015.
© UN-HABITAT/Mr. Mohamed Al Rubai’y

⁴⁵ In-person interview conducted in mid-April 2015.

Table 4: Scale of physical destruction and estimated destroyed houses in visited townships – April 2015

NAME OF TOWNSHIP	SCALE OF DESTRUCTION	Estimated no. of houses destroyed	
		As observed by the research team	As estimated by the authorities
Khana Sor / <i>Al Tam'eem</i>		n/a	196
Dhola / <i>Qadisiyah</i>	Severe – particularly in the centre	250	460
Borak / Al Yarmouk	Significant – particularly western and southern sides.	200	
Guhbal / Al Andalus	Significant – destroyed and/or burned, particularly in the northern and southern parts. Hamo village completely destroyed.	600	1,528
Zorava/Al Aroba and Hardan	Significant	n/a because of poor security	
Dkory / <i>Hiteen</i>	Suffered bombing in the north and destruction in other parts	500	734
Sinooni	Least damaged of the northern Yazidi townships	<100	
		Estimated total	Over 2,918



Figure 11: Looted and burned home in Simuni, 2015.
© UN-HABITAT/Mr. Mohamed Al Rubai'y



Figure 12: Abandoned dwellings in Dkory/Hiteen, 2015.
© UN-HABITAT/Mr. Mohamed Al Rubai'y



Figure 13: Burned dwelling in Zorava/Al-Aroba, 2015
© UN-HABITAT/Mr. Mohamed Al Rubai'y



Figure 14: Destruction in Sinjar, as witnessed during the liberation of the area, 2015. © Anonymous Peshmerga soldier



Figure 15: Displaced Yazidis cross the Syrian-Iraqi border, 2015. ©AFP/Getty Images



Figure 16: Men carry the blankets and mattress used by a group of nearly 200 internally displaced people from the Yazidi religious community following their release by militants. UNHCR/Dominic Nabr



Figure 17: The most senior priest in the small mountain village of Lalish, watches as recently released Yazidi men and women arrive at the temple, 2015 © UNHCR/Dominic Nabr

Social repercussions of trauma and protracted suffering

A year on from the siege of Sinjar, a whole community is still dealing with protracted displacement and deep rooted distress. Aside from the loss of some 2,000 Yazidis who were killed by ISIS during the attacks and the forced displacement of hundreds of thousands in IDP camps and temporary shelter solutions, a year on from the height of the carnages it is estimated some 2,000 women remain in captivity⁴⁶. According to multiple reports, the women who survived sprees of brutal slaughter were abducted on a massive-scale and sold as spoils of war to be married to and enslaved by the ISIL militants, while children are forced to enrol in military training camps and commit atrocities.⁴⁷ Many young women have committed suicide rather than endure rape.

Several entities, including the Kurdish authorities, are engaged in trying to rescue them, often paying ransoms for the liberation of individuals or small groups of relatives. Women's groups and other humanitarian organisations are providing safe houses and welfare services – including trauma counselling and education for their families to help reintegration and prevent the women being shamed. There is a powerful stigma attached to rape in Yazidi culture, despite the fact that the community's formal doctrines reject any form of chastisement for women who have been assaulted.⁴⁸

In essence, virtually every refugee family appear to have male relatives who have been killed and women who have been kidnapped. At the moment it is difficult to assess how the layering of trauma, protracted displacement, and stigma within families might affect decision-making regarding return.

⁴⁶ It is widely thought that since the beginning of their bloody rampage, ISIL kidnapped an estimated 5,000 Yazidi women and children.

⁴⁷ Nagl Kurt (2015). "Yezidis demand UN action a year after Shingal massacre", in Rudaw.net, 02 August 2015.

⁴⁸Haworth Abigail (2015). "Vian Dakhil: Iraq's only female Yazidi MP on the battle to save her people", in *The Observer*, 8 February 2015.



Figure 18: Devastation in Dhola/Qadisiyah, 2015.
© UN-HABITAT/Mr. Mohamed Al Rubai'y

3. ADDRESSING HLP VIOLATIONS: LEGAL FRAMEWORK AND CHALLENGES

According to the officials and Mayors of the northern sub-districts of Nineveh who were interviewed for this report, **tens of thousands of IDPs may be expected to return to their homes in the coming months** – assuming that current lines of control between YPG/Peshmerga from one side and ISIL from the others side are maintained, fighters can be eradicated from the region and key areas cleared from unexploded ordinance. UN-Habitat's survey found that, despite the abuse and violations suffered at the hands of ISIL, the large majority of Yazidi respondents (95%) stated that they intend to return to what they consider their homeland in Sinjar. The sub-districts of **Sinjar** and **Rabi'a** appear to be the ones that will be most affected by potential return and thus protection concerns.

From the devastation observed on the ground in early 2015, it is quite certain that returnees will find a

significant percentage of their houses destroyed or damaged and/or looted, public services in disarray, pillaged infrastructure, and disrupted businesses and markets. In addition to a weak rule of law, there is a plethora of issues and suffering at stake, foremost the strong likelihood of reprisal actions targeting local Sunni Arab communities who are perceived as having taken advantage of the chaos that ensued from ISIL's occupation. This may generate ethnic tension and unpredictable episodes of violence.

Aside from the volatile situation on the ground, the political tensions that have been simmering between the Syrian-based People's Protections Units (YPG) and the Kurdish Democratic Party (KDP) while fighting ISIL have not yet been solved. The YPG is effectively still present in many areas in Sinjar. Political stakes are high and since the siege of Sinjar Yazidis have reasons to fear for their safety.

The Legal Framework of the 1975 relocation

Understanding the legal framework that the previous regime adopted to dispossess non-Arabs in the north and to give their lands and property to Arab settlers is crucial to resolving the property disputes that have been occurring in northern Iraq ever since the overthrow of the former government.

Among the first steps taken by the Ba'ath Party when it came to power in 1968 was a major land reform campaign aimed at further eroding the power of the landlords who controlled much of the agricultural land in the country, often owning hundreds of thousands of *donums* of land. Their economic base had already been broken in 1958 as a result of the **Agrarian Reform Act** (Law No. 30) implemented by the government of Abd al-Karim Qassim, which limited the amount of land any individual could own to 2,000 *donums* (applied to rainfall-dependent agricultural land) and expropriating all lands in excess of this limit. The financial compensation paid at that time for expropriated land was nominal, and many landowners received none.

With the **1970 Agrarian Reform Act** (Law No. 117), the Ba'ath regime cancelled all preceding laws and issued even more far-reaching reforms, limiting individual ownership to a maximum of 1,000 *donums* of rainfall-dependent lands, and abolishing compensation payments. These laws were implemented throughout Iraq, and dispossessed many large landowners in the northern richest agricultural region. Subsequently, individual ownership in the Kurdish north was further limited to 300 *donums*.

When the government began mass expulsions of non-Arabs in the north during the mid-1970s, the vast majority of the expelled farmers had property rights to the land they were forced to leave, rights that had been confirmed through an administrative procedure known as *taswiya* (literally, 'settlement'), dating back to the Iraqi monarchy. The **Da'irat al-Taswiya** (Settlement Department) had the purpose of examining individual plots of land across Iraq in order to verify legal ownership and to delineate their boundaries. As a result of the process, landowners who possessed property deeds – many dating back to the Ottoman Empire – had their legal ownership reconfirmed. The process was near completion when the monarchy was overthrown in 1958.

