

Submission to UNSR on FoRB by the Coalition for Religious Equality and Inclusive Development (CREID) on Violence linked to Intolerance and Discrimination Based on Religion or Belief in Iraq

Background

The Iraqi context demonstrates patterns of discrimination and exclusion which have repeatedly caused tensions that lead to violence, both amongst minority groups and against them. Since 2003, the escalation in violent attacks against religious minorities compelled many to leave the country *en masse*, a process accelerated by the conflict with ISIS which resulted in the displacement of nearly 6 million people. Iraq continues to face huge challenges in facilitating the return to normal life post-ISIS, and a volatile security environment remains.

Lack of minority representation in political and public life has resulted in weak protection structures and lack of access to legal remedy or support. Economic, security and political weakness of minority groups has made them an easy target for attacks by those who seek to undermine state control or simply gain expansion of territory. Furthermore, the pervasiveness of hate speech in Iraq has created an environment of discrimination and marginalisation in daily life which often leads to violent attacks perpetuated by a climate of impunity. Structural inequalities and root causes of the recent conflict have not been addressed and as such, Iraq risks falling into renewed cycles of conflict.

Elements that contribute to tension and violence

1. Structural inequalities and discrimination

Political and public participation and identity

The many conflicts in Iraq have reified identity divisions between communities and individuals. The existing policies that have marginalised minority identity in the past can be viewed as drivers or contributors to identity-based conflict and thus must be amended or replaced by laws and policies that safeguard minority identity, language culture and heritage.

- Legislative discrimination against minority identity

Article 2(2) of the constitution guarantees freedom of religious belief and practice and also provides that “No law may be enacted that contradicts the rights and basic freedoms’ in the constitution”. However, Article 2 also states that “Islam is the official religion of the State and is a foundation source of legislation” and that “[n]o law may be enacted that contradicts the established provisions of Islam.” Although Article 125 guarantees “the administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians, and all other constituents,” Iraq has so far failed to enact a law implementing this provision. This has contributed the perception amongst minority groups that they are ‘second class’ citizens.

Outside Kurdistan Regional Government (KRG), Saddam era prohibitions on the practice of the Baha’i faith remain in effect, punishable by up to 10 years imprisonment. According to the Penal Code, Jews are not permitted to hold jobs in state enterprises or enlist in the military.¹

In personal status matters, Article 45 of the Juvenile Welfare Law of 1983 holds that “the minor of an unknown affinity shall be considered as Iraqi Muslim unless it is proved to the contrary”.² This is of particular concern where children conceived through rape by ISIS militants, but born to a non-Muslim mother, must be registered as Muslim. Minority leaders also report that parents incorrectly registered as Muslims are forced to register their child as Muslim or risk the child becoming stateless.³

The Personal Status Code of 1959 applies Islamic Shar’ia principles to non-Muslim minorities, violating their cultural and religious norms with regard to marriage, divorce and inheritance. Furthermore, the Civil Status Law of 1972 holds that the religion of a child shall follow the religion of the Muslim parent and applies not only to new-borns, but also to children born before a parent converts to Islam. In practice, these laws have significant ripple effects on family matters of custody and inheritance, which legally favour the Muslim individual.⁴ The policies on a person changing their religion on their identification documents from Muslim to another are extremely restrictive.⁵ Instances of open conversion out of the Muslim religion are rare and further limited by the conversion potentially resulting in ostracism and/or violence at the hands of the individual’s community, tribe or family as well as Islamist armed groups.⁶

Iraq grants biases to certain groups in its political and justice system, effectively condoning discrimination and providing justification for the suppression of particular identities. This has not only increased tensions amongst minority communities, but also other groups

¹ <https://www.state.gov/wp-content/uploads/2019/05/IRAQ-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>, pg. 5

² Bureau of Democracy, Human Rights and Labor, *Iraq 2017* p.10

³ Juvenile Welfare Law 1983 – <https://bit.ly/2TLb3kC>

⁴ Interview with Yezidi Lawyer and Manager of IDP Camp, Dohuk, February 2019

⁵ *Ibid.*

⁶ UNHCR, ‘International Protection Considerations with Regard to People Fleeing Iraq’, May 2019, pg. 81

marginalised from sites of power. These frustrations and grievances were utilised by ISIS to mobilise communities who felt discriminated against or unrepresented.

- Political and public participation

Post-Saddam, Iraq entered into a power-sharing agreement which has remained in effect today. Electoral law reserves 8 seats in the 328-member Council of Representatives (CoR) for minorities: five for Christians and one each for the Sabaeen-Mandaeans, Yezidis and Shabak. Baha'i and Kaka'is do not have a reserved seat in the CoR. What's more, despite quotas for some groups there is concern regarding the extent of genuine minority representation as those elected in minority positions are often acting on behalf of larger political blocs instead of their community interests.

