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IRAQ

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report examines the legal and societal hostility towards religious minorities in Iraq with regard to anti-conversion laws and the violence shown towards individuals and their property. To comply with obligations under international law, Iraq must fully respect and promote the right to freedom of religion or belief within its borders and provide greater protection for Christian and other minorities.

(a) Freedom of religion or belief

3. The Constitution of Iraq establishes Islam as the official religion of the state, and the foundation of all Iraqi legislation.¹ Article 2 ensures that no law may be enacted that contradicts "the established provisions of Islam".²
4. Article 2 of the Constitution also recognizes "the full religious rights to freedom of religious belief and practice of all individuals",³ and equality between all ethnic and religious groups is established in Article 14.⁴ However, such constitutional freedoms are contradicted in the state's repressive laws. Article 2 of the 1959 Personal Status Law, for example, mandates courts to adjudicate in accordance with sharia principles in the absence of applicable legislative text.⁵ This set of fundamental Islamic laws curtail the rights of minorities to practice their faith in public as well as in private by prohibiting various expressions of faith, such as evangelizing to others.
5. Other pieces of legislation also severely restrict the enjoyment of minority groups – including Jews, Yazidis, Christians and others - of their religious freedom. Regulations on Identity Card procurement prevent the registered conversion of Muslims to any other faith.⁶ Additionally, members of the Bahá'í faith face sentences of ten years imprisonment merely for practicing their religion.⁷ The ramifications of legal discrimination extend into societal hostility and violence. As a result, Iraq is number 13 on the World Watch List ranking

¹ Constitution of Iraq, Chapter 1 Art 2.

² *Ibid.*

³ *Ibid.*

⁴ Constitution of Iraq, Chapter 1 Art 14.

⁵ Law No. 188, *Personal Status Law and Amendments* (30 December 1959).

⁶ Iraq National Identity Card Law (2015) Art 26 (While non-Muslims may convert to Islam, the reverse right is not afforded). See Minority Rights Group International, *Crossroads: The Future of Iraq's Minorities after Isis* (ILHR, MRG, NPWJ and UNPO 2017) 33.

⁷ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, (31 May 2012) UN Doc HCR/EG/IRQ/12/03.

the top 50 countries where Christians are most persecuted.⁸ Reports of violence have included instances of bomb explosions⁹ as well as sexual harassment¹⁰, kidnappings and killings.¹¹

6. Such examples of legal and societal discrimination contravene the Iraqi Constitution's provisions on freedom of religion or belief, and deprive citizens of their human rights under Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which Iraq ratified in 1971.

Genocide of Religious Minorities by the "Islamic State" (ISIL)

7. Between 2014 and 2017, the Islamic State (ISIL) group spread a radical, fundamentalist Islamic ideology and proclaimed its caliphate within territory seized from Iraq and Syria. During the height of IS' actions in Northern Iraq, religious minorities faced a genocide. Within just a few days of August 2014, an estimated 9,900 Yazidi people were captured by the terrorist group,¹² either to face execution or to be trained as child soldiers or sex slaves.¹³ Of the 550,000 Yazidis living in Iraq before the assault, 400,000 are now displaced within Iraq and 90,000 have fled abroad.¹⁴
8. After facing an ultimatum to either convert to Islam, leave the country, pay a "protection tax" or face death¹⁵, the Christian population in Iraq was also decimated. Testimonies from Christian women captured by IS detail experiences of rape, physical torture, forced conversion and forced abortion.¹⁶ In 2003, the Christian population was estimated at 1.4 million people;¹⁷ however, by 2018, it had decreased to an estimated 258,000.¹⁸ The Chaldean Archbishop Habib Nafali of Basra, Iraq, recently warned that "Christianity in Iraq is just one wave away from extinction."¹⁹

⁸ Open Doors, 'World Watch List: Iraq' <<https://www.opendoorsusa.org/christian-persecution/world-watch-list/iraq/>>.

⁹ 'Iraqi Christians hesitate to return to Bartella' *World Watch Monitor* (12 February 2019).

¹⁰ *Ibid.*

¹¹ Open Doors, *Iraq: Country Dossier* (Report, 2019) 12.

¹² Valeria Cetorelli et. Al., 'Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey' (9 May 2017) 14 *PLOS Medicine Journal* 5, 1.

¹³ Open Doors, cited above §11, 11-12.

¹⁴ Vian Dakhil (Member of Iraqi Parliament), 'Stabilizing Iraq: What is the Future for Minorities?' (Panel contribution, U.S. Institute for Peace, 1 August 2017) <<https://www.usip.org/publications/2017/08/how-iraqs-minorities-can-secure-future-after-isis>>.

¹⁵ Ewelina U. Ochab, *Never Again: Legal Responses to a Broken Promise in the Middle East* (Kairos Publications, 2016) 104.

¹⁶ 'Iraqi Christian Rita was sold four times on the IS sex slave market' *World Watch Monitor* (19 June 2018).

¹⁷ Aid to the Church in Need, 'Iraq' in *Persecuted and Forgotten? A Report on Christians Oppressed for their Faith 2013-15* (Report, 2015).

