

An Iraq for All: Improving the Status of Assyrians in the Iraqi Constitution

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ABOUT ASSYRIANS

An estimated 3.5 million people globally comprise a distinct, indigenous ethnic group. Tracing their heritage to ancient Assyria, Assyrians speak an ancient language referred to as Assyrian, Syriac, Aramaic, or Neo-Aramaic.

The contiguous territory that forms the traditional Assyrian homeland includes parts of southern and southeastern Turkey, northwestern Iran, northern Iraq, and northeastern Syria. The Assyrian population in Iraq, estimated at approximately 200,000, constitutes the largest remaining concentration of the ethnic group in the Middle East. The majority of these reside in their ancestral homelands in the Nineveh Plain and within the Kurdistan Region of Iraq.

Assyrians are predominantly Christian. Some ethnic Assyrians self-identify as Chaldeans or Syriacs, depending on church denomination. Assyrians have founded five Eastern Churches at different points during their long history: the Ancient Church of the East, the Assyrian Church of the East, the Chaldean Catholic Church, the Syriac Catholic Church, and the Syriac Orthodox Church. The majority of Assyrians who remain in Iraq today belong to the Chaldean and Syriac churches.

Assyrians represent one of the most consistently persecuted communities in Iraq and the wider Middle East.

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ABOUT THE ASSYRIAN POLICY INSTITUTE

Founded in May 2018, the Assyrian Policy Institute works to support Assyrians as they struggle to maintain their rights to the lands they have inhabited for thousands of years, their ancient language, equal opportunities in education and employment, and to full participation in public life.

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This publication was made possible
through the support of the
Assyrian National Council of Illinois.

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January 2, 2020

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An Assyrian activist joins Iraqi protests in Baghdad's Tahrir Square in October 2019.

ACKNOWLEDGEMENTS

This report was prepared by Reine Hanna with the support of Michael Youash, PhD, University of Toronto. Special thanks to Mardean Isaac for his assistance and contributions during the preparation of this report.

In addition to the above-named individuals, other persons—including government officials, parliamentarians, researchers, and legal experts—in Iraq provided extensive support and analysis. Their names have been withheld for security and privacy reasons.



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The Assyrian Policy Institute is grateful to its donors Dr. John Michael, Tony S. Kalogerakos, Atorina Zomaya, Abe Yousif, Manny Goriel, Dr. Edison Ishaya, and Dr. Dennis Gelyana.

The contents of this report are the responsibility of the Assyrian Policy Institute and do not necessarily represent the views of the above-named institutions and individuals.

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Part I: Introduction

In response to the massive anti-government protests that swept through Iraq in October 2019—which tragically saw hundreds of unarmed protestors killed by Iraqi security forces¹—a committee was formed to oversee the drafting of amendments to the Iraqi Constitution with the aim of meeting the public’s demands and quelling weeks of unrest. Often lost in the national dialogue is the fate of marginalized peoples such as Assyrians and Yazidis, who are still reeling in the aftermath of ISIS and now significantly smaller in number than when the Constitution was adopted in 2005.

The Iraqi Constitution, which is the “preeminent and supreme law in Iraq,”² is comparatively progressive, most notably in its recognition of civil rights, decentralization, democratic governance, federalism, and individual freedoms. However, it lacks protection measures for these basic norms and freedoms, and contains vague and conflicting articles related to the rights of minoritized peoples, the role of religion, and political freedoms. Further, the Constitution does not adequately address some of the priorities of marginalized groups, and leaves their status contingent on laws that have yet to be enacted.

In contrast to the previous Constitution which said Iraq is part of the Arab nation, the Constitution adopted in 2005 recognizes Iraq’s multi-ethnic, multicultural, and multi-linguistic nature. However, several key provisions of the Iraqi Constitution have yet to be implemented, leaving Yazidis, Assyrians, and other vulnerable communities largely disadvantaged and without protection from harm. Chief among them is Article 125, which calls for developing exceptional governance arrangements within Iraq’s federal framework through which the administrative, political, cultural, and educational rights of Assyrians and other marginalized peoples is guaranteed. The advancement of decentral-

ization in Iraq, as called for in the Constitution, can provide critical support for minoritized peoples. However, these communities face insurmountable challenges when entering the federalism dialogue, as they lack political power and the credible threat of force—relying instead on the development and respect for the rule of law to achieve their constitutional rights.

While the Constitution establishes strong rights on equality, the rights and liberties of minoritized communities in Iraq are often denied or compromised in their implementation. Assyrians, Yazidis, and other marginalized peoples have little influence over the formulation and enactment of laws that affect their lives.

“Sectarian politics [in Iraq] are one of the factors which has most affected minorities since 2003, as they were the weakest link in unequal conflict and in an environment with no role for the law.”

The 28-member committee formed in October 2019 includes parliamentarians representing Iraq’s “main components and all minorities.”³ Assyrian interests are represented on the committee by Yonadam Kanna, senior Member of Parliament and Secretary General of the Assyrian Democratic Movement, who also served on the commission which drafted the Constitution of 2005.⁴

According to Mikhael Benjamin, Director of the Nineveh Center for Minority Rights: “Sectarian politics [in Iraq] are one of the factors which has most affected minorities since 2003, as they were the weakest link in unequal conflict and in an environment with no role for the law.”⁵

Amendments to the Constitution are necessary for the advancement of minority rights and democratic norms in Iraq. This tragic period presents a critical opportunity for the Iraqi Government to renew its commitment to its most vulnerable communities and acknowledge its responsibility to enable Yazidis, Assyrians, and other minoritized groups to achieve conditions of real equality and secure a meaningful place in Iraqi society.

Drafting the Constitution of 2005

The constitutional process in post-2003 Iraq was initiated by the Coalition Provisional Authority—the US-led transitional Iraqi Government which operated from 2003 to 2004—following the establishment of the Iraqi Governing Council (IGC) in July 2003. The IGC was comprised of 25 members, including Yonadam Kanna on behalf of Assyrians. Yazidis did not have a designated representative on the committee.

Prior to the drafting of the Constitution, the IGC adopted the Transitional Administrative Law (TAL) which defined the foundations of a new liberal democratic, federal, and decentralized state structure.⁶ The TAL included parameters for the future Constitution. In January 2005, elections were held to legitimize the constitutional process as outlined in the TAL.

A 55-member drafting committee was formed following the elections and later named the Constitutional Commission—its membership was eventually

expanded. The Constitutional Commission was tasked with preparing a draft constitution by August 15, 2005, and for the draft to be submitted to a referendum by October 15, 2005.⁷

The committee was led by Islamic cleric Humam Hamoudi, leader of the Islamic Supreme Council of Iraq, a Shia Islamist political party.⁸ It included representatives from marginalized communities; Yonadam Kanna was selected as the representative of Assyrians. The committee was counseled by the United Nations and a group of technical experts, including jurists and judges. According to Minority Rights Group International, the Constitution drafting process was “constrained by problems of consensus-building, external pressures, inclusion and tight deadlines.”⁹

The Constitutional process was fiercely divisive and intensified the contest between groups from different ethnic and religious backgrounds over the distribution of political power and state resources.

The Constitutional process was fiercely divisive and intensified the contest between groups from different ethnic and religious backgrounds over the distribution of political power and state resources. The committee was split along ethnic, religious, and communal lines, each faction represented by elites from each community claiming ideological and cultural distinctiveness.

Assyrians and other minoritized groups expressed concerns about their marginalization in the drafting process:

The Christians constitute an estimated 3 percent of the population, and like the Turkomen, are spread over several provinces. Small ethnic minorities, including the Chaldo-Assyrians and Turkomen, and the Arabs of Kirkuk, fear marginalization under the Kurdish-federated provinces.

Religious minorities, including the Christians, Sabeans [Mandaeans], and Yezidis, are alarmed by the insurgency, Shi'i Islamic conservatism, and the Islamic influence over the Constitution. They fear for their religious freedoms and their welfare.¹⁰

The final version of the Constitution adopted in 2005 indeed failed to address many key concerns for Iraq's smaller populations, and did little to protect or advance their status and rights.