The KRG does not reserve seats for Yezidi, Shabak, Black Iraqis or religious minorities other than Christians. Increasing reports also suggest that minority political representatives are targeted if they are critical of the main Kurdish political parties. For example, in July 2017, the Assyrian mayors of predominantly Assyrian towns of al-Qosh and Tel Kayf were allegedly replaced by mayors loyal to the Kurdish Democratic Party (KDP).⁷

The fixed power-sharing agreement may have served as a steppingstone to appease various sects post-Saddam, but there have since been several conflicts in Iraq to which identity has been a core element, yet the political system maintains the same status quo that keeps large blocs in power and marginalises minorities. While political quota systems may be important post-conflict, they risk entrenching people in their group identity and can overlook grievances that may occur within or between minority communities, as well as the other power dynamics that often can be in effect within minority groups such as social status, class, economic status and gender. As such, to truly address minority grievances and avoid tensions, minority perspectives must be sought and applied throughout all fields of governance, in addition to minority representation.

2. Socio-Economic Marginalisation

Minorities in Iraq largely live in more regionally under-developed areas. There is an evident lack of resources, services and socio-political institutions in minority towns, which has been exacerbated by the destruction caused in the recent conflict.

Conflict-affected minorities such as Yezidis continue to suffer economic exclusion which can tie groups into cycles of deprivation. These levels of socio-economic marginalisation can greatly impede minorities' access to their rights, with potentially major implications for their security, status and wellbeing.

- Employment

⁷ Bureau of Democracy, Human Rights and Labor, *Iraq 2017* p.13

Minorities continue to accuse the federal Government of Iraq of sectarian bias in the recruitment of public sector employees. There is practically no minority presence in high-level posts within public bodies, especially in the security and police forces. Minorities are also underrepresented in public employment at the governorate and municipality level. The public sector accounts for approximately 60% of Iraq's full-time employment.

Dire economic circumstances and lack of employment opportunities have on occasion led minorities to take up arms. In Khanke Displacement Camps, many of the young IDPs had registered on waiting lists to enlist in armed groups. The motivation to escape the deprivation of displacement was so much so, that many Yezidi youth expressed a desire to join any armed group that came to enlist fighters, no matter their political or military motivation or legitimacy under state authorities. Economic deprivation and marginalisation were also motivators for many who joined ISIS.

If action is not taken to promote minority rights and the development of minority communities, including employment opportunities – particularly for its youth – frustrations with the state will continue to emerge and perceptions of marginalisation and exclusion from Iraqi society will grow. As a result of corruption, low employment opportunities, and political grievances, the outbreak of large-scale popular protests in Basra and other Iraqi cities from July 2018, and the wave of violent repression of civilian activists since then is an indication of the conflict and violence which can emerge from frustrations about structural inequalities.

- Education

Many minority communities in Iraq have fewer educational opportunities, higher rates of poverty, and higher unemployment than other groups.

After 5 years of displacement, several generations of children have been unable to access a formal education while many have dropped out of school altogether. In areas of return, access to education remains a major challenge. Both during ISIS occupation and during the retaking of cities, buildings were destroyed or damaged and require repair before learning can resume. Further revision of curricula in schools in areas previously under ISIS control is required while teachers may need retraining. Minority education is further impacted by state economy and corruption. Controversy has surrounded disappearance of nearly 1.1 billion Iraqi dinars allocated for the salaries of teachers employed by the Sinjar Directorate of Education, which is under the jurisdiction the Kurdistan Regional Government (KRG). As a result, the teachers, who are mostly members of the Yezidi ethno-religious community, have not been paid and may boycott the reopening of schools during the easing of Covid-19 lockdown restrictions.

If education services do not resume swiftly, there is a heightened risk of child labour and early marriage, while adolescents could be prone to political and social manipulation, hence exacerbating social conflicts and increasing recruitment to armed groups.

- Health

According to World Bank statistics, apart from Tel Afar, al-Muqdadya and al-Ramadi, all cities in regions occupied by ISIS had at least half of their healthcare facilities partially or fully destroyed.⁸ Many minority areas suffered already from disproportionately poor healthcare facilities which have only worsened in the intervening years.

Damage to housing and infrastructure also threaten public health in areas of return, with the presence of explosive remnants of war and damage to basic services, including electricity and clean water, particularly pressing concerns.