According to an interview conducted in 2003 with Najib Fa'iq Ahmad, Head of the legal office and the Expropriations Department of the Kirkuk agriculture office, the *taswiya* deeds were kept in the Property Registration Department – and were still there at the time of the interview.⁴⁹ It remains to be verified if such documents have survived in Sinjar.

Following the mass expulsions of minorities in the mid-1970s, the Revolutionary Command Council (RCC) issued a series of orders, expropriating the land left vacant in the north and converting it to government-owned land. The government supposedly paid nominal compensation for these lands, at the rate of six Iraqi dinars per *donum*, but almost no displaced Kurds or Turkomans were able to claim it. Once the land was nationalized, the government then rented the land to newly arrived Arab farmers at nominal rates, under annual, renewable contracts issued by district agricultural departments.

Another layer of grievances stems from the Ba'ath regime's annulment of the long-term agricultural lease agreements with the state issued to farmers – this was recorded by IOM in its recent HLP assessment report as one of the most contentious issues in this already complex setting.⁵⁰

Constitutional Article 140

It is clear that the land tenure claims of the Yazidis community that are yet to be addressed in Sinjar are not only the result of a legacy of the 1975 forced deportation and long-lasting discriminatory policies targeting minority groups, but are also the consequence of the **failed political process and diverging agendas regarding the so-called "disputed areas"** – which includes oil-rich Kirkuk – claimed both by the central Arab government in Baghdad and the semi-autonomous Kurdistan Regional Government (KRG).

While both groups claim these contested lands on the basis of their ethnic "entitlement", the region is historically one of the most ethnically, culturally and religiously diverse regions of Iraq and has been for centuries inhabited by Turkmens, Assyrian and Chaldean Christians, Yazidis, Shabaks and other minorities as well as Kurds and Arabs.

According to **Article 140** of the Constitution that was drawn in 2005, two years after Saddam was ousted, displaced Arabs and Kurds will be given

⁴⁹ Human Rights Watch (2004). *Op. cit.*

⁵⁰ Rehema Jahn Ina, Peter van der Auweraert and Igor Cvetkovski (2015), *A Preliminary Assessment of Housing*,

Land and Property Rights Issues Caused by the Current Displacement Crisis in Iraq, Hijra Amina Project (under publication), IOM.

compensation and a chance to resettle in their old homes. The constitution takes up the language of article 58 of its predecessor, the Transitional Administrative Law, which specified steps the government must take to

“remedy the injustice caused by the previous regime’s practices in altering the demographic character of certain regions, including Kirkuk, by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving the inhabitants of work, and correcting nationality.”⁵¹

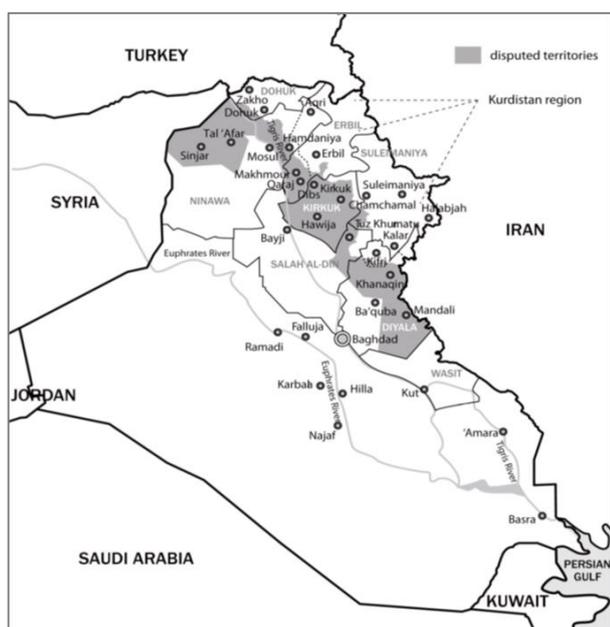


Figure 19: Indicative map depicting the so-called “disputed territories” whose status was to be addressed by Constitutional Article 140, 2009 © International Crisis Group

Article 140 consists of three phases. The first, the “normalization” phase, foresees: (a) the restoration of expelled and deported residents to their homes and property, or, where this is unfeasible, provide just compensation; (b) the repeal of all decrees relevant to “nationality correction” and allowing affected persons the right to determine their own ethnic affiliation free from coercion and duress. A neutral arbitrator was to make recommendations concerning the administrative boundaries that were modified by the previous regime. The second phase entails the carrying out of a “fair and transparent” census. The third and final stage was to carry out a public referendum in Kirkuk and other disputed territories “to determine the will of their citizens” on

whether they want their areas to be governed by the central authorities or join the semi-autonomous Kurdistan Region of Iraq.⁵² The deadline for the full implementation of this article was set for 2007, but was not respected.

Many appreciate the fact that the victims of Saddam Hussein’s Arabization campaign deserve to be able to return to, and rebuild, their historic communities. Yet it is argued that “the issue of redress for past wrongs should not be subject to the struggle for geo-political control over the disputed territories, and does not justify exclusive control of the region by one ethnic group over another. The competing efforts to resolve deep disputes over the future of northern Iraq have left the minority communities who live there in a precarious position”⁵³, bearing the brunt of the political discord.

It is clear that the process has stalled for lack of political consensus and that **the case of the Yazidi minority from Sinjar ought to be split from the broader discourse of the implementation of Article 140.**

It is also evident that there are serious challenges as how to actually solve the pending tenure issues due to the length of time that has gone by. **Property claimants are most often the descendants of the families that were displaced four decades ago** – many of which have died in the meantime. Households in the meantime have grown exponentially. Proofs of ownership have been lost or were never issued. **Many properties have also changed hands**, with current owners exhibiting legitimate but informal sale documents. The seizure of Mosul in mid-2014 by ISIL *de facto* postponed any conciliation attempt and has most probably added a third layer of claims as abandoned properties were usurped.

Present legal status of the land in the collective townships

At present, there are no *tapoo* records (land deeds) or lists of names of the families to whom each parcel of land within the collectives were allocated in 1975 at the Sub-districts level. Lists of names can be found only in the records of the administrative District Centre of Sinjar (Qaemaqamiah). Names are registered in groups and not on the basis of single parcels, so for example under the collective cluster known as ‘Al-Salaf’, which consists of 13 parcels, the

⁵¹ Constitution of the Republic of Iraq (*Dustur Jumhuriyyat al-Iraq*), 2005.

⁵² *Ibid.*, art. 140; Law of Administration for the State of Iraq for the Transitional Period, March 2004, art. 58.

⁵³ Human Rights Watch (2004). *Op. cit.*; p. 17.

group denomination lists the names of the 13 people who received land – without more detail about who occupied what. Subsequent enumeration was conducted only for census and statistics purposes, not to confirm ownership.