Assyrian Opposition to the Constitution

Days after its submission in August 2005, Assyrians in Iraq held demonstrations in opposition to the draft constitution, which they felt did not adequately address the needs or guarantee the rights of Assyrians and other marginalized peoples. Hundreds of protestors across Hamdaniya District in the Nineveh Plain took to the streets in Bakhdida (Qaraqosh). A simultaneous protest was also held in Tel Keppe District.¹¹ There were numerous points of contention,



Assyrians in the Nineveh Plain protest draft constitution on August 24, 2005.

including the lack of provisions protecting Assyrian land rights and the separation of Assyrians and Chaldeans.¹²

The Assyrian Democratic Movement (ADM), the largest Christian Assyrian political party in Iraq, issued a statement, among others, expressing opposition to the constitution, which it claimed does not “reflect equality and conformity between all Iraqis in a manner that is fair and in which it strengthens national unity and promotes harmony that we seek for all Iraqis.”¹³ The September 2019 statement also noted:

[The Constitution] affected the unity of our people in its core when it divided our people into Chaldeans and Assyrians contrary to fact and history ... These interferences were in matters outside the framework of their duties and reflected a narrow and sectarian vision and adherence to personal interests ... They did not resonate to the demands of our people and the efforts and objections of our ChaldoAssyrian representative in the constitution drafting committee in order to institutionalize our unity and presence in the preamble when pertaining to ethnic identity or oppression. Initiated by our absolute belief in the [deep roots] and unity of our ChaldoAssyrian Syriac nation and in its historic struggle and because of our historic national and ethic obligations we must point to this great imbalance and flaw that is not accepted at all.¹⁴

Also opposed to the constitution was the Assyrian General Conference (AGC). Among its many objections, the AGC expressed concerns that the constitution reinforced sectarianism, particularly in its division of Assyrians and Chaldeans as two distinct peoples. According to a September 2019 statement: “We at the Assyrian General Conference see that the Constitution did not meet the Iraqi people’s ambitions in general, and the Assyrian people in particular.”¹⁵

Assyrian opposition to the Constitution was widespread and many feared for the future. An article published in the Fall 2005 edition of the *Assyrian Star*, a US-based publication read:

For Assyrians, the prospects of a failed constitution raise real fears of a generalized deterioration in security throughout Iraq. During such times, the very same minorities who end up rejecting the Constitution will probably disproportionately bear the brunt of more civil unrest. However, as one Assyrian leader noted, “We are not rejecting the democratic process, far from it. We fully support the democratic process and are making full use of it to clearly and loudly resist our marginalization. We do not believe this Constitution will lead to democracy in Iraq. On October 15, we will go to the polls and ask this government for a better, more democratic Constitution.”¹⁶

The Iraqi Constitutional referendum was held on October 15, 2005 during which the Iraqi population voted on whether or not to ratify the proposed Constitution. All but three of Iraq's governorates voted for approval, and the Constitution was formally adopted later that month.¹⁷

The Way Forward

The Iraqi Constitution adopted in 2005 enshrines the principle of nondiscrimination and the equality of all Iraqis, regardless of ethnic or religious background. However, the Constitution fails to protect the indigenous status of Assyrians, and treats Assyrians, Yazidis, and other non-Muslim ethnic groups predominantly as religious minorities in a political framework that asserts the supremacy of Islam. While there are robust provisions which guarantee the administrative, political, cultural, and educational rights of all nationalities, in practice, minorities have been denied even their most basic rights. Moreover, marginalized groups continue to lack access to justice and mechanisms to protect themselves from targeted violence and persecution; systemic discrimination in law and practice; and practical limitations on the exercise of administrative, political, civil, social, cultural, and economic rights.

The survival of these communities—along with their cultural, linguistic, and religious identities—remains under threat. It is important to emphasize that despite a considerable decrease in violence in Iraq and comparative stability in the Kurdistan Region, Assyrians, Yazidis, and other vulnerable populations continue to face threats of violence, discrimination, exclusion, and denial of their property rights. As a result, members of these communities continue to be forced into emigration with the hope of accessing a “better life” characterized by conditions of safety, stability, equality, and opportunity outside the country.

Constitution drafting processes in post-conflict situations unavoidably—and even appropriately—reflect the effort to overcome sources of conflict in the previous political order.

Constitution drafting processes in post-conflict situations unavoidably—and even appropriately—reflect the effort to overcome sources of conflict in the previous political order. Iraq's Constitution, adopted in 2005, reflects the imperative of undoing the forms of violence perpetrated by the Ba'athist regime over decades. Iraq's present constitutional reform initiative can and should formally reflect the sources of persistent, institutionalized, and non-state violence, as well as sources of government failure and persecution experienced by all Iraqis. This study operates on this exact premise with a focus on Iraq's most vulnerable populations that face a true existential threat today as a result of the failures of the constitutional design and implementation of the post-Ba'athist era.

Part II: Constitutional Reform Recommendations

The following section examines Articles that negatively and disparately affect marginalized communities in Iraq, including Yazidis and Assyrians, provides commentary, and makes recommendations aimed at improving their protection and advancing their social, cultural, economic, and political rights within the country. The Articles appear in chronological order and fall under the appropriate headings of the relevant sections of the current constitution.

CONSTITUTIONAL REFORM PRIORITIES

- Preamble (See page 11)
- Article 2 (See page 13)
- Article 110 (See page 21)
- Article 125 (See page 25)
- Article 140 (See page 28)
- Proposed Article on the Prevention of Genocide (See page 30)
- Proposed Article on Transitional Justice for Assyrians and Yazidis (See page 34)

Preamble

Preamble

...invoking the pains of sectarian oppression inflicted by the autocratic clique and inspired by the tragedies of Iraq's martyrs, Shiite and Sunni, Arabs and Kurds and Turkomen and from all other components of the people, and

recollecting the darkness of the ravage of the holy cities and the South in the Sha'abaniyya uprising and burnt by the flames of grief of the mass graves, the marshes, Al-Dujail and others and articulating the sufferings of racial oppression in the massacres of Halabcha, Barzan, Anfal and the Fayli Kurds and inspired by the ordeals of the Turkomen in Bashir and the sufferings of the people of the western region, as is the case in the remaining areas of Iraq where the people suffered from the liquidation of their leaders, symbols, and Sheiks and from the displacement of their skilled individuals and from drying out of its cultural and intellectual wells, so we sought hand in hand and shoulder to shoulder to create our new Iraq, the Iraq of the future, free from sectarianism, racism, complex of regional attachment, discrimination, and exclusion.

The Preamble of the Iraqi Constitution recognizes crimes committed against Arabs, Kurds, and Turkomen in the country, but makes no mention of the historical suffering of Assyrians and Yazidis within Iraq's borders.

Proper recognition of the atrocities committed against Assyrians and Yazidis will help advance reform in Iraq and promote its transition into a pluralist and tolerant society.

The Preamble of the Iraqi Constitution recognizes crimes committed against Arabs, Kurds, and Turkomen in the country, but makes no mention of the historical suffering of Assyrians and Yazidis within Iraq's borders. The exclusion of crimes committed against Assyrians and Yazidis absolves the perpetrators, trivializes the suffering of these peoples, contributes to the erasure of their modern history, and debases and diminishes their importance in Iraqi society. It reflects the inequality of political voices whereby claim-making produces formal constitutional recognition of past injustices for those with access to power today and is denied to those who lack power irrespective of the manifest truth of their distinct claims. Excluding formal recognition of the Assyrian and Yazidi genocides in this constitutional reform process will signal that claim-making is legitimized by political power and is thereby exclusive and can be selective about which peoples' 'truth' is recognized and legitimized. This reflects a fundamental inequality of political voice between Iraq's diverse peoples.

Injustices against the Assyrian and Yazidi peoples in Iraq—both historical and contemporary—have lasting consequences that threaten their future. In August 1933, Iraq launched a genocidal campaign targeting its Assyrian citizens during which as many as 6,000 Assyrian civilians were systematically killed on the orders of the Iraqi Army, with tens of thousands more externally displaced.¹⁸ When Raphael Lemkin coined the term genocide in 1944, he cited the Iraqi campaign against Assyrians in 1933 as one of the defining examples of what he meant by genocide.¹⁹ More recently, the Yazidi Genocide of 2014 at the hands of ISIS claimed the lives of thousands of Yazidi civilians. The Yazidi people were subject to unspeakable crimes, including mass executions and sexual enslavement. In November 2014, the Iraqi Council of Ministers recognized that the crimes committed by ISIS against components of the Iraqi people amounted to genocide.²⁰

The denial of historical injustices threatens the democratization of the Iraqi state and prolong strained relations between different ethnic and religious groups. Proper recognition of the atrocities committed against Assyrians and Yazidis will help advance reform in Iraq and promote its transition into a plu-

ralist and tolerant society. Exclusion of references to the genocidal violence in 1933 and 2014 against Assyrians and Yazidis respectively misses the opportunity for Iraqis to acknowledge that ethnic and sectarian violence is deeply rooted in Iraq's foundation as a state, persists into the present and targets the most vulnerable peoples within Iraq's heterogeneous society. The impunity of the violence in 1933 underpinned the impunity exercised when successive regimes targeted other, larger segments, of Iraq's population. By formally recognizing the Simele Massacre of 1933 and the Yazidi Genocide of 2014 in its Constitution, the Iraqi Government can pay tribute to the perseverance and determination of those who survived, as well as its citizens of Assyrian and Yazidi descent who form an integral part of Iraq's social fabric today. By commemorating and condemning these crimes, the Iraqi Government will acknowledge its responsibility to prevent future atrocities targeting all components of the Iraqi people.