¹⁸ Open Doors UK, 'World Watch List: Iraq' (Factsheet, 2018).

¹⁹ Simon Caldwell, 'Iraqi Archbishop fears more persecution, says IS went underground' *Catholic News Service* (9 October 2018).

9. Since November 2015, over 50 mass graves have been uncovered in areas formerly under IS control, containing up to 4,000 bodies each. Those killed were most likely from religious minority groups.²⁰
10. ISIL and other militant groups prevented public gatherings from occurring in areas under their control, and demolished churches and monasteries, or repurposed them as weapons stores, mosques, and jails.²¹ During raids, altars were smashed, statues beheaded, blasphemous graffiti scrawled on the walls and sacred tombs disturbed, with their contents removed.²² Such destructive actions evidence that militant groups acted with “the intent to destroy in whole or in part”²³ the Christian community in Iraq.
11. The 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage underlines that cultural heritage is an important component of cultural identity and of social cohesion, and that its intentional destruction may have adverse consequences for human dignity and human rights. In light of the above, Iraq should take effective steps to ensure that those responsible for the destruction of cultural heritage are brought to justice.²⁴
12. ISIL was territorially defeated in Iraq in 2017; however, large numbers of ISIL militants are said to have “disappeared” into the general population.²⁵ Nevertheless, a new era has created an opportunity to end the persecution of minorities. Deliberative, positive action is now necessary to achieve a full and sustainable recovery.
13. Three thousand Yazidi women and children, as well as a significant number of Christians, remain missing.²⁶ These individuals are thought to remain in captivity with ISIL soldiers as victims of human trafficking, treated as sex slaves in forced marriages, or kept as child soldiers. IS’s actions violate the Palermo Protocol on Human Trafficking²⁷, as well as numerous protections against slavery and abuse as guaranteed in the Universal Declaration of Human

²⁰ Minority Rights Group International, cited above §6, 13.

²¹ Olivia Jackson and Ruth Watson, *IRAQ: Compound structural vulnerabilities facing Christian women under pressure for their faith* (Report, Open Doors, November 2018) 6.

²² Aid to the Church in Need, cited above §18.

²³ Consistent with the crime of genocide, as defined in the Convention on the Prevention and Punishment of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 Art 2.

²⁴ UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, 32nd Session of the General Conference (Paris, 29 September – 17 October 2004) 32 C.

²⁵ Open Doors, *Iraq: Country Dossier* (Report, 2019) 15.

²⁶ OHCHR, “They came to destroy: ISIS Crimes Against the Yazidis” (15 June 2016) UN Doc A/HRC/32/CRP.2/ 2; Open Doors, *Op.Cit.*(n25) 9.

²⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Adopted 15 November 2000, Entered into force 25 December 2003) Art 3(a).

Rights,²⁸ the ICCPR,²⁹ the Convention on the Rights of the Child³⁰, and its Optional Protocol on the involvement of children in armed conflict.³¹

14. While Iraq must prosecute ISIL soldiers and terrorists, they must do so with respect for due process and individual rights. Iraqi authorities have detained and prosecuted thousands of individuals under vague counterterrorism laws for their affiliations with IS.³² Several groups have raised complaints that the label of “terrorism” is being used as a screen for the authorities to arrest and detain persons indiscriminately.³³ This includes the condemnation of women linked to militant groups only as the result of forced marriage.
15. Meanwhile, not enough has been done to hold the guilty accountable for specific human rights grievances and crimes against religious minorities, such as rape. A more victim-centered approach is necessary to establish adequate transitional justice for Yazidis, Christians and other minority groups who suffered under the genocide.
16. Many minorities who fled the region because of religious persecution are still afraid to return to their homes. Only 50% of Christians have returned to the Nineveh Plains, where one time their communities flourished.³⁴ Even fewer have returned to Mosul and other regions.³⁵
17. Practically, the towns from which religious minorities fled must be made safe and secure in order to allow for refugees and internally displaced persons (IDPs) to return. The increasing settlement of the Hashd Shi’a militia into formally Christian-owned homes and communities is deteriorating the security situation of Christians and Yazidis. The spread of this violent group’s presence in the region has been encouraged through the pro-Shi’a government’s provision of incentives. This could prove lethal in attempts to restore peace to the region.³⁶ The presence of Shi’a so close to Sunni-majority Mosul may tempt

²⁸ Universal Declaration on Human Rights, (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) Art 4, 5, 16(2).

²⁹ ICCPR, cited above, §16, Art 8.

³⁰ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 Art 9, 38(4), 39.

³¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002) UN Doc A/RES/54/263.

³² See Human Rights Watch, ‘Flawed Justice: Accountability for ISIS Crimes in Iraq’ (Report, December 2017).

³³ For example, see Delkis Wille, ‘Unfair ISIS Trial in Iraq Hands Women Harshest Sentences’ *Human Rights Watch* (21 February 2018).

³⁴ ‘Nineveh Plains Christians ‘Slowly Returning to Normal’ *World Watch Monitor* (8 August 2018).