Figure 20: Destroyed house in Zorava/ Al-Aroba, 2015
© UN-HABITAT/Mr. Mohamed Al Rubai'y

Despite the fact that land transactions were officially prohibited these nevertheless took place as people moved in and out of their homes in the collective towns. Though not legally valid, “nominal” land transactions would be conducted in the presence of the Sub-District Directors and two witnesses, after which the Director would send a letter to the Administrative District requesting the change of names in the electricity bills. In the absence of title deeds, the predominant proof of housing ownership to date has been the actual occupation of the land and electricity payment records⁵⁴. It appears that very few problems have arisen from these property transactions – determined by an obvious degree of mutual trust between sellers and buyers.

Aside from unofficial land transactions, a first administrative hurdle is constituted by the fact that a significant portion of the agricultural land that was

allocated for the construction of the collective Yazidi townships land was in itself confiscated from nearby farmers and villagers – some of whom actually ended up living in the assigned *mujamma*. As verified by UN-Habitat’s legal research team, **the land was never officially transferred to the Municipal Council** – which represents the first requisite for any allocation for residential purposes.

In short, the land upon which the collectives have been built appears to be divided into two main categories, as follows:

- a) State-owned land cultivated by nearby villagers holders of *tasarruf* rights⁵⁵ – whereby the new residents were granted occupancy rights – these lands are owned by the State, represented by the Ministry of Finance (MOF), and may be repossessed by the State at any time. In the case of repossession, a Court of Law would notify the holder of usufruct rights, inform him/her of the compensation amount – one-third of the land value – and given the right to object (on the amount of compensation only) within 60 days.
- b) Agricultural lease contracts: in this case the land, often leased for a nominal fee, falls under the Ministry of Agriculture (MOA), which may terminate lease contracts at any time, in the name of public interest. Compensation may range from 3 to 12% of the farming value of the land.⁵⁶

Making the case of the right to return

International law not only defines the forced and arbitrary transfer of populations that were lawfully present in the areas from which they were deported as a ‘crime against humanity’⁵⁷, but also provides for a remedy for the persons victimized by these forced transfers. Persons forcibly transferred from their homes in violation of international standards are entitled to return to their home areas and property, a right known as the “right to return”. Also, when displaced persons are unable to return to their homes because their property has been destroyed or

⁵⁴ Utility bills are used in many countries as proof of occupancy, as a first step towards claiming tenure rights

⁵⁵ In Iraqi land law: the ‘right to use, exploit, and dispose of *miri*’ (state-owned) land – which consents similar privileges as the Western legal concept of ‘usufruct’. The *tassaruf* can be sold, leased or mortgaged. A person may acquire a *tassaruf* by cultivating *mir* land for 10 years without being challenged. Source: UN-Habitat (2010). “Legislative Assessment and Drafting Report for Property Rights Related to Land Regime” (unpublished).

⁵⁶ A real estate assessment conducted in Sinjar in 2010 recorded that land prices did not exceed IQD 2,500,000 per *donum* (approximately US\$ 2,000 today), i.e. IQD 1,000 per square meter. With the current situation, it is safe to assume that land prices have fallen. The assessment committee included the Mayor of Sinjar, a Provincial official, in addition to Mr. Abdul Hamid Kassem Younes, director of Qirawan and other experts.

⁵⁷ Lee R. (2004). *The International Criminal Court*, p. 86, defining the relevant elements of the crime of deportation, as referred to in: Human Rights Watch, *Ibid.*: p. 20.

claims against a current occupant are unsuccessful, they are entitled to compensation.⁵⁸

Article 12 of the International Covenant on Civil and Political Rights (ICCPR), to which Iraq became a party in 1971, establishes that everyone shall have “the right to liberty of movement and freedom to choose his residence.”⁵⁹ Section V of the UN *Guiding Principles on Internal Displacement* contain the ‘Principles Relating to Return, Resettlement and Reintegration of Internally Displaced Persons’. Principle 28 provides that:

Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.” [...] special efforts should be made to ensure the full participation of all internally displaced persons in the planning and management of such processes. The participation of women, in particular, is essential.

An important element that needs to be ascertained is whether displaced Yazidis would want to return to the collective townships that have been their home for the last 40 years, or would wish to return to the farm and grazing land of their ancestors in the mountain or nearby villages – or both. Managing their expectations will be crucial.



Figure 21: Looted and burned houses in Gubbal/ Al-Andalus, 2015. © UN-HABITAT/Mr. Mohamed Al Rubai'y

⁵⁸ Human Rights Watch (2004). *Ibid.* p. 24.

⁵⁹ International Covenant on Civil and Political Rights, Art. 12.

⁶⁰ Coalition Provisional Authority Regulation 4, “Establishment of the Iraqi Property Reconciliation

Property recovery policies and mechanisms

Almost as soon as the previous regime collapsed in 2003, the U.S. administration announced ambitious plans to set up a property dispute mechanism to resolve the claims resulting from the Arabisation policy, creating a Bosnia-style property commission for Iraq. On June 26, 2003, the **Iraqi Property Reconciliation Facility (IPRF)**, was established with the aim to collect “real property claims and promptly resolve such claims on a voluntary basis in a fair and judicious manner.”⁶⁰ From its inception, the Facility was envisioned as an interim measure, whereby the Coalition Provisional Authority (CPA) delegated to IOM the development of a broad information campaign, the issuance of standardized claim forms, the establishment of claim registration offices and facilities where property disputes could be settled through voluntary mediation. Alas, severe security problems, insufficient staffing and the absence of a framework for resolving property disputes undermined the effort.

In January 2004, the Iraqi Interim Governing Council (IGC), approved the establishment of a new body – the **Iraq Property Claims Commission (IPCC)** – as a successor to the IPRF. Its Statute provides for the nationwide settlement of property claims arising between July 17, 1968 (when the Ba’ath Party seized power in Iraq) and April 9, 2003 (when the previous regime fell to US-led coalition forces). The claims in question, as set out in Article 9 of the Statute, cover “property confiscated or seized or acquired for less than appropriate value by the former governments of Iraq for reasons other than land reform or lawfully used eminent domain, or as a result of opposition to the former governments of Iraq, or as a result of ethnicity, religion, sect of the owners, or for purposes of ethnic cleansing.”⁶¹ The matter of funding for purposes of compensation or resettlement was not addressed by the Statute, not the question of *where* the Arab families moved by the former regime to northern Iraq under its Arabisation policy are to be resettled.

In terms of property-recovery policies, the Iraqi government also makes a distinction between those who were displaced during the Ba’ath period (i.e. pre-2003) and those who were displaced in the post-Ba’ath period (i.e. post-2003). The claims of the 2014 caseload of displaced have not been examined yet.

Facility,” signed June 26, 2003 – as referred to in Mufti Hania and Bouckaert P. (2004), *Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq*, HRW, Vol. 16, No. 4(E).

⁶¹ Mufti H. and Bouckaert P. (2004), *Op. cit.*; p. 64.

The Iraqi **Commission on the Resolution of Real Property Disputes (CRRPD)** has been tasked with providing recourse to victims of the Ba'ath regime through a quasi-judicial process, while the **Council of Ministers Decree 262** and **Prime Minister Order 101** facilitate property recovery for those who were displaced between 2006 and 2007.⁶² Claims arising before or after the Ba'ath period are made in the civil courts. The overall effectiveness of the available administrative mechanisms and oversight process has been deemed poor and mired with bottlenecks.