RECOMMENDATION

Amend the Preamble of the Constitution to reflect the historical and ongoing contribution of Yazidis and Assyrians to Iraq's cultural and political heritage. Include specific references to historical injustices committed against these peoples, including the state-sanctioned Simele Massacre of 1933, during which as many as 6,000 Assyrians were systematically killed and the 2014 Yazidi Genocide at the hands of ISIS.

Section One: Fundamental Principles

Article 2(1)(A)

*Islam is the official religion of the State and is a foundation source of legislation:
No law may be enacted that contradicts the established provisions of Islam.*

Article 2(1)(A) poses major challenges for reform in Iraq, as it precludes any law that contradicts the established provisions of Islam. The Article renders void many legal provisions that strive to include and provide legal protections to non-Muslim peoples in Iraq, namely Mandaean, Yazidi, and Christian communities like Assyrians and Armenians. This provision can also be used by judges to curtail the rights of religious minorities, and may result in discrimination against non-Muslim communities.

An amendment that broadens the Article to include the shared practices and principles of all religious groups represented in Iraq can substantiate existing provisions and advance legislation intended to improve the legal status of marginalized peoples.

RECOMMENDATION

Remove Article 2(1)(A) to promote Iraq's transition into a secular and pluralist society. Alternatively, amend Article 2(1)(A) to reflect the shared practices and principles of all religious groups represented in Iraq, rather than just Islam.

Article 4(1)

The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkomen, Assyrian, and Armenian shall be guaranteed in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions.

The current Constitution recognizes only Arabic and Kurdish as the country's official languages. While the Constitution makes provisions for the protection of linguistic rights for the Assyrian and Turkomen languages, it limits the possible use of local minority languages to educational institutions or, as outlined in Article 4(4), "in the administrative units in which they constitute density of population."

Language is a critical aspect to cultural identity. Iraq has exhibited aggression towards Assyrian identity, and has a long history of infringing on the cultural and linguistic rights of its Assyrian population. Following the establishment of the Iraqi state in 1932, the Assyrian language—alongside the Kurdish language—was viewed as a threat against national unity. Language continues to be used as a political tool to subdue Assyrians as indigenous language speakers.

Without equal rights and treatment, Assyrian identity will continue to be discriminated against. While Iraq no longer practices a policy of assimilation of non-Arabic speakers, their linguistic rights are often compromised as there is little incentive to learn how to read and write a language for intrinsic reasons with no external use.

UNESCO lists Assyrian (or Syriac) as a "definitely endangered" language.²¹ Many indigenous languages are disappearing owing to various factors, including genocide, acculturation into majority cultures, and oppressive policies designed to eliminate use of indigenous languages.

Recognizing the vulnerability of indigenous languages, the United Nations proclaimed 2019 the International Year of Indigenous Languages (IYIL) to "draw attention to the critical loss of indigenous languages and the urgent need to preserve, revitalize, and promote indigenous languages."²² According to the IYIL website:

UNESCO lists Assyrian as a "definitely endangered" language. Many indigenous languages are disappearing owing to various factors, including genocide, acculturation into majority cultures, and oppressive policies designed to eliminate use of indigenous languages.

The indigenous Assyrians of the Middle East are currently in a precarious position. With the situation in their homeland having been unstable for many decades now, due to wars and persecution, a large number of them have chosen to emigrate to the diaspora, where their language is in danger of disappearing. In their native countries, on the other hand, this population drain is having a devastating effect on the Assyrians' critical mass, and their ability to maintain and preserve their ancient language for future generations. The lack of proper governmental representation, and the lack of official recognition by some states in which they live, also make this endeavor particularly difficult.²³

Article 35 of the Iraqi Constitution states that the Iraqi Government “shall seek to support indigenous Iraqi cultural orientations.” Formal recognition of the Assyrian language as one of the official languages of Iraq will signal its commitment to the cultural and linguistic rights of the Assyrian population and promote pluralism.

RECOMMENDATION

Amend Article 4 to provide constitutional recognition of the Assyrian language as one of the official languages of Iraq, alongside Arabic and Kurdish.

Article 10

The holy shrines and religious sites in Iraq are religious and civilizational entities. The State is committed to assuring and maintaining their sanctity, and guaranteeing the free practice of rituals in them.

Since 2003, scores of Assyrian churches and Yazidi temples have been attacked, bombed, or destroyed by extremists and terrorists.

Article 10 is positive in the sense that it establishes protections for religious sites in Iraq, however, the omission of the word “all” from the language leaves open to interpretation which shrines and religious places merit recognition and safeguarding. Since 2003, scores of Assyrian churches and Yazidi temples have been attacked, bombed, or destroyed by extremists and terrorists. In August 2007, a series of coordinated suicide bombings targeted Yazidi villages and places of worship, leaving 796 dead.²⁴ In October 2010, a horrific massacre took place during church services at Our Lady of Salvation Syriac Catholic Church in Baghdad, which claimed the lives of over 50 civilians.²⁵ Scores of Assyrian churches²⁶ and Yazidi temples were destroyed during the ISIS occupation.²⁷

RECOMMENDATION

Amend Article 10 to make clear these provisions are guaranteed to *all* religious places and holy shrines in Iraq.

Article 12(1)

The flag, national anthem, and emblem of Iraq shall be regulated by law in a way that symbolizes the components of the Iraqi people.

The flag of Iraq, as the country's national symbol, should reflect the country's plurality of religions and ethnicities.

The flag of Iraq is not representative of all components of the Iraqi people. The most recent version of the flag was adopted in January 2008 and includes the Pan-Arab colors derived from the Arab Liberation flag. Further, it is reminiscent of the flag of the Kingdom of Iraq (1932-1958) which launched a genocidal campaign against its Assyrian citizens less than a year following its establishment.²⁸ The flag also bears the *takbīr* in green lettering at the center of the flag (the common Islamic expression in Arabic, *Allāhu akbar*). These elements are alienating and, in some cases, offensive to non-Arab, non-Muslim people of Iraq. The flag of Iraq, as the country's national symbol, should reflect the country's plurality of religions and ethnicities. The Article should be amended to proscribe the use of nationalistic or sectarian symbolism.

RECOMMENDATION

Amend Article 12 to express that the flag, national anthem, and emblem of Iraq should symbolize all components of the Iraqi people and prohibit use of ethno-sectarian symbolism.

Section Two: Rights and Freedoms

Article 14

Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.

Linguistic minorities in Iraq are subject to restrictions and discrimination which impact their rights and freedoms. Assyrians and other marginalized communities, especially those who were forcibly displaced, often experience unfair treatment based solely upon the characteristics of their speech and ability to use one language instead of another. For example, Assyrians from southern provinces are subject to language discrimination when in provinces administered by the Kurdistan Regional Government due to their inability to speak Kurdish.

RECOMMENDATION

Amend Article 14 to include “language” and “other status” as prohibited bases for discrimination.

Article 23(2)

Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law.

The intention and scale of the expropriation of Assyrian lands, including in the Kurdistan Region, constitutes a targeted and systematic attempt to ethnically cleanse the Assyrian population from their ancestral homeland.

The expropriation of land was one of the major features of the discriminatory assimilation policies of the Ba’athist regime, which continued even after its fall. Systematic policies of unlawful expropriation, government-sanctioned efforts to effectively alter the demographic character of minority-inhabited territories, and extreme violence have violated Constitutional safeguards and served to undermine the right of Assyrians, Yazidis, and other vulnerable communities to own property free from discrimination. Illegal or unauthorized expropriation in Baghdad, Ninewa, Basra, Erbil, and Dohuk continues to be a problem with very little judicial or other recourse. Assyrians and other minoritized peoples are frequently involved in property disputes in areas with Arab or Kurdish majorities. The Iraqi Commission for the Resolution of Real Property Disputes (formerly called the Iraqi Property Claims Commission) largely failed to address this longstanding problem, rendering the eventuality of conflict resolution increasingly unlikely. The intention and scale of the process, including in the Kurdistan Region, constitutes a targeted and systematic attempt to ethnically cleanse the Assyrian population from their ancestral homeland.²⁹

RECOMMENDATION

Amend Article 23(2) to ensure that the expropriation of private property for public benefit in return for just compensation shall prohibit discrimination of any kind and shall not foster demographic change of any kind throughout Iraq’s provinces and the Kurdistan Region of Iraq. Ensure that implementing legislation provides marginalized peoples with equal access to the judiciary and law enforcement when raising property disputes.

