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**REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15 (C)
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1**

Iraq

Introductory Executive Summary

Key Words: Turkmen, Iraq, north of Iraq, Kurdish authorities, constitution, Indigenous peoples, minorities, cruel and inhumane treatment, torture, arbitrary detention, ethnic cleansing and SOITM.

The Iraqi Turkmen Human Rights Research Foundation, known as SOITM, and founded in 2001, is an institute which focuses on human rights and democracy pertaining to the Turkmen of Iraq and other Iraqi non-ruling (minority) communities. It maintains regular contact with Middle Eastern academics, the international press, policy makers and various human rights organizations.

SOITM provides information under sections B, C, and D outlined in the *Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism*:

- In **Section B**, SOITM focuses on the **normative and institutional framework of the State**, placing particular focus on the drafting of the Iraqi constitution and evaluating the contents and discuss gridlocks of the amendment.
- **Section C** is focused on the **implementation and efficiency of the Iraqi normative and institutional framework**, drawing attention to the north of Iraq, inefficiencies in administration, demographical changes, imbalance in standard of living, lack of monitoring, incidences of cruel and inhumane treatment, torture, arbitrary detention and enforced disappearances.
- **Section D** issues a number of **recommendations** for action by the Iraqi authorities and United Nations Organs to address the areas of concern.

Section B: Normative and institutional framework of the State

Undemocratic Constitution drafting process

Transitional Administrative Law (TAL)¹ was drafted by the Iraqi Governing Council and can be considered a preliminary version of the Iraqi constitution. TAL demanded a codification of the constitution by 15 August 2005 and a referendum to ratify it by October 15, 2005. The drafting process of the Iraqi constitution suffered under timeframe restrictions and deadline pressure from both domestic and US administration. The committee met for the first time less than two months before the deadline. The constitution bypassed debate and parliamentary ratification. It was only published and distributed two weeks before the referendum and there was no public discussion or debate.

On July 19, three gunmen assassinated M. Issa and D. H. al-Obeidi, two Sunni representatives working on the constitution, outside a restaurant in Baghdad.² The Sunni boycott of the constitution committee ended in a short time. To prevent boycott of Sunni bloc, Article 142 was added, according which the amendments left for the following parliament. In the referendum, the Sunnis voted against constitution. This contravenes Article 21.3 of the UN Universal Declaration of Human Rights which states that the "will of the people shall be the basis of the authority of government".³

Up to now, the constitutional review committee has not realized any amendments.⁴ Federalism and related paragraphs (the power of the federal and central authorities, the boundaries of Kurdish region and underground wealth) remain the most controversial subjects to be amended. Deba'athification, personal status law and harmony between the Islamic laws and the Human Rights principles and minority issues still needed to be agreed upon.⁵ However, in addition to the unsolved issues, the results of voting in the Iraqi parliament and the disapproval of two-thirds of the voters in two governorates remain the crucial stages which should be successfully passed to have a permanent constitution for Iraq.

Discrepancies in the Constitution

Inconstancies in the Iraqi constitution have been nationally and internationally reported.⁶ Various constitutional issues disturb functioning and viability of the Iraqi state: a. Serious restrictions on the authority of central state. b. Contradictory articles. c. Granting independency to the regional authorities in important state's power. d. Living of future decisions in non-treated fields to the regional authorities. e. Sharing the regional governments in almost all the authorities of the central government. Additionally, Article 142.4 refutes the will of the majority and Article 4.2 unreasonably dictates the huge numbers of governmental official documents to be published in Kurdish.⁷

Discrimination in the Constitution

Attempts of Kurdish authorities to emphasize their ethnic role within Iraq can be considered the dominant factor that contributed to discrimination outlined in article 4 of the constitution. This Article encourages ethnic discrimination against Iraqi indigenous peoples. It differentiates between Arabs and Kurds, and other indigenous Iraqis. Article 4.4 ambiguously refers to a notion which further complicates the use of mother tongue by Indigenous peoples. It demands a population density before recognizing a language as official in that region. This process relies on a further authority deciding what constitutes a population density in a region. In case study of Kerkuk, despite its dominating Turkmen nature, the Kurdish authorities who have overriding decision the province refused to use Turkmen as an official language. It took four years until the federal court approved Turkmen language as official in Kerkuk, but still the application of the law is very limitedly applied.⁸

Deadlocks in the federalism issues

The federal system, its boundaries, size of its power and subterranean resources are considered the major issues requiring amendments in the Iraqi constitution. Federalism, in fact independency, is of primary demand of the Kurdish bloc, opposed by almost all other Iraqi political groups. These disagreements are reducing national reconciliation and state rebuilding processes by fuelling the already fragile security situation.