An assessment conducted by UN-Habitat in 2011, confirmed a **backlog in claims, as well as lack of enforcement of adjudicated claims**. Particularly disappointing is the inability of the authorities to deal with the inaccessibility of properties affected by second occupancy, the enforcement of eviction notices and the reluctance of the state to pay financial compensation.⁶³ Calls have been made for property recovery and/or compensation to be made accessible to a broader section of displaced people by expanding its temporal scope and allowing alternative means of proving one's displacement and property rights. Relevant to the Yazidi caseload, usufruct rights are considered private property for the purposes of constitutional protection. Under the *Civil Code*, every right having a material value is considered property (Civil Code 40/1951, art. 65). Therefore it must be acquired for public benefit, and compensation must be just and fair.⁶⁴

Ongoing lawsuits and claims

In 2006 the Iraqi government offered compensation to those in Sinjar who were unlawfully relocated in 1975 but the promised payments and release of land with *tapoo* were only partially executed (see Table 5, in the Appendices). Yazidi claims were rejected on the basis of the unsettled implementation of Art 140.

Addressing land disputes in these areas will always be challenging and the process may uncover previous layers of unsolved claims. Whereas, in the collective townships located north of Mount Sinjar the state-owned land with usufruct rights is mostly occupied



Figure 22: Attempt to rebuild a home amidst devastation, 2015.
© UN-HABITAT/Mr. Mobamed Al Rubai'y



Figure 23: Flattened home in Sinooni, 2015.
© UN-HABITAT/Mr. Mobamed Al Rubai'y

by Yazidi people, each of the collectives built south of Mount Sinjar is a special case. A case in point is represented by the township of Tel Banat built on land that originally belonged to a Yazidi tribe who lived in the old village of Tel Banat. The Tel Banat lawsuit filed before the fall of the Ba'ath regime recorded 50 Yazidi holders of usufruct rights.⁶⁵ The original contracts had been issued in the 1940s, but curtailed by the land limitations imposed by the 1958 agrarian reform⁶⁶ led by President Abdul Karim Qasim. There are other cases where property owners are Arabs, such as Tel Qasab, where 52 people descend from the Al-Ajili clan.

⁶² Isser Deborah and Peter Van der Auweraert (2009). "Land, Property, and the Challenge of Return for Iraq's Displaced", Special Report 211, USIP; p. 1.

⁶³ UN-Habitat (2011). "Legislative Assessment and Drafting Report for Property Rights Related to Land Regime" (unpublished report); p. 4.

⁶⁴ UN-Habitat (2011). *Op. cit.*; p. 11.

⁶⁵ At that time land was apparently evaluated IQD 250 million per *donum* (for a total of IQD 750 million for 3 *donums*).

⁶⁶ The 1958 agrarian reform limited the amount of land owned by landowners to 1000 *donum* (100 ha) of irrigated land or twice the amount of land that depended on rainfall. Any land above such amount was expropriated and distributed to landless individuals who were asked to pay the government the price of the land over a 20-year period.

Land dispute countermeasures taken by the Iraqi government

As reported in the UN-Habitat's *Rapid Assessment Infosheet*⁶⁷, in the face of the crisis in August 2014, the **Iraqi Ministry of Justice** issued a formal statement declaring void all transfers of ownership and registration of real estate in 17 real estate directorates under ISIL control, including Ninewa.

Bearing in mind that the operational status of the cadastral offices in areas occupied by ISIL still needs to be assessed, commonly where public administration buildings have been damaged or destroyed, there is a strong potential for protracted disputes over tenure rights and delays in compensation.⁶⁸



Figure 24: A Yazidi boy tending to sheep on Mount Sinjar. If in the past Yazidis' livelihoods depended on pastoral and agricultural activities, nowadays many Yazidis have urban-related jobs.

© AP Images/Jacob Silberberg

Potential administrative solutions

While the Yazidis should be obviously assisted in reclaiming back their properties in the *mujamma'at*, there are no legal or institutional obstacles for those who might choose to return to their original hamlets and farming land for which they still hold customary rights. However, it should be clear that the latter choice would urgently require the development of regional and urban plans as well as the mobilisation of significant financial resources for critical

infrastructure, services and livelihoods by the government and the international community.

Due to the complexity of the land situation in the *mujamma'at*, UN-Habitat engaged legal experts and Heads of municipalities and Directors of Sub-districts under each municipality to discuss possible administrative and legal means that could be undertaken to enable the return of the Yazidis to the liberated towns. This would necessarily entail the transfer of the land parcels to their rightful occupants according to the following steps:

1. **Repossession of State-owned land** owned by MOF and MOA:
 - a) MOF-owned land occupied by holders of *tassaruf* rights to be restored to the State/MOF through a Committee setup by MOF, which includes Heads of municipalities, Directors of Sub-districts and representatives from Nineveh Governorate. As per the current legal framework, the Committee would be tasked to assess the land value, determine the adequate compensation⁶⁹ and inform the usufruct rights holders or their heirs (i.e. the farmers on whose land the *mujamma'at* were built), and grant them a period of 60 days to object⁷⁰.
 - b) MOA-owned agricultural land occupied or farmed by lease holders: to be restored to the State/MOF through the direct termination of all lease contracts by MOA.
2. **Transfer of lands** from MOF to the Ministry of Municipalities & Public Works (MoMPW) – whereby MoMPW would remain the temporary “custodian” of the land in view of its redistribution to eligible households.
3. **Registration of land titles to occupants** – whereby MoMPW instructs Sinjar District and the concerned Sub-districts that accommodate the collectives townships to issue *tapoos* (land deeds) in the name of their Yazidi occupants – heirs of the 1975 displaced villagers or those who have bought land subsequently – the majority of which are nowadays displaced. Whether these transactions will entail nominal payments or will be free of charge remains to be determined.

⁶⁷ UN-Habitat, (2015). “Rapid Assessment of Housing, Land & Property Issues among IDPs settled in Basra Dohuk, Erbil and Baghdad” Infosheet.

⁶⁸ Republic of Iraq/Salahuddin Governorate (2015). “Recovery and Stabilization Needs Assessment Report for Amerli Town and Villages Chardajli, Barwajli, and Qaranaz in Salahuddin Governorate”.

⁶⁹ The norm is: 66% to the State and 33% to the rightful owner.

⁷⁰ The tenure holder can only object on the estimated price and not on the process of land repossession, because the State is legally entitled to determine the application of public interest.