Special provisions are required for land disputes and land theft causing demographic change adversely affecting Assyrians and Yazidis. Land rights are linked inextricably to the fundamental rights and freedoms in this Section of the Constitution. These, however, are appropriately stipulated under ‘Transitional Provisions’, see page 27.

Article 35

The state shall promote cultural activities and institutions in a manner that befits the civilizational and cultural history of Iraq, and it shall seek to support indigenous Iraqi cultural orientations.

Article 35 is positive in the sense that it commits the Iraqi Government to supporting indigenous communities in the country, however, it does not provide a definition of “indigenous Iraqi cultural orientations.”

The Assyrian and Yazidi peoples are among the most ancient nations in the world.

The Assyrian people are indigenous to Iraq.³⁰ Their unique ethnic identity, including a distinct living linguistic and literary heritage and material and architectural culture, originated in ancient Mesopotamia and spans millennia. Correspondingly, the original core of the Assyrian homeland — which was once ancient Assyria — is located in modern day Iraq.³¹

RECOMMENDATION

Amend Article 35 to include a definition of “indigenous Iraqi cultural orientations” that explicitly names the Assyrian people.

Article 42

Each individual shall have the freedom of thought, conscience, and belief.

Article 42 is critical and guarantees protection for international human rights. While Article 2 provides for the “full religious rights to freedom of religious belief and practice,” this right should be restated in Article 42, as part of the chapter on fundamental rights and freedoms.

RECOMMENDATION

Amend Article 42 to include “religion” to the list of freedoms.

Section Three: Federal Powers

Article 49

The Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people. They shall be elected through a direct secret general ballot. The representation of all components of the people shall be upheld in it.

The representation of minoritized groups should be protected regardless of changes to their population in order to protect their status in the country and promote the return of externally displaced persons and expatriates.

The representation of minoritized groups in Iraq needs to be instituted in a meaningful way at all levels in government. On the federal level, Christians in Iraq—of whom Assyrians make up the overwhelming majority—are allotted five seats in the Council of Representatives, whereas other minoritized groups such as Yazidis, are only afforded one seat. The representation of marginalized groups in Iraq should not be contingent on their population, due to various factors driving forced migration since 2003. The representation of minoritized groups should be protected regardless of changes to their population in order to protect their status in the country and promote the return of externally displaced persons and expatriates.

Many members of the Yazidi and Assyrian communities believe that the quota representation system is deficient and that elected representatives lack the resources and capacity to make a meaningful impact on the political process. There is also a widespread perception that representatives elected through the quota system are less respected and lack real power, and as a result, are marginalized within the parliament or fall under the control of their majority counterparts.

The absence of laws to protect the spirit and purpose of the minority quota system—first by mandating that only minority voters can select their representatives, and second by prohibiting the use of financial patronage by dominant groups to colonize the political landscape of marginalized ethno-religious populations—has therefore resulted in the near-complete elimination of independent and organic minority political representation.³²

RECOMMENDATION

Article 49 should be amended to prohibit the reduction of minority representation on the basis of a decline in population due to genocide, ethnic cleansing, or forced emigration. Implementing legislation should increase representation for Yazidis and other marginalized groups. The amendment should address how fair representation can be achieved and ensure that the quota system is not abused and used to appoint proxy representatives of majority groups.

Article 50

Each member of the Council of Representatives shall take the following constitutional oath before the Council prior to assuming his duties:

“I swear by God Almighty to carry out my legal duties and responsibilities with devotion and integrity and preserve the independence and sovereignty of Iraq, and safeguard the interests of its people, and ensure the safety of its land, sky, water, wealth, and federal democratic system, and I shall endeavor to protect public and private liberties, the independence of the judiciary, and pledge to implement legislation faithfully and neutrally. God is my witness.”

In order to demonstrate the Iraqi Government’s commitment to nondiscrimination towards all ethnic and religious groups in the country, the constitutional oath taken by members of the Council of Representatives should be amended to include a pledge of nondiscrimination. An important step towards inclusiveness is explicitly prohibiting discrimination, and requiring individual lawmakers to acknowledge that responsibility will help promote a culture of tolerance in Iraq.

RECOMMENDATION

Amend Article 50 to require the oath taken by members of the Council of Representatives to include a pledge to uphold the rights of all Iraqis regardless of ethnic or religious background.

Article 92(2)

The provisions established in Article 92 have prompted fears, especially among non-Muslim communities, of the Islamization of the judiciary, as it enables individuals whose only background is in sharia law to serve as judges in matters pertaining to civil law.

The Federal Supreme Court shall be made up of a number of judges, experts in Islamic jurisprudence, and legal scholars, whose number, the method of their selection, and the work of the Court shall be determined by a law enacted by a two-thirds majority of the members of the Council of Representatives.

Article 92 mandates that Iraqi jurists be experts in Islamic law, but makes no requirement for them to be educated in civil law. The provisions established in Article 92 have prompted fears, especially among non-Muslim communities, of the Islamization of the judiciary, as it enables individuals whose only background is in *sharia* law to serve as judges in matters pertaining to civil law. These provisions allow for the undermining of judicial independence under the pretext of protecting religious ideologies, as jurists appointed to the Supreme Court who are trained exclusively in Islamic law may be more likely to interpret the Constitution in a manner privileging the dominant religion in Iraq, rather than a judicial approach that is objective and evenly applied to all

Iraqis. Further, requiring the appointment of experts in Islamic jurisprudence may result in discrimination within the judicial selection process on the basis of religious or ethnic background.

Article 92 has been used to advance legislation that would provide for Islamic clerics to serve as judges on Iraq's Federal Supreme Court with enhanced powers to veto laws they deem to be in conflict with Islam.³³ Marginalized communities fear that such legislation could lead to the establishment of a supreme religious authority in Iraq. Theocratic governance would undermine Iraq's fragile democracy and jeopardize religious freedom and other basic rights.

RECOMMENDATION

Amend Article 92 to require the Federal Supreme Court to include persons who have broad expertise in civil law, and develop legislation ensuring that judges and jurists will have the skill and capacity to interpret Iraqi law without discrimination on the bases of ethnicity or religion. At minimum, all jurists should have training in civil law, including a law degree.

Section Four: Powers of the Federal Government

Article 110(2)

[The federal government shall have exclusive authorities in the following matters:] Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq.

The collapse of the security apparatus in Iraq in 2003 led to heightened sectarian conflict and widespread instability, leaving minoritized populations particularly vulnerable to terror attacks. Violence against non-Muslims rose considerably in the years after 2003, taking the form of killings, bombings, kidnappings, and forced displacement. The unequal degree of suffering experienced by Iraq's smaller communities is a reflection both of their being singled out for persecution and the complete absence of a security apparatus deployed on their behalf.

Prior to the emergence of ISIS, security in Sinjar and the Nineveh Plain was controlled by the Peshmerga and other KRG-affiliated security forces, while falling under the administrative authority of the Iraqi Government. This dynamic negatively affected the stability of the area and proved disastrous for the various communities caught in between.

When faced with the ISIS advance, the Peshmerga and KRG-affiliated security forces preemptively withdrew without notifying local populations.³⁴ The events of 2014 led to increased feelings of mistrust and isolation, as these communities were abandoned by the authorities who failed to uphold the rule of law.

Following the liberation of these areas from ISIS, a security vacuum was created which was filled by various actors pursuing competing agendas, including those hostile to the interest of Assyrians, Yazidis, and other vulnerable peoples.

Like other groups in Iraq, Assyrians and Yazidis are unable to trust security forces that lack connections to their community owing to their past experiences. In order to trust a security force, the Assyrians need assurances that protection will be provided regardless of changing political allegiances.

Like other groups in Iraq, Assyrians and Yazidis are unable to trust security forces that lack connections to their community due to their past experiences. In order to trust a security force, these communities need assurances that protection will be provided regardless of changing political allegiances. Given recent history, fear of future violence targeting indigenous peoples in the region is widespread and they lack the necessary confidence in Iraqi and KRG forces. Their concerns are often downplayed or ignored despite their seriousness. For years, Assyrians have sought to form a local force to defend themselves and their lands, but have consistently been denied this right.

In contrast to forces like the Iraqi Army or KRG Peshmerga, forces like the Nineveh Plain Protection Units (NPU)—formed in response to the rise of ISIS—provide a sense of security through their ties to the local community. This claim has been validated in the post-ISIS phase, as the areas controlled by the NPU in the Nineveh Plain have seen the highest rates of return.³⁵ Despite the remarkable success of the NPU, the dangerous security status quo has been upheld. The status quo can best be described as a situation whereby Assyrian and Yazidi security is made the responsibility of precariously-balanced, opposing Kurdish and Arab-dominated forces competing for control of the Nineveh Plain and Sinjar and prioritizing their political ambitions over the security of these communities.