Boundaries of Kurdish region, Vast regions out of the Kurdish territories are claimed by the Kurdish authorities,^{9, 10} most of which are historical regions of the Iraqi Indigenous peoples. Kerkuk city is well-known for its Turkmen nature.^{11,12} The historical presence of the Shabaks, Yazidis,¹³ Chaldeo-Assyrians,¹⁴ and Turkmen in Nineveh province are well-documented. The Turkmens and the Arabs in north of Diyala are more than the Kurds. Moreover, the Kurdish presence in most of these regions is not ancient.^{15,16} and the non-Kurdish communities dominate the population in these regions. The construction of boundaries and regions along ethnic lines is impracticable.

Subterranean resources, the regions which the Kurdish authorities insist to include in Kurdish region store huge oil and gas deposits. These fields are found in regions where the social demographics present Kurds as a minority or equal in size to other ethnic groups. Baba Gurgur oil fields in Kerkuk, Gayyara and Ain Zalla oil fields in Mosul province and in Naftkhana in Diyala province are the oil fields in the region.

Power of federal region, The Kurdish authorities have ruled their region since 1991, govern with near autonomy. They hold significantly more posts in the Iraqi state. In the Iraqi constitution, the power of Kurdish region is almost equaled to that of central government, which influences negatively the workability of state. The recently published constitution of Kurdish region comprises all powers and institutions of an independent country and clearly contradicts the Iraqi constitution.¹⁷

As a result the Kurdish authority's demand of immense lands, huge underground wealth and independence are exceptionally unpractical and unrealizable; their inflexible and provoking approach¹⁸ delays the constitutional amendments, disturbs reconciliation process, worsens the already insecure condition and certainly and consciously brings the region closer to an enduring war.

Section C: Promotion and protection of human rights on the ground

Inefficiencies in administration

In the North of Iraq¹⁹ rebuilding of administration in the years following the collapse of the Ba'ath regime developed under the authority of occupation troops, Kurdish political parties, and Peshmerga militias. In this chaotic, unstable, insecure and unmonitored environment, the human rights situation has deteriorated in the following ways: a. Regions claimed by the Kurdish authorities are mainly inhabited by the Iraqi non-ruling communities (Indigenous peoples) who are already exhausted by decades of suppression by the former regime.²⁰ b. Being well armed, strongly motivated and powerfully supported by the Coalition Forces in early years, Kurdish political parties have ensured absolute superiority over the other Iraqi communities in the region, whose land they claim. c. The strong desire and continuous efforts of the Kurdish authorities to expand their lands, where other Iraqi communities live, caused the unbalanced conflict between powerful Kurdish authorities, which have already dominated the administration, and the vulnerable powerless Iraqi communities. d. Decades of living through violence in the rough mountainous regions and a lack of education have negatively influenced the attitudes of Kurdish actors and militias towards the idea of universal human rights. e. The security-first approach permitted the Kurdish Peshmerga militias to work on party political agendas. f. Almost complete lack of monitoring.

Lack of Monitoring and Evaluation of Human Rights Situation

The following major factors have meant that aggressive violations of human rights could not be monitored, reported and published: a. the engagement of the Iraqi government, coalition authorities and the international community with the fierce sectarian quarrel in the middle of Iraq, which caused tens of deaths daily and for years. b. Complete absence of monitoring of the human rights situation. Neither the United Nations Assistance Mission to Iraq (UNAMI) could establish a workable office in the north of Iraq, other than in Erbil, nor has there been presence of international human rights organizations in regions other than within the Kurdish Regional Government.

Demographic changes

Administration; The Coalition authorities and their Kurdish allies organized the city councils which appoint the head of administrative units, governors and mayors, chiefs of police and directors of governmental offices. Tens of thousands of peoples were appointed. The great majority of staff which was appointed to these posts was Kurds who brought in many cases their families from other provinces. **(An. 2)**

Population; Hundreds of thousand of families were brought to the newly controlled regions. They built houses on all types of lands. Thousand of Arabs are forced to leave the region. Thousands of buildings have been occupied by the newcomers and used as homes for families or offices for political parties.