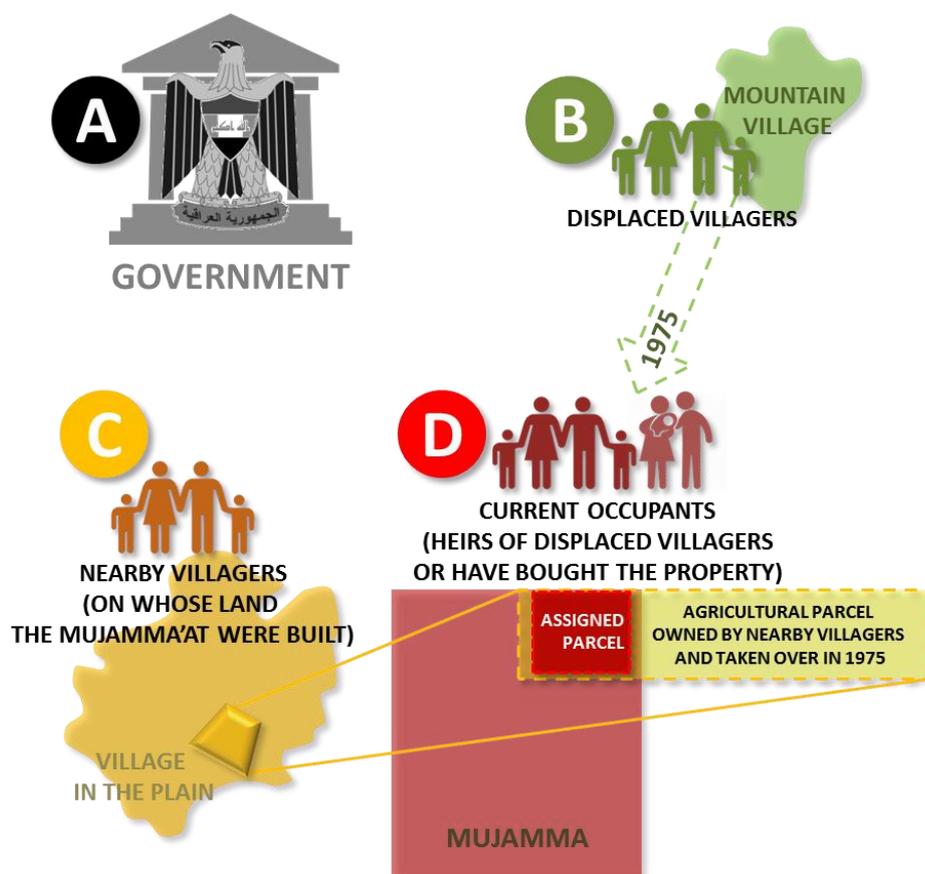


Figure 25: Illustrative diagram depicting the four parties potentially involved in claims related to the Yazidi land tenure predicament: (A) the Government – in particular its ministries MOF or MOA; (B) the villagers displaced in 1975; (C) the villagers with usufruct rights whose land was taken to build the collective townships; and finally (D) the current occupants – who might be the heirs of the original displaced or might have bought the land in the meantime (but could not register the transaction). © UN-HABITAT

The directors of Sub-districts and Heads of municipalities interviewed for this report anticipate major challenges in the execution of the above-mentioned steps (1. Repossession; 2. Transfer; 3. Titling), however they all concur that they are necessary for the resolution of the Yazidi land tenure rights – notwithstanding the need to address potential competing claims, the need to respect the rights of any pre-1975 owners and compensate families who might have in the meantime purchased houses from administrative structures set up by ISIL.

As per the Iraqi Constitution, the decision lies in the hands of the Dispute Resolution Committee, nowadays regrettably inactive and unfunded. It has been suggested that an exception for the Yazidis could be addressed by the Prime Minister himself, to then be approved by Parliament. In this sense, agencies, such as IOM, UN-Habitat, OHCHR and NRC have a vital role to play in terms of persuasively raising this issue with the Ministries of Finance and of Agriculture and advocating for a swift resolution of the Yazidi caseload.

4. CONCLUSIONS

Overall, the survey findings, interview with public officials and analysis of legal documents conducted for this report substantiate the claims of discrimination and violation by the former regime of the Yazidis’ human rights – aside from the violence its people have suffered at the hands of ISIL in 2014. Subjected to forceful deportation from their home villages to collective townships purposely established in 1975 by the former Regime, as a means of socio-political and ethnic control, Yazidis never received any restorative justice. The Yazidi caseload falls within the “cut-off” date of the earlier Iraq Property Claims Commission (1968). The failure of national and international authorities to address the aspirations and grievances of these thousands of displaced minority groups has greatly added to the tensions in northern Iraq. The denial of their land tenure rights over the last four decades jeopardizes Yazidis’ current chances of return to their homeland.

On the other hand, today's pressure from the sheer number of Yazidis that are projected to return to their properties in the areas liberated from ISIL may provide a **unique window of opportunity** to persuasively raise the matter at ministerial level and force all parties to attempt to settle their claims in earnest – once and for all.

Some of the displaced may choose not to return to their previous homes for fear of discrimination or further violence. Some households may be too traumatized by the loss of their loved ones to consider returning to their former lives. Others may return to find their homes destroyed or land unusable as a result of landmines or ongoing occupation by ISIL. In these cases, resettlement should remain a viable option, helped by appropriate compensation. One should also consider the possible emergence of cases where the restitution of property may result in the eviction of households who have moved in since the displacement of the original occupants. Measures need to be taken to ensure that upon eviction, these persons will be able to find alternative shelter and compensation if they cannot have access to their own properties.⁷¹

The right of IDPs to return voluntarily to their homes must be stressed at both governorate and national level. Concerned authorities should ensure the compatibility of all the procedures, institutions

and mechanisms and legal frameworks related to housing, land and property in full conformity with international human rights law and related standards – and this includes the recognition of the right to voluntary return in safety and dignity or resettlement into new homes and communities. Once they reach their destinations, returnees should have recourse for property restitution or compensation, and should receive strong reintegration and rehabilitation support to build their livelihoods and contribute to long-term economic and political development.

A factor to be taken into consideration in the case of women-headed households, is that within the Yazidi society property is habitually divided equally among a deceased man's sons or, if he has left no sons, among his brothers and cousins. Traditionally, daughters and wives do not receive a share of the inheritance, in an attempt to retain land within the family and the continuity of patriarchal lineage.

With proper support, displaced persons can serve as critical and essential human resources toward the rebuilding of the host nation. Return and resettlement can represent a tangible end to violent conflict, strengthen the state's role and restore normal life for the conflict-affected population. Resolving rights to nationality, residency, and property will contribute to an effective, trustworthy, and durable state-citizen relationship.⁷²



Figure 26: Selective destruction in Dhola/Qadisiyah, 2015.
© UN-HABITAT/Mr. Mohamed Al Rubai'y



Figure 27: No matter the size, everything got demolished
© UN-HABITAT/Mr. Mohamed Al Rubai'y

⁷¹ USIP (2009). *Guiding Principles for Stabilization and Reconstruction*, Washington, DC.

⁷² USIP (no date). "Return and Resettlement of Refugees and Internally Displaced Populations".



Figure 28: Yazidis settled in abandoned houses as they took shelter on the top of Mount Sinjar after fleeing the jihadists, 2014. © Reuters

5. THE ROLE OF HLP IN AN HUMANITARIAN CRISIS

Land, resources and conflict are often inextricably linked. Despite this reality, governments and the international community have often shied away from developing systematic and effective strategies to address land grievances and conflicts. Land is seen as too politically sensitive or too technically complicated to lend itself to meaningful resolution.⁷³ Worldwide experience has demonstrated that this can be a costly mistake in terms of perpetuation of underlying socio-economic and ethnic tensions. Addressing HLP issues early in the conflict cycle and comprehensively contributes to:

- **Saving lives and preserving dignity:** delays in accessing land and housing after crises puts people in life and health-threatening situations,

undermines their dignity and can expose them to a range of serious protection risks, including sexual and gender based violence.