RECOMMENDATION

Expand Article 110(2) to include a sub-clause with the following provisions (draft language provided below):

All areas with Assyrian and Yazidi populations decimated by genocide and other forms of violence by state and non-state actors shall establish locally-recruited security forces, with special authorization under the command structure of Iraqi Security Forces, to secure their own towns and villages. These Assyrian and Yazidi forces will become Special Guard Forces. This shall be regulated by law.

Article 112

The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law.

The Iraqi Government has a responsibility to restore areas that fell under ISIS control in 2014 and create the conditions that would enable the return of displaced populations. Of particular concern are the territories in Ninewa Governorate historically inhabited by Yazidis and Assyrians—Sinjar and the Nineveh Plain—due to the unique vulnerabilities of local populations.

Seven governorates in Iraq were fiercely affected by the violence inflicted by ISIS in 2014 and the subsequent war to liberate these areas from ISIS. In most conflict-afflicted areas, basic infrastructure has been destroyed, including roads, water and sewage systems, and power supplies. The Iraqi Government has a responsibility to restore areas that fell under ISIS control in 2014 and create the conditions that would enable the safe return of displaced populations. Of particular concern are the territories in Ninewa Governorate historically inhabited by Yazidis and Assyrians—Sinjar and the Nineveh Plain—due to the unique vulnerabilities of local populations.

Even prior to the advent of ISIS, Sinjar and the Nineveh Plain were among Iraq's poorest, most ignored, and most underdeveloped areas, lacking many basic services.³⁶ Minority-inhabited areas such as the Nineveh Plain and Sinjar were occupied by the Peshmerga following the removal of the Ba'athist regime. The Iraqi Government largely refused to provide funds for basic services and development as a result of the occupation while the KRG rejected any responsibility for the areas so long as they remained 'disputed'. As a result, the Nineveh Plain and Sinjar underwent a period of underdevelopment or politicization of development spending while being caught in an impossible situation outside the control of Yazidis and Assyrians.

While the broad language of Article 112 encompasses conflict-afflicted areas, the language should be amended to acknowledge the scale of the damage and loss inflicted by ISIS. More importantly, the language should be amended to reaffirm the state's urgent responsibility to these areas and to require an allotment of oil and gas revenues to areas affected by ISIS.

RECOMMENDATION

Amend Article 112 to also specify an allotment of oil and gas revenues for areas affected by the conflict inflicted by ISIS in 2014.

Section Five: Powers of the Regions

Article 117

This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.

The etymology of the word Kurdistan means “land of the Kurds,” yet the Kurdistan designation refers to an area that has historically been home to diverse communities including Assyrians, Yazidis, Arabs, and others. The naming of territories is a highly political process, and efforts should be made to deemphasize ethno-sectarian tensions and to prevent ethnic partition of the country. The term “Kurdistan” reinforces an ethno-nationalist narrative; it was first legally adopted in an era in which the Iraqi Government recognized the country as an Arab nation. In contrast, Arabs, Kurds, Assyrians, Yazidis, and all other ethnic groups in the country can adopt an Iraqi nationality while maintaining their distinct ethnic and cultural identity, but non-Kurds cannot adopt a Kurdish (or “Kurdistani”) identity, as it is rooted in an ethnicity.

The Kurdistan designation has many negative effects on non-Kurdish peoples inhabiting the region, including the erasure of their ethnic and cultural identity and history, the denial of their indigeneity, the denial of their property rights, institutionalized racism, and the use of ethnic identifiers to refer to non-Kurdish peoples, such as “Kurdish Christians” and “Kurdistani Christians” which are often imposed on Assyrians.

The Kurdistan designation has many negative effects on non-Kurdish peoples inhabiting the region, including the erasure of their ethnic and cultural identity and history, the denial of their indigeneity, the denial of their property rights, institutionalized racism, and the use of ethnic identifiers to refer to non-Kurdish peoples, such as “Kurdish Christians” and “Kurdistani Christians” which are often imposed on Assyrians. Further, the Kurdistan designation promotes ethnic partition of the country and allows for eventual secession from Iraq driven by ethno-nationalism. In an effort to diminish ethno-sectarianism, promote inclusivity, and reaffirm Iraqi sovereignty and territorial integrity, the Kurdistan Region and all government institutions should be renamed to reflect its multi-ethnic, multicultural, and multi-linguistic nature.

It is also important to acknowledge that the ethnically Kurdish population in proportion to the Assyrian population and that of other vulnerable, minoritized peoples, is growing but only due to the discriminatory policies and practices implemented by the KRG. Ignoring how the name of the territory establishes ethnic superiority of the Kurdish people also legitimizes the prejudicial policies employed by Kurdish governing authorities to suppress the population of indigenous Assyrians and other ethnic groups.

RECOMMENDATION

Amend Article 117 to change the designation of the region of Kurdistan to account for its multi-ethnic, multicultural, and multi-linguistic nature (e.g. Regional Government of Northern Iraq).

Article 125

This Constitution shall guarantee the administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law.

Assyrian emigration from Iraq intensified following the US-led invasion in 2003. Assyrians and other marginalized communities were disproportionately more likely to emigrate, as they could not call upon influential or armed groups to protect them. Estimates for the Assyrian population, which were as many as 1.5 million prior to 2003, have now shrunk to below 200,000. Even the relatively high concentrations of Assyrians in Baghdad, Ninewa, and areas administered by the Kurdistan Regional Government began to dwindle as Assyrians faced both physical violence, persecution, and political marginalization. While it is true that all Iraqis were affected by the Iraq War, the international community failed to sufficiently focus on or confront the specific vulnerabilities of minoritized communities. In the aftermath of the 2003 invasion, a political approach toward minorities began to take shape that continues to victimize their communities today, especially in the disputed territories.

Article 125 is an exceptional constitutional provision for a territorial federal solution distinct from local governance at the district and sub-district levels within Iraq's nascent federal system.

The administrative, political, cultural, and educational rights of Assyrians, Yazidis, and other marginalized peoples should be protected regardless of transformations in population or demographic character of the Nineveh Plain and Sinjar.

Article 125 is an exceptional constitutional provision for a territorial federal solution within Iraq's nascent federal system. This provision is distinct from local government which is explicitly provided for in the authority of governorates under Article 122, which specifies the place of districts, sub-districts, and villages in constituting governorates. It is on this basis that Assyrians have sought the establishment of a Nineveh Plain Governorate since 2005,³⁷ and more recently, Yazidi leaders have called for a Sinjar Governorate.³⁸

The administrative, political, cultural, and educational rights of Assyrians, Yazidis, and other marginalized peoples should be protected regardless of transformations in population or demographic character of the Nineveh Plain and Sinjar. The proposed amendment to Article 125 (detailed below) is justified in light of the discriminatory policies that have left Assyrians, Yazidis, and other marginalized peoples vulnerable to social, economic, political, and especially physical violence. It follows the precedent set by Article 140(1) and Article 140(2) which ensures that Article 58 of the Transitional Administrative Law (TAL) from 2004 remains in effect to restore the Kurdish demography of specific regions, especially Kirkuk. See Article 140(1) and Article 140(2) of Iraq's Constitution and Article 58 of the TAL.³⁹

Further, Article 125 excludes mention of Yazidis, Shabaks, Mandaeans, and Kakai. As constituent peoples of Iraq, these communities should be recognized by the Constitution. Finally, the language promotes the growth of internal sectarianism among Assyrians—detrimental to an already fragile and disadvantaged community. The Transitional Administrative Law (TAL) which preceded the Constitution incorporated the unifying term “ChaldoAssyrian” which was

agreed on at a major October 2003 conference held in Baghdad that involved representatives of political and civil organizations, as well as religious clergy representing the main church denominations in Iraq, including the Ancient Church of the East, the Assyrian Church of the East, the Chaldean Catholic Church, the Syriac Catholic Church, and the Syriac Orthodox Church.⁴⁰

RECOMMENDATION

Expand Article 125 and include the following provisions (draft language provided below):

First: The rights specified in this Article, within the framework of Iraq's evolving system of federalism, will be provided for on the basis of the demographics of various nationalities, such as Assyrians, Yazidis, Shabaks, and Turkomen, as of 2002-2003.