Kerkuk province; With its subterranean wealth of oil and gas and dominant non-Kurdish population,²¹ Kerkuk province has been exposed to the biggest demographic change. They built houses on the land of municipalities, government and original inhabitants; as a result the area of Kerkuk city increased about 20 km sq.²² **(An. 3)**. The population of Kerkuk province was 870,000 at the day of the fall of Ba'ath regime; it approaches 1.4 million today²³ **(An. 4)** and over 100,000 Arabs were forced to leave the province.²⁴ Twenty five villages were evacuated. Hundreds of Ba'ath party buildings and governmental institutions have been occupied by the newcomers and used as homes for families or offices for political parties. The number of Kurds and Turkmen, who had been exiled from Kerkuk province by Ba'ath regime, was between 100 and 140,000.²⁵ In Kerkuk province, 38,000 lawsuits were presented to the Property Claims Commission of which the majority made by the Turkmen and the majority are still not completed. **(An. 5)**

Imbalance in standard of living

The domination of administration by Kurdish political parties has disrupted the standard in favor of the Kurds. The following took place almost all of Northern Iraq, which was controlled by Kurdish parties after

the fall of Ba'ath regime: a. *Appointment to governmental office*: 90% of 10,000 appointments to government office in Kerkuk province have been Kurdish. Two thousands Kurds have been appointed in Kara Tepe sub-district. Thousands of Kurdish teachers from Duhok were appointed in Mosul region. The Kurds constitute about 80% of the two Iraqi army divisions in Nineveh province. The security system in Kerkuk has almost been completely replaced by Kurds. Tens of thousands of Peshmerga militants were appointed in 2004 and 2005. Since the appointments were politicized, appointments from non-Kurdish communities severely decreased. b. *Disproportional income from Iraqi budget*: the Kurdish regional government receives 17% of the Iraqi budget, while the Kurdish population in KRG region is only about 8% of the total Iraqi population. Other Iraqi communities have no share in this budget. c. *Income from misuse of administration*: The domination of administration by the Kurdish political party members lead to granting of the majority of hundreds of contracts to the Kurdish contractors; consequently the Kurdish staff and workers are mostly employed. Most of the Turkmen contractors were either killed or forced to leave Kerkuk.²⁶ d. *Other sources*: since 1991, the Kurdish political parties get huge income from the Khabur frontier entrance. Outmaneuver in military and economical powers facilitate further suppression of the already vulnerable non-ruling communities (minorities)

Incidences of ethnic cleansing which contravene various articles of the international and UN conventions (an. 6)

Even though the region has not experienced a Shia-Sunni conflict, hundreds of instances of human rights violations have occurred including, intimidation, arbitrary detention, assassinations, kidnappings, persecutions experienced by different non-Kurdish communities, particularly those who show opposition.

The Turkmen in Erbil; Suppression of Turkmen of Erbil hinders the activities of Turkmen civil society activists and stalls the establishment of Turkmen civil society and political organizations. The Iraqi Turkmen Front (ITF) is the only Turkmen organization, but its functioning is severely restricted. In April 2005, Kurdish security agents broke in to Turkmen institutions in Erbil and took over 24 buildings, including thirteen schools, the buildings for education, health, Turkmen Unions and syndicates, Turkmen House, Shifa dispensary, the Turkmen Radio and Television, Turkmen print house and the buildings of Turkmen political parties. The print house was closed contravenes and the Turkmeneli newspaper has not been published in Erbil. The content of most of the buildings was sold. Turkmen education has been deliberately neglected and the registration of new students has significantly decreased and is about to close down. This violates Article 14.1 of the UN Declaration on the Rights of Indigenous Peoples.

An urgent appeal was made at 16th May 2009 by SOITM to the Office of the High Commissioner for Human Rights about the imprisonment of Mr. A .E. A. S.. He was kidnapped by Kurdish security agents. He was frequently denied sleep and the use of toilet facilities, and was kept standing and unfed for long times. He was also repeatedly exposed to verbal abuse such as curses and insults. He was beaten around the penis, testicles, and anus as well as other parts of his body. Mr. A. E. A. S. was deprived of legal assistance, and trialed by secret court and sentenced to live on 20 October 2004. This contravenes Article 10 of the UN Universal Declaration of Human Rights. **(An. 7)**

The Turkmen in Kerkuk; An urgent appeal was made at 9th June 2009 by SOITM to the Office of the High Commissioner for Human Rights about the kidnap and torture of Mr. S. A. Ibrahim. He was kidnapped on 27 May 2009, by the security agents (Asayish) of KUP. This violates UN Article 1.1 of UN Convention Against Torture. He was exposed to severe torture before he was rescued.²⁷ On 1 June 2009, a Turkmen shop was shot by Kurdish police Colonel Abdullah Kadir and his guards. Four were severely injured, the condition of two of them was critical. On 14 May 2009, two Turkmen were shot in the city of Tuz Khurmatu. Mr. Alaa Mecid was killed and Mr. A. Kalandar Shahbaz was injured. These peoples are simple citizens who are neither politicians nor activists.²⁸ **(An. 8)**