- **Enabling humanitarian action:** access to safe, secure land is critical for humanitarian sectors such as food security; livelihoods; shelter; and camp coordination and camp management. Land and property documents are sometimes required as a pre-requisite for accessing relief aid, even though they may have been lost, destroyed or may never have been issued.
- **Mitigating conflicts and disasters:** inadequate land-use and weak protection of HLP rights exacerbate the negative impacts of disasters, especially on the most vulnerable

⁷³ UN-Habitat (2012). *Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict: Land and Conflict*.

groups of the population. Disputes over land and natural resources are often the underlying cause of conflict and can also re-emerge shortly after a peace agreement if not addressed.

- **The development of durable solutions:** displaced populations are often unable to return home because someone else is occupying their land or property. Secure HLP rights enable IDPs and refugees to return home, remain where they are or to move to a location of their choice.⁷⁴

In a nutshell, addressing HLP issues is a key component of the Iraqi nation building process and the creation of a cohesive state while enhancing its multi-ethnic and cultural roots.

The gender dimension

It is widely recognised that the particular situation of women must be considered when planning returns of displaced communities to areas of customary land tenure or denied property rights. For one, displaced women are likely to find themselves as heads of households following the death or absence of their male relatives. As the sole-breadwinner, women's capacity to secure a livelihood for her family will, in many cases depend on her ability to secure the use or ownership of land and/or home. Yet customary systems usually fail to recognize women's inheritance rights and cultural traditions may limit women's ability to use the land⁷⁵ – particularly in regions where the Sharia law is applied.



Figure 29: A Yazidi mother from Sinjar with her children, 2014
© Reuters/ Youssef Boudlal

⁷⁴ Global Protection Cluster (2015). “Housing, Land and Property”, in Global Protection Cluster – Areas of Responsibility.

⁷⁵ Kiggundu Jacquie (2008). “IDP Return Processes and Customary Land Tenure”, speech ‘Uncharted Territory:

Yazidis’ social systems may help to provide the necessary social security network for those members of the community unable to meet their basic needs. However, the upheaval brought about by displacement may seriously magnify women’s engrained socio-economic disadvantages. The displacement of women-headed households’ may be unduly prolonged by their inability to access and navigate land administration system⁷⁶, besides securing missing or incomplete personal documentation to prove their identity and claims. By perpetuating traditional inequities in land registration processes women are unlikely to become self-reliant.

While the present research has not been able to collect data specific to gender issues, this information gap suggests that there is much to be gained from addressing land tenure with a gendered perspective.

6. THE WAY FORWARD

Clearly, the immediate priority is return to pre-ISIL situation in the *mujamma’at*. With a view to promote durable solutions, it appears urgent to focus on the following aspects:

POLICY & ADVOCACY

- As a first step, align all key actors and reach a consensus on the overall objectives, principles and legal basis to be used for the HLP interventions in Sinjar.
- Institutions and agencies should acknowledge the rights of households to choose to return both to the *mujamma’at* and/or to their original hamlets should they wish to, or be compensated for their losses in view of their integration elsewhere.
- In any case, there is a need to put in place a solid regional development plan and phased investments in the Sinjar area.
- Bring about the necessary political support to separate the Yazidi land tenure rights from the wider and much politicised “Disputed Areas” issue linked to the application of Constitutional Art 140.

Land, Conflict and Humanitarian Action’ ODI conference in London, Brookings.

⁷⁶ Kiggundu (2008), *Ibid*.

- Advocate for the protection of human rights against all discrimination – including access to housing – irrespective of ethnic and religious affiliation.

INSTITUTIONAL

- Agree upon essential coordination mechanisms between existing institutions, in parallel to targeted capacity-building of local administrative bodies tasked to deal with the anticipated surge of property claims. New mechanisms should be established where necessary.
- Conduct a rapid assessment of the functionality of Directorates of Land Registry where security has improved, in response to the official request for assistance addressed by the Ministry of Justice to UN-Habitat in early 2015.
- Quantify adequate financial, operational and human resources to ensure long-term sustainability of adopted mechanisms and procedures.
- Identify potential sources of funding and other resources within government and the donor community in order to set up a specific Sinjar Urban Recovery Fund.

LEGAL/ ADMINISTRATIVE

- Set up the required implementation mechanisms for the proposed transfer process of property from MOF and MOA to Ministry of Municipalities in order to consolidate the registration of properties in the names of the current Yazidi occupants.
- Explore the applicability of alternative HLP dispute resolution mechanisms, in line with the policy recommendations above – in particular strengthen the decision-making, enforcement and appeals mechanisms that would be necessary to move forward, including training and delegating community members to provide social evidence of land rights that can be corroborated by community leaders.
- Develop guidelines to ensure the effectiveness of required procedures and mechanisms relating to HLP, particularly in complex cases (usurpation, conflicting claims, dubious documentation, destroyed records, claims that imply relocations)
- Initiate processes of community consultations to collect data on the basis of high resolution satellite imagery of the selected target sub-district. Conduct preliminary identifications, verifications and GIS mapping of tenure grievances caseloads.

- Advocate for the adoption of community-led verification mechanisms supported by customary evidence of occupancy, including utility bills, sale documents, interviews, photographs, etc.
- Resume the compensation process for the unlawful relocation of Yazidis dating back to 1975 that was set about in 2006 but not fully executed.

URBAN RECOVERY & LIVELIHOODS

- Conduct a rapid assessment of available primary services and livelihood conditions prior to and after ISIL occupation.
- Invest in the provision of primary infrastructure (water, electricity and sanitation), key social services (education and health) financed through the above-mentioned Sinjar Urban Recovery Fund.
- Invest in a comprehensive housing and technical assistance program in support of households that make their return to Sinjar financed through the above-mentioned Sinjar Urban Recovery Fund.
- Develop targeted assistance packages for the resumption of vital farming and livestock activities, prioritising the most vulnerable families. On the short-term, provide cash assistance to those who have lost commercial assets or equipment and tools.
- Encourage the employment of local labourers in the reconstruction of physical infrastructure and primary services.

In principle, to facilitate immediate return at such scale, it is recommended that all stakeholders adopt a “fit for purpose” approach, that is to say options that may offer ‘imperfect’ solutions to large number of people, rather than ‘perfect’ but lengthy and costly solutions that may end up benefitting few people in an uncertain future.

The granting of “tenure rights” endorsed through community-led verification and certification processes should be seen as a first step towards full titles. Incremental solutions can be looked at, where for instance preliminary tenure security documents are provided (e.g. certificates of ‘occupation’, etc.) and then are upgraded or further verified after additional due processes in a second stage.