Second: A special commission comprised of commissioners appointed by the elected representatives of these various nationalities in proportion to their representation in the 2005 national elections, will be charged with providing direction to the relevant ministries and relevant commissions, on the right of return for those Assyrians, Yazidis, Shabaks, and Turkomen displaced by ongoing violence and discriminatory policies of governing authorities since 2005.

Third: The special commission shall act expeditiously to take measures to remedy the injustice caused by the discriminatory and failed policies of governing authorities and subsequent terrorist attacks altering the demographic character of specific regions, including the Nineveh Plain and Sinjar.

Fourth: The special commission shall be funded to fulfill its purpose within the equitable share of national revenues provided in Article 121(3), having regard to their resources, needs, and the percentage of their population in 2002-2003.

In addition to the above, Article 125 should be amended to include Yazidis, Shabaks, Mandaeans, and Kakai by name and to reflect the ethnic unity of Assyrians by rejecting the use of denominational and/or sectarian designations as identifiers of distinct communities, separate from one another as different peoples.

Section Six: Final & Transitional Provisions

Article 132

The state shall guarantee compensation to the families of the martyrs and the injured as a result of terrorist acts.

Article 132 should be expanded to also guarantee compensation for the families of genocide victims in addition to genocide survivors. In November 2014, the Iraqi Council of Ministers recognized that the atrocities committed by ISIS against Yazidis and other marginalized groups amounted to genocide. In addition, Article 132 should be amended to expand the scope of harm that merits compensation to include mental and sexual violence in addition to physical violence.

RECOMMENDATION

Amend Article 132(2) to also guarantee adequate care for victims and survivors of genocide and to provide just compensation for families affected by genocide, including those affected by sexual violence.

Article 136

The Property Claims Commission shall continue its functions as an independent commission in coordination with the judicial authority and the executive institutions in accordance with the law. The Property Claims Commission shall be attached to the Council of Representatives.

Systematic policies of unlawful expropriation, government-sanctioned efforts to effectively alter the demographic character of minority-inhabited territories, and extreme violence have violated Constitutional safeguards and served to undermine the right of Assyrians, Yazidis, and other vulnerable communities to own property free from discrimination.

Systematic policies of unlawful expropriation, government-sanctioned efforts to effectively alter the demographic character of minority-inhabited territories, and extreme violence have violated Constitutional safeguards and served to undermine the right of Assyrians, Yazidis, and other vulnerable communities to own property free from discrimination. The Iraqi Commission for the Resolution of Real Property Disputes (formerly called the Iraqi Property Claims Commission) has largely failed to address this longstanding and ongoing problem, rendering the eventuality of conflict resolution increasingly unlikely. For more information, see commentary provided on page 17 under Article 23(2).

Special and targeted provisions are required for land disputes and land expropriation causing demographic change negatively affecting Assyrians and Yazidis are required and linked inextricably to the fundamental rights and freedoms in this Section of the Constitution. Article 136 describes the role and authority of the commission. New language is required to account for and provide redress for the extensive violations committed against Assyrians and Yazidis.

RECOMMENDATION

Article 136 should be amended to include a new sub-clause which accounts for the unique situation facing Assyrians and Yazidis. Draft language is provided below:

The Iraqi Commission for the Resolution of Real Property Disputes (the new name given to the ‘Property Claims Commission’) must establish a special body to verify and provide redress and resolution for property and land rights violations adversely affecting vulnerable minorities, especially Assyrians and Yazidis, in territories disputed by state actors. The special body has two years to produce a report and recommendations after which this sub-article will expire.

Article 140(2)

The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.

Article 140 of the Iraqi Constitution states that the status of the disputed territories—i.e. whether they should be administered by the Iraqi Central Government or the Kurdistan Regional Government (KRG)—should be resolved by 2007, and that it should be the inhabitants of those territories who choose which administration they prefer through a referendum. However, Iraq’s Constitution remains vague on which areas are under dispute, and does not identify which areas of Ninewa Governorate are included in this definition and no authoritative rendering of the disputed territories exists. The designation of some areas as disputed territories stems from the premise put forward by Kurdish nationalist parties that historically Kurdish areas where the demography was altered through forced demographic change driven by policies of Arabization should be “reattached” to the Kurdistan Region of Iraq. Kurdish authorities maintain that their pursuit of the disputed territories is part of an effort to rectify major historical injustices committed against the Kurdish people in Iraq.

When the Iraqi Constitution was adopted in 2005, the KRG had yet to lay claim to the Nineveh Plain; however, today, the Nineveh Plain and Sinjar are considered among Iraq’s disputed territories despite the fact that these areas have never had significant Kurdish populations. KRG de facto administration in these areas occurred through the unilateral imposition of Kurdish authority over the Nineveh Plain and Sinjar in 2003. Primarily because of a lack of sup-

port among local populations for Kurdish annexation, the status of the disputed territories was not resolved by the deadline put forward by Article 140, and the KRG continues to dispute the administrative status of these areas.

The designation of the Nineveh Plain and Sinjar as disputed territories is contrary to the interests of the Assyrians, Yazidis, Shabaks, and other peoples of the region.

The designation of the Nineveh Plain and Sinjar as disputed territory is contrary to the interests of the Assyrians, Yazidis, Shabaks, and other peoples of the region. Kurdish claims to this territory, often at the expense of minoritized communities, have generated resentment towards the KRG. The ongoing political conflict has created lasting uncertainty, prevented development, enabled violence, fueled emigration, and continues to hinder return to areas affected by ISIS. A critical February 2018 report published by the International Crisis Group determined that only the Iraqi Government can stabilize Sinjar and the other disputed territories.⁴¹

RECOMMENDATION

Amend Article 140(2) to define the disputed territories and explicitly reject the designation of Sinjar and the Nineveh Plain as disputed territory, rejecting any referendums to settle the status of these areas.

Part III: Recommendations for New Articles

The Assyrian Policy Institute recommends the following proposed articles for consideration under **Section One: Fundamental Principles**:

Prevention of Genocide

Iraq has a long history of genocide, beginning with the Simele Massacre of 1933 committed by the armed forces of Iraq systematically targeting the country's Assyrian population.

Iraq has a long history of genocide, beginning with the Simele Massacre of 1933 committed by the armed forces of Iraq systematically targeting the country's Assyrian population. Indeed, the Simele Massacre—which took place less than a year after Iraq's founding—set a precedent for subsequent state-sponsored campaigns against Iraq's communal groups, including Saddam's campaign against the Shia community of southern Iraq and the genocidal Anfal Campaign.

More recently, the Yazidi people, along with Turkomen, Shabaks, and Assyrians faced genocide and mass atrocities at the hands of ISIS. The events of 2014 not only threatened their lives and cultures but their very existence in this region. The Yazidis in particular were subject to unspeakable crimes, including mass executions and sexual enslavement. These communities are still reeling from the damage caused by ISIS, and a great number remain externally displaced.

The Iraqi Government's failure to prevent and respond to the threat of ISIS strained relations between members of minoritized groups and government authorities. The Iraqi Government should adopt an Article demonstrating its commitment to protecting its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as their incitement. Further, the Iraqi Government should adopt a mandate to provide adequate care for victims and survivors of genocide, provide just compensation for families af-

fectured by genocide, and to advance measures that can be undertaken to prevent genocide.

SUGGESTED LANGUAGE

The State shall commit itself to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as their incitement, and shall work to advance measures that can be undertaken to prevent genocide and mass atrocities within its borders.

Protection of Cultural Heritage

Catastrophic losses have already been sustained with regard to Iraq's cultural heritage, and many sites remain at great risk.

Long referred to as “the cradle of civilization,” Iraq is home to upwards of 10,000 cultural heritage sites,⁴² including the archaeological remains of ancient cultures as well as more recent architectural achievements. Archaeological sites have been damaged and looted since the start of the post-2003 conflict in Iraq, most recently by ISIS. Historic buildings across the country, namely in Baghdad and Ninewa, have been destroyed as a result of conflict and widespread looting. Catastrophic losses have already been sustained with regard to Iraq's cultural heritage, and many sites remain at great risk. Many of the cultural heritage sites in Iraq have great value and significance to its people, especially to the Assyrian population. The adoption of this fundamental principle would emphasize the importance of protecting Iraq's extraordinary record of human history.

SUGGESTED LANGUAGE

The State is committed to the protection and preservation of all cultural heritage and archaeological sites within its geographical borders.

Prevention of Cultural Genocide

The concept of cultural genocide has never been legally defined or codified. While it lacks a clear or accepted definition, it is generally accepted that cultural genocide involves acts and measures undertaken to “destroy nations’ or ethnic groups’ culture through spiritual, national, and cultural destruction.”⁴³ According to Article 7 of the Declaration on the Rights of Indigenous Peoples:

Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.⁴⁴

There has consistently been a link between cultural and physical destruction in the genocidal campaigns targeting the Assyrian and Yazidi peoples in modern history.