The Covid-19 pandemic has heightened the need for health services, and minority towns long neglected are gravely vulnerable during this time. This has added to sentiments of exclusion, and reinforced minority self-reliance, entrenching community divides even further.

3. Land and property disputes

The expulsion of ISIS from minority territories has not resulted in reinstatement of property ownership and many displaced communities have not been able to return. The ongoing border disputes between the Iraqi government and the KRG are a persistent security concern for local communities. Looting and restrictions on freedom of movement by Kurdish forces on minorities and minority lands are indicative of a larger campaign of demographic change, and an operation to assume control of larger territories. Similarly, the GoI has been largely accused of supporting and abetting the building and reallocation of infrastructure in retaken Christian areas to Shabak communities, fuelling territorial disputes between Shabak and Christians, and contributing to demographic change. Reports indicate that more than 30,000 Christian properties have been seized by political parties, criminal networks, and some militia groups in Baghdad, as well as areas of Anbar, Babil, Basrah, Diyala, and Wasit with impunity, despite the prime minister's office promising open investigations into the seizures.⁹

Land disputes between central and regional government has pressured communities into identity politics. Ethnic or religious affiliation with either state authority is rewarded with economic and development policies, which have polarised communities and deepened divides between and within minority groups, thereby aggravating tensions. For example, Christians' legal complaints against Kurds regarding land and property disputes are rarely upheld by courts. In 2018, of 59 long-pending property dispute cases between Christians and Kurds, the KRG courts had only ruled on five cases, despite that four out of the five cases were ruled in favour of the Christian party.¹⁰

⁸ World Bank Group, *Iraq: Reconstruction & Investment – Part 2* p.xvi

⁹ <https://www.state.gov/wp-content/uploads/2019/05/IRAQ-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>, pg. 20

¹⁰ <https://www.state.gov/wp-content/uploads/2019/05/IRAQ-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>, pg. 16

The importance of minority land should be noted as, aside from a sense of home and community, minority identity and heritage are often deeply rooted in their territories. The loss of land for religious minorities such as Christians and Yazidis has been the start of a drastic decline of their wellbeing which has persisted for over 5 years and will likely continue amongst future generations. If minority land is not restored, protected and ownership reinstated, a great sense of minority grievance may fester and evolve into violence.

4. Hate Speech

Hate speech in Iraq has played a major role in creating stereotypes, motivating discrimination and building support for violence against minorities. In the less severe outcomes this has resulted in social exclusion and in the worst case, has contributed to genocide. Hate speech in Iraq can be found systematically promulgated through politics, religion, the media and even education systems.

There is currently no law in Iraq that criminalises hate speech and incidents of it go largely unchecked. An Anti-Discrimination Law, which also includes a provision on hate speech, had its first reading in the Iraqi parliament in 2016 but due to a change in government, it must begin the enactment process anew.¹¹ While the government has attempted to close some media outlets accused of promulgating hate speech, many sectarian channels continue broadcasting.¹² Furthermore, Iraq's totally unregulated internet leaves the government ill-prepared to tackle hate speech online.¹³

Education systems in Iraq directly impact understanding on minority and majority cultures and religions and in absence of a diverse curricula, it is difficult to develop the foundations of tolerance amongst Iraqi youth. Officially, the government does not require non-Muslim students to participate in religious instruction in public schools, but some non-Muslim students nevertheless report feeling pressured to do so. Christian and Yazidi leaders report continued discrimination in education and a lack of minority input on school curricula and language of instruction.¹⁴ In 2015, the Ministry of Education promulgated a new curriculum incorporating lessons on religious tolerance.¹⁵ While the ministry has purportedly established a "Human Rights Unit" to promote human rights and facilitate national reconciliation, to-date the curriculum remains largely unchanged.¹⁶

5. Justice Mechanisms

¹¹ OHCHR, 'Committee on the Elimination of Racial Discrimination reviews the situation in Iraq'

¹² Wollenberg, A., El-Richani, S. & Jekta, M., 'In Defence of the Iraqi Media – Between Fuelling Conflict and Healthy Pluralism', *Global Media Journal – German Edition*, Vol.7, No.1 (2017) p.5

¹³ Jawad, H., 'Cybercrime Legislation in Iraq', *Al Tamimi & Co.*, September 2017 – <https://bit.ly/2THdhm1>

¹⁴ <https://www.state.gov/wp-content/uploads/2019/05/IRAQ-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>, pg. 15

¹⁵ Bureau of Democracy, Human Rights and Labor, *Iraq 2017* p.15

¹⁶ OHCHR, 'Committee on the Elimination of Racial Discrimination reviews the situation in Iraq'