As mentioned earlier, it is also worthwhile trying to tackle deep-rooted discriminations, notably gender-based. ■

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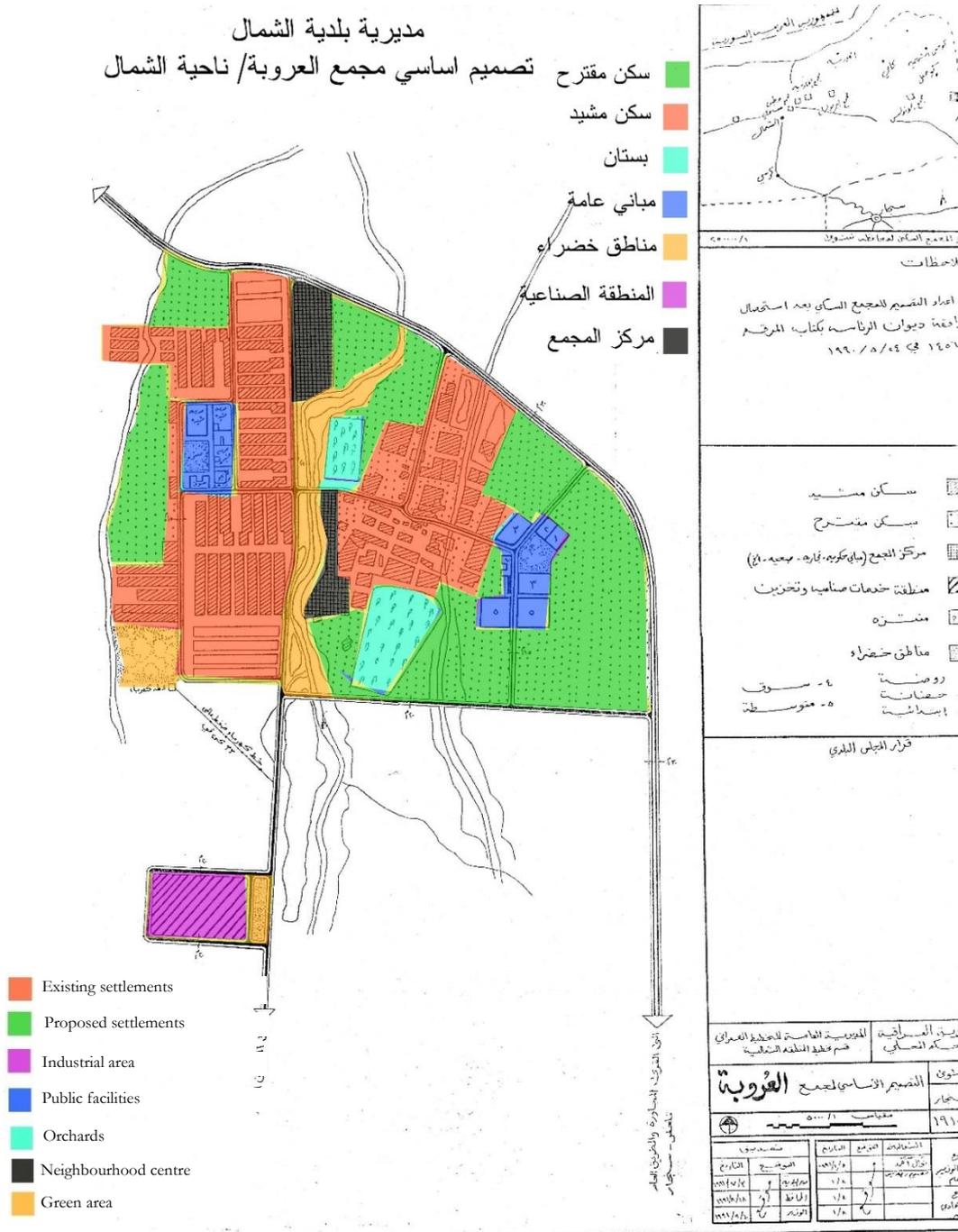


Figure 31: Master Plan of Al-Aroba (also known by its local name Zorava), mujamma'at located to the North of Mount Sinjar. Despite the fact that the land was not officially transferred to the municipality, these settlements have been subject to conventional planning processes. (Source: local authorities)

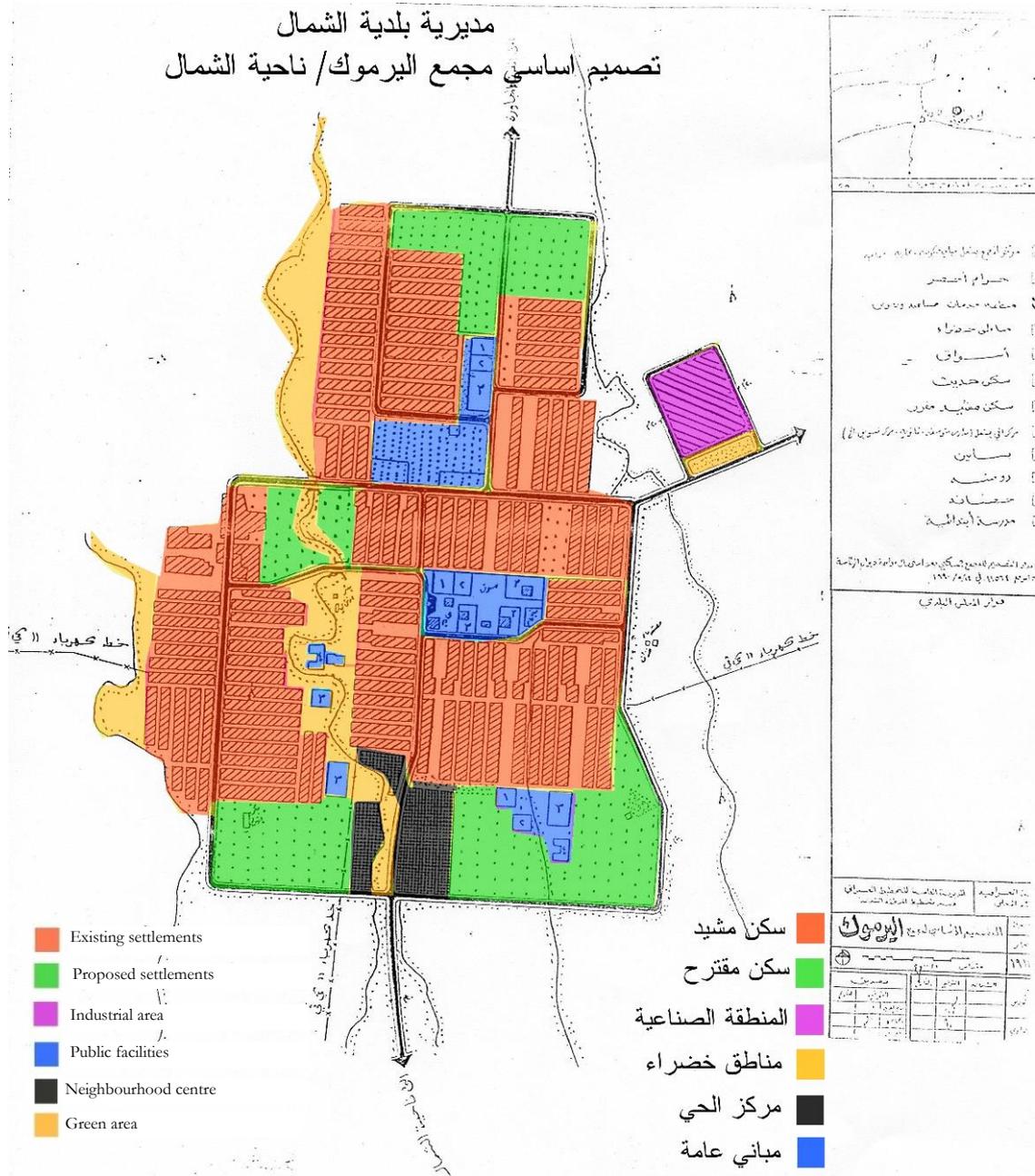


Figure 32: Master Plan of Yarmouk (also known by its local name Burke), mujamma'at located to the North of Mount Sinjar. (Source: local authorities)