Genocide has many dimensions and layers. There has consistently been a link between cultural and physical destruction in the genocidal campaigns targeting the Assyrian and Yazidi peoples in modern history. Most recently, ISIS specifically and systematically targeted the culture, identity, and heritage of these peoples as part of their policy of genocide and ethnic cleansing.

Many historic sites and holy places belonging to Assyrians and Yazidis have been destroyed. The destruction of heritage is more than just the destruction of property—it threatens the unique identity of the targeted communities. Cultural genocide has jeopardized the survival of the Assyrian and Yazidi cultures, as well as traditions and practices central to their identity.

SUGGESTED LANGUAGE

The State shall commit itself to the prevention of cultural genocide, and shall work to advance measures that can be undertaken to prevent cultural genocide.

The Assyrian Policy Institute recommends the following proposed articles for consideration under **Section Three: Federal Powers, Chapter Four: The Independent Commissions**:

Establishment of a Commission on The Prevention of Genocide

See commentary under “Prevention of Genocide” on page 30.

SUGGESTED LANGUAGE

A public commission on the prevention of genocide shall be established. The commission shall be comprised of experts in human rights and international humanitarian law and shall advance measures that can be undertaken to prevent mass atrocities in Iraq. The commission shall work to enhance the State’s capacity to prevent and address the root causes and drivers of mass atrocities and violent conflict; meet regularly to ensure that atrocities and the risk of atrocities throughout the country are considered and addressed; oversee the development and execution of policies and tools to enhance the capacity of the Republic of Iraq to prevent and respond to mass atrocities; monitor developments within the country that heighten the risk of atrocities; analyze and closely review specific threats or situations of heightened concern; provide the Council of Representatives with recommendations and potential improvements to pol-

icies, programs, resources, and tools related to genocide prevention and response; conduct outreach, including regular consultations with representatives of minority-led nongovernmental organizations to monitor, receive early warning of, and coordinate responses to potential atrocities; promote accountability and deny impunity for perpetrators of atrocities; and engage allies and partners, including the United Nations Office on Genocide Prevention and the Responsibility to Protect to build capacities and mobilize action for preventing and responding to atrocities.

Establishment of a Commission on Religious Freedom

While the Constitution provides for religious freedom, this guarantee has provided little actual protection as Assyrians and Yazidis continue to face religious persecution and discrimination in Iraq.

In the years that followed the 2003 invasion, there were widespread reports of targeted violence against Assyrians due to their Christian faith, including abductions, torture, murders, and bombings. Assyrian churches and Christian religious figures were frequent targets. Yazidis, who are not viewed as “people of the Book” (an Islamic term which refers to Jews and Christians), have also suffered threats, attacks, and persecution. Yazidi spiritual leaders were often targeted; Yazidi religious and cultural buildings were bombed. Extremist groups issued *fatwas* calling for all Christians and Yazidis in the country to be killed. The Iraq War’s deadliest terrorist attack targeted Yazidi villages in August 2007, leaving 796 dead.

In 2014, non-Muslim communities suffered especially egregious, devastating, and large-scale abuses at the hands of ISIS, including forced expulsion from their historic homelands, forced conversion, rape and enslavement of women and children, torture, and massacres. The ongoing persecution against these beleaguered communities has fueled high levels of emigration and internal displacement among Assyrians and Yazidis.

The Iraqi Government has repeatedly demonstrated a lack of regard for the fate of minoritized peoples as well as its inability to end religiously-motivated violence, protect civilian life, or bring perpetrators to justice. According to the United States Commission on International Religious Freedom 2019 Annual Report:

In 2018, there continued to be significant challenges to religious freedom conditions in Iraq, trending toward modest but fragile improvement. The Iraqi government continued to show a lack of willingness or ability to provide proper security for vulnerable religious and ethnic minorities.⁴⁵

The Iraqi Government has repeatedly demonstrated a lack of regard for the fate of minoritized peoples as well as its inability to end religiously-motivated violence, protect civilian life, or bring perpetrators to justice.

To be noncommittal about the importance of religious freedom is to embolden those who hope to establish an Islamic extremist or fundamentalist state in Iraq.

To be noncommittal about the importance of religious freedom is to embolden those who hope to establish an Islamic extremist or fundamentalist state in Iraq. Minoritized religious communities, namely Yazidis and Christians, do not believe that religious freedom and human rights are priorities for Iraqi authorities. The Iraqi Government's inability or unwillingness to stop this violence has created a perpetual sense of insecurity for its most vulnerable communities. Iraqi authorities must take meaningful steps to address religious freedom violations and promote religious freedom among its population. A public commission established for this purpose would signal the Iraqi Government's commitment to producing durable and positive change.

SUGGESTED LANGUAGE

A public commission on religious freedom shall be established. The commission shall be comprised of distinguished individuals noted for their knowledge and experience in fields relevant to the issue of religious freedom and shall include an equal number of representatives from all religious communities in Iraq. The commission shall review the facts and circumstances of violations of religious freedom in the country and make policy recommendations to the President, Prime Minister, and Council of Representatives.

The Assyrian Policy Institute recommends the following proposed article for consideration under **Section Six: Final and Transitional Provisions**:

Transitional Justice for Assyrians and Yazidis

Prior to 2003, the Assyrian population in Iraq was estimated to be roughly 3 percent of the overall population, numbering approximately 1.5 million.⁴⁶ Current estimates suggest the number has dwindled to less than 200,000, raising serious concerns about the survivability of this ancient people. The hundreds of thousands of Assyrians externally displaced by ISIS represent only a small part of the larger exodus that has left the Assyrian population of Iraq on the verge of disappearance. Following the US-led invasion, the Assyrians suffered devastating and large-scale abuses at the hands of state and non-state actors, including forced expulsion from their homeland, murders, kidnappings, and massacres.

Similarly, large numbers of Yazidis have fled Iraq owing to religious persecution, targeted violence, and genocide. Approximately 600,000⁴⁷ Yazidis lived in Iraq prior to the ISIS assaults in the summer of 2014, during which thousands of Yazidis were killed or kidnapped. According to a July 2019 report, approximately 100,000 have emigrated and 360,000 remain internally-displaced.⁴⁸

The hundreds of thousands of Assyrians externally displaced by ISIS represent only a small part of the larger exodus that has left the Assyrian population of Iraq on the verge of disappearance.

The drastic fall in the number of Assyrians was related in part to their strong presence in urban centers, such as Baghdad, Mosul, and Kirkuk, whereas Yazidis generally remained in their traditional settlements, such as Sinjar, until the rise of ISIS. Even there, however, they were not spared the terror of extremist groups as demonstrated by the 2007 bombings targeting Yazidi areas in Ninewa and the 2014 Yazidi Genocide.

The proposed Article is warranted due to the lack of rule of law and the discriminatory policies which have left the Assyrians and Yazidis vulnerable to forced displacement and targeted violence. It flows from the precedent set by Article 58 of the Transitional Administrative Law (TAL), which provided the basis for Article 140 of the Iraqi Constitution. These two articles appropriately identified the need to first reverse the prejudicial, unjust demographic changes imposed on Iraqi Kurds by the previous regime in order to facilitate a just political solution to territorial questions. The same principles and precedent must be applied to Assyrians and Yazidis who have been victims of forced displacement and ethnic cleansing by the previous regime and since 2005, including at the hands of the KRG.

SUGGESTED LANGUAGE

This Constitution's provisions for relevant rights and liberties, especially those in relation to security, exceptional federal arrangements, and equitable division of revenue, will be provided for on the basis of the population of Assyrians and Yazidis as of 2005, when the Constitution was adopted. All relevant articles and provisions enabled by legislation will also take into account the need for implementation on the basis of Assyrian and Yazidi population numbers as of 2005. This must form part of a Constitutional imperative to the fundamental, globally recognized, right of return for all refugees and internally-displaced persons.

Appendix 1: Assyrian Democratic Movement Statement on Iraqi Constitution (September 19, 2005)

Assyrian Democratic Movement

Declaration

The expanded meeting of the Assyrian Democratic Movement (ADM) Central Committee on September 19, 2005, addressed the final draft of the constitution presented to the United Nations. Presumably, Iraqis will vote on this draft in a referendum on the upcoming October 15. The meeting evaluated the devoted efforts that were spent generously in preparing and drafting of the constitution draft and the rapid efforts devoted towards the assembling of the most inclusive representation of Iraqi components, groups, and fabrics to participate in its drafting.