The Chaldea-Assyrians: Chaldea-Assyrians, Firas Josef, Ramzi Audisho and Sabri Shaya were verbally insulted, tortured and fired from their jobs because they did not vote for the pro-Kurdish Ishtar slate in provincial elections of January 2009.²⁹ In another report, the Kurdish forces Confiscated Ration Cards from Chaldea-Assyrians.³⁰ On late 2004 an armed group from the KDP militia attacked Mar Yohana (St. John's) Church in Bakhdeda, several residents were gathered up, severely beaten, insulted, and finally taken away. On another occasion an armed KDP group attacked a Syriac-Assyrian family in Bakhdeda.³¹

The Chaldea-Assyrians were prevented by KDP militias from voting in Iraqi general elections in 2005.³² It is also reported that the Kurdish authorities Block Assyrians, Shabaks from Police Force in North Iraq.³³ Earlier reports affirmed killing of Chaldea-Assyrians by Kurdish political party agents.^{34, 35}

The Shabak: The Shabak parliamentarian Mr. Hunain al-Qaddo says that the Shabaks of the Nineveh Plains are under pressure from the Kurdish political parties seeking to "Kurdify" them in a drive to assert wider control over the ethnically divided north. They face oblivion as a people and are targeted politically by Kurdish authorities who claim ownership of their land.³⁶ On July 13th, 2008, Mr. Abbas Kadhim was attacked by an armed group, and was killed. Kurdish Peshmerga's checkpoints are scattered along the road. He played an important role during meetings with UN office in Baghdad by presenting critical information about the Kurdification processes and violation of human rights in the Hamdaniya region.³⁷

The Yazidis; The Yazidi parliamentarian Mr. Amin Farhan, informed the European parliament that he could not visit his constituency over the past two years for fear of assassination. He said that more than 50 Yazidi politicians and activists have been arrested, persecuted and threatened by the Kurdish parties. After visiting Europe in 2006 and organizing several political meetings, the first degree relatives of Yazidi activists who participated in the organization of the conference were intimidated by the Kurdish authorities in Yazidi regions³⁸ Brothers of F. K. K. and father of D. S., who live in Europe, were called several times by Kurdish security offices in Shaykhan and threatened,³⁹ Claiming that two Yazidi youth were founded with a Muslim girl, armed militants led by Kurdish security officer Bahzat attacked the Yazidi District Shaykhan on 14 and 15 February, 2007, set on fire in cultural and social center Lash, burned religious Shrine Mand, and brutally attacked the civilian population and throwing the House of Prince by stones,⁴⁰

Section D: SOITM recommendations

To the Iraqi National Assembly

To facilitate rebuilding of the Iraqi state, reducing violence in Iraq and instituting the stability in the region, a powerful and viable centralized Iraqi state should be created. Consequently, the Iraqi constitution should be amended to:

- a) Reduce the restrictions on the state authorities
- b) Remove contradictory articles
- c) Clearly define and strengthen the power of central government
- d) Grant priority to the central government in shared authorities and all future decisions

Article 4 of the Iraqi constitution should be rephrased in a manner that:

- a) Removes discrimination between the communities of Iraqi society
- b) Improves the access of ethnic communities to education in their mother tongue
- c) Prevent the publication of immense Iraqi state documentation in Kurdish

Article 142.4 which refutes the will of the majority and binds the outcome of all Iraqi referenda to the will of minority should be removed from the Iraqi Constitution.

To the Iraqi Government

- a) To facilitate the effective involvement of Iraqis in rebuilding of the state on a democratic basis, NGO laws should be instituted to international best practice.
- b) Encourage Human Rights Watch and Amnesty international to open offices in northern Iraq.

To the United Nations Assistance Mission for Iraq and International Human Rights organizations

- a) Complete the institution of UNAMI office in Kerkuk and provide it with sufficient staff and experts.
- b) Open offices in Mosul city, Nineveh plain, Telafer district, Tuz Khurmatu and in north of Diyala.

To members of United Nations

Do not cooperate with the Kurdish Regional Government until the Kurdish authorities:

- a) Stop the suppression of other Iraqi communities.
- b) Abandon claims to Iraqi lands inhabited mainly by non-Kurdish communities.
- c) Abandon the use of militias and end all threats of war with Iraqi government.

Annexes (An): Eight annexes were attached to this Report