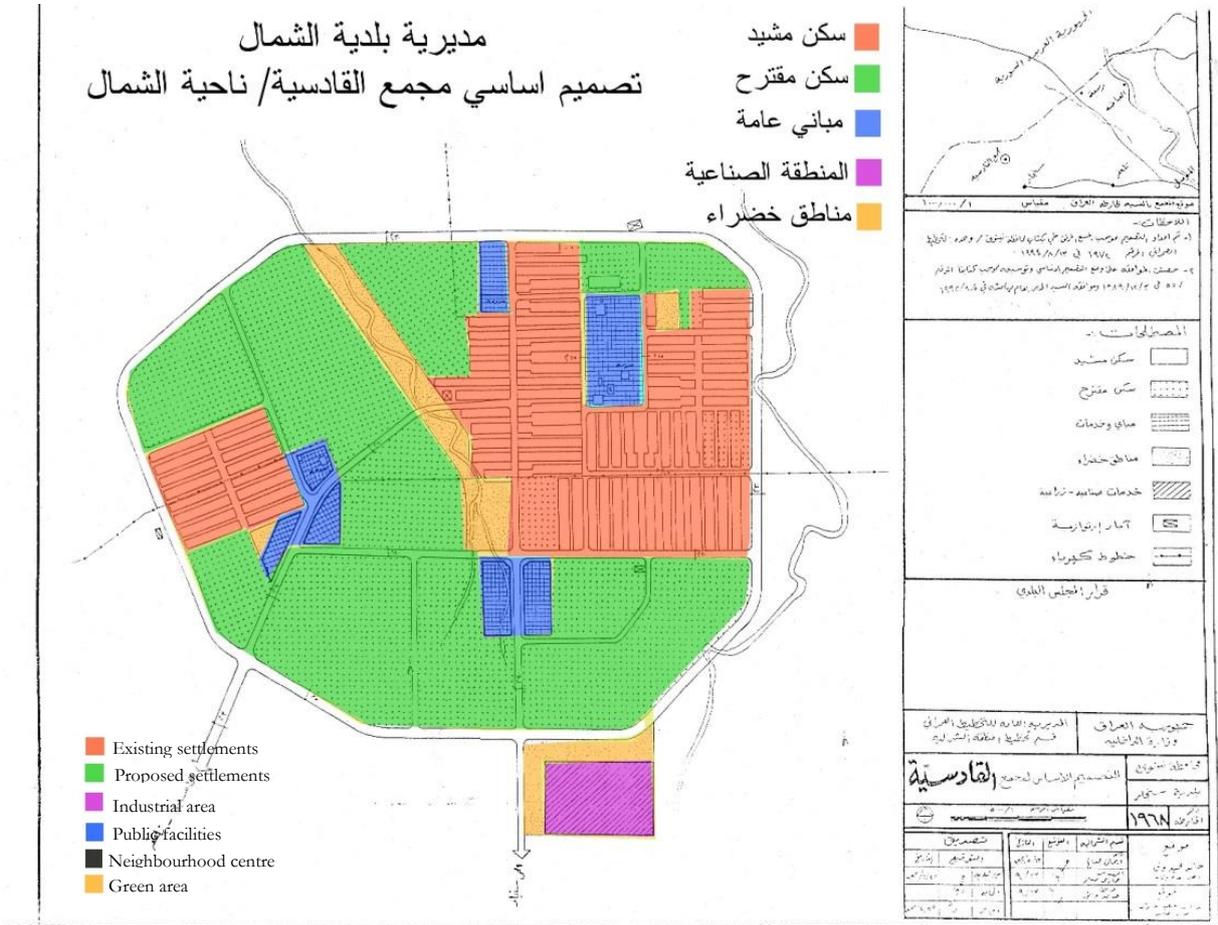


Figure 33: Master Plan of Qadisiyah (also known by its local name Dhola), mujamma'at located to the North of Mount Sinjar. (Source: local authorities)

Summary of the implementation of Article 140 compensations

Table 5: Summary of the implementation of Article 140 compensations from 2006 to 31 December 2012 – the numbers here recorded do not provided a breakdown by ethnic or religious group but the compensation process prioritized non-Yazidi households who were thus able to return to their pre-1975 areas outside Sinjar (Source: Council of Ministers, KRG)

No. of forms distributed to the targeted residents		No. of checks completed		No. of transactions completed and ready for the issuance of checks	
Newcomers / Migrants	Relocated/ Displaced	Newcomers / Migrants	Relocated/ Displaced	Newcomers / Migrants	Relocated/ Displaced
1,386	89,417	238	22,597	14	28,141

List of facilities Sinjar District

Table 6: List of facilities Sinjar District as surveyed in 2013 (Source: Council of Ministers, KRG)

	LOCATION	BLEEJ			KR UZAIR			SHINGAL			SINUN		
General Info	Area	283,935 Acres			44,450 Acres			456,721 Acres			581,000 Acres		
	Population	70,962			72,886			77,926			140,000		
	Ethnicity	Kurds+ Arabs+ Turkmen			Kurds+ Arabs			Kurds + Arabs + Turkmen			Kurds + Arabs		
	Religion	Muslims + Yazidi			Muslims + Yazidi			Muslims + Yazidi+ Christian			Muslims + Yazidi		
	Heritage area	1			0			2			0		
	Cultural Centre	1			0			3			5		
Educational Sector	Nursery	0			0			0			0		
	Kindergarten	0			0			1			0		
	Primary school	3			43			23			42		
	Intermediate	8			6			3			9		
	Secondary	7			4			7			13		
	Vocational	0			0			0			0		
	No. of Teachers	Centre	Region	Total	Centre	Region	Total	Centre	Region	Total	Centre	Region	Total
	456	222	678	425	224	649	519	337	856	786	384	1,170	
No. of Students	Male	Female		Male	Female		Male	Female		Male	Female		
	7,816	6,059	13,875	19,632	11,719	31,351	10,021	7,463	17,484	19,063	17,759	36,822	
Health Sector	Hospital	0			0			1			0		
	Health Care Centre	1			1			2			1		
	No. of Doctors + employees	Centre	Region	Total	Centre	Region	Total	Centre	Region	Total	Centre	Region	Total
	59	0	59	58	0	58	249	11	260	195	0	195	
Public Services	Public Garden	1			1			3			1		
	Playgrounds	0			0			0			0		
	Public library	0			0			0			1		
	Neighbourhood Garden	0			0			0			0		
	Sport fields	1			2			2			6		
	No. of implemented projects	5			33			15			17		