Furthermore, the meeting evaluated positively other articles in the draft, specifically those pertaining to humans' rights, their fundamental freedoms, including those that are connected to our people's rights. However, the draft stopped short at issues and points that do not reflect equality and conformity between all Iraqis in a manner that is fair and in which it strengthens national unity and promotes harmony that we seek for all Iraqi fabrics.

Regarding our ChaldoAssyrian Syriac people, the ADM struggled for more than twenty-six years to institutionalize our ethnic identity in the constitution. Since its establishment in 1979, the ADM considered the national unity of our people as sacred that could not be compromised. From this understanding, the meeting stopped at the followings:

1. The unjustified concealment of our Babylonian Assyrian civilization in the preamble. In addition, the preamble neglected unjustifiably to mention the oppression, mass murders especially in Simele and Sooriya, the destruction of hundreds of villages and tens of monasteries and churches by the past dictatorial regime against our people, especially when the preamble included similar examples committed against other components and fabrics of the Iraqi people.
2. Article 122 affected the unity of our people in its core when it divided our people into Chaldeans and Assyrians contrary to fact and history.

We hold the responsibility for what happened to interferences by authorities from both branches of the Church of the East (Chaldean and Assyrian). These interferences were in matters outside the framework of their duties and reflected a narrow and sectarian vision and adherence to personal interests. In addition, it was due to the stand of the two main groups to concord in this same direction. They did not resonate to the demands of our people and the efforts and objections of our ChaldoAssyrian representative in the constitution drafting committee in order to institutionalize our unity and presence in the preamble when pertaining to ethnic identity or oppression. Initiated by our absolute belief in the rooted and unity of our ChaldoAssyrian Syriac nation and in its historic struggle and because of our historic national and ethic obligations we must point to this great imbalance and flaw that is not accepted at all.

While we highly appreciate the keen stands regarding the unity of our people that were reflected by many institutions, activists, ChaldoAssyrian parties, and thousands of notables who demanded a commitment to the unity of our people, we stress to continue in the path of unity that the ADM struggled to accomplish through its combative history baptized with the blood of martyrs.

Since the constitution draft is now in front of the nation to judge, it is our duty to clarify our stand and to have our people understand the whole picture. Our people shall have the final judgment on it.

The expanded meeting of the Central Committee
Assyrian Democratic Movement
September 19, 2005

Appendix 2: Article from Fall 2005 Edition of the *Assyrian Star*

Vol. LVII, No. 3 Assyrian Star ܠܝܬܝܢܟܝܢܐ Fall 2005

In his press briefing on Feb. 8, IECI spokesman Farid Ayar blamed the ballot fraud on unidentified "militiamen or armed men". According to Maj. Cruz, however, the only such incident in the province was in Bashiqa.

Ayar refused to divulge which party would have profited from the fraudulent ballots, telling the journalists, "I can't accuse any party, because we don't know."

The KDP obviously miscalculated in thinking that electoral officials in Nineveh could be bribed to turn a blind eye to such crude ballot stuffing. But no damage was done by the failed attempt. The IECI helped by diverting press attention from the Kurds, and U.S. news media never dug into the story behind the mountain of fraudulent ballots exhibited by the commission.

In the constitutional referendum, the Shiite government will share the Kurdish interest in doing whatever is necessary to avert the defeat of the constitution in Nineveh. Meanwhile, the U.S. military remains heavily dependent on Kurds in Nineveh. The KDP may well believe that a more sophisticated Kurdish ballot-stuffing scheme will work on October 15. (By Gareth Porter for Inter Press Service News Agency. www.ipsnews.net 28 September 2005)

Assyrian Duo Wins Sweden's National Music Competition

Last Friday two Assyrian girls, Maria Chabo and Maria Josefson, both 15, won the national singing competition in Sweden called Lilla Melodifestivalen. The two "Marias" performed a Swedish song "Grändlös kärlek" (Endless Love) on the national television SVT 2.

Looking cool and colorful on stage, the members of the band "M+" - perhaps in reference to the two similar first names, received support from the Assyrian callers who helped vote for their favorite contestants. However, just as in the "adult" version of Melodifestivalen this year, the jury vote outweighed the viewers' choice in the televoting. The winner of the televote ended up finishing in third place. The jury selected M+ for all-around performance.



Maria Josefson & Maria Chabo of M+

M+ will represent Sweden in the upcoming Junior Eurovision Song Contest in Hasselt, Belgium in November. This year, Lilla Melodifestivalen offered the audience a great variety of musical styles starting from a piano ballad followed by pop, disco and even Latino inspired songs. 1400 songs were sent in to compete for the chance to represent Sweden at Junior Eurovision Song Contest 2005. Only 10 entries made their way to the final.

The winner was selected by adding the results of the vote of the jury members from 5 different regions in Sweden (North, Middle, East, West and South) as well as the televote. Regional jury groups announced their favorites by giving them 4, 6, 8, 10 and 12 points, but the rest of the songs received 2 points each. The television votes from viewers carried 10 points and then 20, 30, 40, 50 up to 60 points.

More than 197,000 votes were cast from the television audience, a remarkable participation for a national selection for Junior entry. Maria Josefson and Maria Chabo were born in Sweden. (Zindamagazine.com 12 October 2005)

Assyrians Reject Iraq Constitution

Assyrian opposition to the Iraqi draft Constitution has solidified after statements of rejection by the Assyrian Democratic Movement (ADM) and the Assyrian General Conference (AGC). The statements in opposition to the Constitution follow an earlier rejection by the Assyrian Democratic Organization (ADO) as well as widespread grassroots demonstrations in opposition by Assyrian Christians (also known as Chaldeans and Syrians) in the Nineveh Plain.

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According to the September 19th ADM statement, the Constitution falls short from the Assyrian perspective on several counts including:

- "The unjustified concealment of our Assyrian Babylonian civilization in the preamble. In addition, the preamble unjustifiably neglected to mention the oppression, mass murders especially in Simele and Sookriya, the destruction of hundreds of villages and tens of monasteries and churches by the past dictatorial regime against our people, especially when the preamble included similar examples committed against other components and fabrics of the Iraqi people."
- "Article 122 affected the unity of our people at its core when it divided our people into Chaldeans and Assyrians contrary to fact and history."

The AGC statement noted that "the Constitution did not meet the Iraqi people's ambitions in general and the Assyrian people in particular." In apparent reference to the Kurdistan Democratic Party's (KDP) expansionist and secessionist ambitions, the AGC statement added "The Constitution came full of separatist intentions dealing with different Iraqi sects, according to the principle of numbers...not on basic principles and laws of a nation." Specific points of contention from the Assyrian perspective included "limiting to two the official languages of Iraq and ignoring the existence of other ancient and indigenous languages." Again in apparent reference to KDP tactics, the AGC statement criticized "race based ideologies and separatist views that threaten the integrity of Iraq." Referring to the Constitution's separate recognition of Assyrians and Chaldeans, the AGC decried the division "as two Nations...as opposed to one, ignoring the historical, social, geographical, and linguistic facts that emphasize our existence as one Nation."

For Assyrians, the prospects of a failed constitution raise real fears of a generalized deterioration in security throughout Iraq. During such times, the very same minorities who end up rejecting the Constitution will probably disproportionately bear the brunt of more civil unrest. However, as one Assyrian leader noted "We are not rejecting the democratic process, far from it. We fully support the democratic process and are making full use of it to clearly and loudly resist our marginalization. We do not believe this Constitution will lead to democracy in Iraq. On October 15, we will go to the polls and ask this government for a better, more democratic Constitution." (www.AINA.org 5 October 2005)

Inception of the Diyarbakir TurAbdin Assyrian Association

Ms. Helma Adde is the first president of the Diyarbakir TurAbdin Assyrian Association in New York/New Jersey. Last month the organization formally publicized its inception at a dinner party. The following are excerpts from Ms. Adde's speech:

About eight months ago, a group of about ten concerned Assyrians got together to discuss the notion of an Assyrian club in this tri-state area. We all recognized the cultural needs of our Assyrian community, but through our discussions that evening, and reflections on past organizations and influential Assyrians, we realized that we are not original in our thought. We are simply the descendants of the earliest Assyrian nationalists to establish themselves here in the United States, right here in New York actually. It was then that we realized the significance of the task ahead of us.

We are the children of Assyrians who have helped to shape the idea of Assyrian nationalism for the Assyrians in the west. Not only are we Assyrians, but we are living in New York or New Jersey, the states that were home to legends like Naoum Fayik, an accomplished writer and poet born in Diyarbakir who immigrated to New York in 1912 and settled in Western New York. Assyrian New Yorkers can date their history in this country to people like Joseph Durna, again born in Diyarbakir, who settled in Newark in the early 1900s where he established himself as a well respected lawyer. Throughout his ca-

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