Justice procedures and mechanisms for ongoing abuses

A fragile state, weak rule of law and the unchecked proliferation of militia groups have encouraged both systematic and opportunistic crimes against Iraq's religious minorities. Minority representatives continue to report uneven application of the law and profess a lack of faith in police to effectively investigate and prosecute crimes against minority communities.¹⁷ While the GoI has shown signs of support for minority rights, many minority communities doubt that religious freedom and human rights are truly priorities for Iraqi leaders. A lack of faith in formal protection structures which failed or neglected to protect them from violence, particularly if systematic and large scale, can cause minorities to take up arms to form their own protection structures which fall outside the regulation of the state. Minority militias were indeed formed during the height of the anti-ISIS campaign and continue to operate to 'secure' and defend retaken minority territories. Far removed from sites of power, and in absence of strong protection laws (such as anti-discrimination law), minorities may resort to tribal justice or revenge attacks which can feed into cycles of violence and exacerbate tensions.

Justice procedures and mechanisms post-conflict

Historic memory of crimes committed against groups of people can continue to divide relations between communities. If left without acknowledgment, justice and where possible remedy, the memories of ISIS attacks against groups, (together with memories of how Sunni neighbours told ISIS where to find minorities or stood by whilst genocide took place) will likely fester for generations and eventually lead to violence. For example, the withdrawal of Peshmerga from Yezidi territories just prior to the attack of ISIS on the community has seriously damaged relationships between the KRG and Yezidis and on several occasions tensions between the communities have resulted in violent attacks.¹⁸ Iraq acknowledges religious minorities as targets of the ISIS campaign but there have been little to no government efforts to memorialise victims, including that of the Yezidi genocide.

In September 2017, the UN Security Council adopted Resolution 2379 to establish an investigative team to support domestic efforts to hold ISIS accountable.¹⁹ While attempts have been made to preserve over 200 mass grave sites discovered in Iraq, the investigation has not progressed with sufficient urgency, risking the decay and destruction of vital evidence.²⁰ Although Resolution 2379 has identified the Iraqi courts as the primary site for prosecuting ISIS fighters, reports suggest that Iraqi judges have rushed to convict ISIS fighters, often in very short group trials, under the problematic Anti-Terrorism Law (2005), often resulting in the death sentence.²¹ Under the Anti-Terrorism Law, perpetrators are not prosecuted for crimes against humanity, war crimes or genocide but

¹⁷ Bureau of Democracy, Human Rights and Labor, *Iraq 2017* p.22

¹⁸ EASO, 'Country Guidance: Iraq', June 2019

https://www.easo.europa.eu/sites/default/files/Country_Guidance_Iraq_2019.pdf p69

¹⁹ United Nations Security Council, 802nd meeting, *Resolution 2379*

²⁰ UN News, 'ISIL's 'legacy of terror' in Iraq: UN verifies over 200 mass graves', 6 November 2018 – <https://bit.ly/2Pi48xN>

²¹ Foltyn, S., 'Justice for the Enemy', *The Intercept*, 17 June 2018 – <https://bit.ly/2YeKKTq>

rather for their membership in a terrorist organisation. Beyond identification of ISIS members, survivors are rarely part of the of trial procedures, meaning that victims never obtain justice for crimes committed against them.

Furthermore, efforts to hold popular mobilization forces (PMF) and government forces to account for human rights violations have been mired in secrecy, with concerns raised about the independence of investigations,²² likely contributing to further minority resentment.

Notably, since ISIS' control and proliferation in majority Sunni Muslim occupied territories, there has been a social tendency which is reflected by PMF and Iraqi security forces (ISF) attacks, to blame Sunnis for the crimes of ISIS. If the historic injustices against minorities are left unremedied, there is a great risk of rising tensions and violence amongst minority communities neighbored by Sunni former ISIS stronghold towns. Such tensions are already augmented by the fact that the homes and properties of these towns remain intact while minority territories have been destroyed; a visual and continuing reminder of the injustice experienced by minorities.

About CREID

The Coalition for Religious Equality and Inclusive Development (CREID) provides research evidence and delivers practical programmes which aim to redress the impact of discrimination on the grounds of religion or belief, tackle poverty and exclusion, and promote people's wellbeing and empowerment. CREID is led by the Institute of Development Studies (IDS) in partnership with Al-Khoei Foundation and Minority Rights Group and is funded by UK aid from the UK Government. www.ids.ac.uk/creid

CREID partners



²² Human Rights Watch, 'Iraq: Fallujah Abuses Inquiry Mired in Secrecy', 7 July 2016 – <https://bit.ly/29tq3vR>