³⁵ Bishop Nicodemus Daoud Sharaf, ‘Prelate: Muslims encroaching upon Christian lands on the Nineveh Plains’ (Interview, Aid to the Church in Need, 19 March 2018) <<https://www.churchinneed.org/iraqs-nineveh-plains-prelate-sees-muslims-encroaching-upon-christian-territory/>>.

³⁶ Jeremy P. Barker and Kent Hill, ‘Hanging by a Thread: Christians and other Religious Minorities are Fading into History on the Nineveh Plains’ (Report, the Religious Freedom Institute, 2019) 5.

Sunnis to join forces with ISIS against the Shi'a, thus erupting tensions again and catching returning religious minority groups in the crossfire.³⁷

18. Investment in mediation between the current and the returning population - who will co-habit the space – is necessary in order to ensure a future of peaceful co-existence and interfaith harmony throughout the country.³⁸
19. Additionally, securitization efforts must include a reconstruction of infrastructure with regards to electricity, water and education³⁹, and basic assistance in the rebuilding of houses (of which 70% were destroyed). Furthermore, even in areas where infrastructural repair has taken place and private funds for reconstruction are available, the minimalist prospects of job opportunities do not allow for a sustainable future for returnees. Without stable economic prospects, religious minorities will be forced to sell their homes and be forced out of the land once more.⁴⁰ Major economic revitalization programs are thus a necessity in creating conditions for peace and prosperity in Northern Iraq.⁴¹

Political and societal Exclusion

20. Minorities were marginalized legally, politically and socially even before the period of ISIL control in Northern Iraq. For those who have returned, discrimination and exclusion are still deeply entrenched in Iraqi society. As the Special Rapporteur on minority issues noted in 2017 (A/HRC/34/53/Add.1), “The defeat of ISIL is only one important step among many needed to address the concerns of communities that are vulnerable to attack, subject to deeply entrenched discrimination and excluded from economic, political and social life.”
21. Reports of religiously-based societal harassment and extreme violence still abound. In A family of three Christians were stabbed to death in their homes in Baghdad in March 2018.⁴² Open Doors report on dozens of Christians having been arrested and detained while evangelizing throughout the country.⁴³
22. Attacks on religious sites also continue in the post-IS era. In November 2017, a Christian cemetery was vandalized and a Christian school looted in the village

³⁷ *Ibid.*

³⁸ The Unrepresented Nations and Peoples Organisation (UNPO), ‘The Situation of Minorities in Iraq after ISIS’ (7 July 2018).

³⁹ Saad Babir of the Yazda Organisation, quoted in Monica Saba, ‘Yazidi: the Genocide No One Talks About’ (Open Cultural Center, 10 August 2018).

⁴⁰ Jeremy P. Barker and Kent Hill, cited above §41, 6.

⁴¹ *Ibid.*

⁴² “Iraq: Christian family stabbed to death in Baghdad” *World Watch Monitor* (12 March 2018).

⁴³ Open Doors, cited above §26, 13.

of Inshke. In December 2018, a Shia militia opened fire on the the Christian Centre of St. George's Church in Bartella, and threatened the Priest.⁴⁴

23. Religious minority groups have extremely limited political representation. Out of 328 seats in the Council of Representatives, quotas allow for only 5 seats to be held by Christians; 1 by a Yezidi, and 1 by a Sabaeen-Mandaean. Open Doors report that, since this small presence of minority groups is scattered throughout different parties, their participation is often irrelevant.⁴⁵ This limitation negatively affects opportunities for minorities to participate in government and public sector bodies, or in security organs.⁴⁶

Religious registration and anti-conversion laws

24. Sharia law forbids conversion away from Islam, and government regulations make it difficult to change one's religion on identity documents.

25. In 2015, the government enacted a national identity card law which severely curtails the rights of minorities to freely exercise their right to freedom of religion or belief. The law stipulates that any child born to a Muslim parent and a non-Muslim parent automatically must take on the religion of Islam. This poses a problem for women from religious minorities who were captured and raped by extremist militants, as even if the child was born as a result of rape, they must be registered as members of the faith of their Islamic parent. The de facto outcome of this law is forced conversion.⁴⁷

26. Members of the Baha'i faith group have reported severe difficulty in obtaining identity documents without hiding their faith and posing as Muslims, owing to the unrecognized status of their religion in the Iraqi Constitution.⁴⁸

(b) Recommendations

27. In light of the aforementioned, ADF International suggests the following recommendations be made to Iraq:

- a) Ensure the freedom of religion or belief in Iraq, both in law and in practice, for adherents of all religions and none, and root out all cases of religious persecution and the exploitation of laws against members of religious minorities;

⁴⁴ Raymond Ibrahim, "'We Will Displace You ...': Persecution of Christians, December 2018' *Gatestone Institute* (17 February 2019).

⁴⁵ Open Doors, cited above §26, 6.

⁴⁶ UN High Commissioner for Refugees (UNHCR), *Situation of Christians in Baghdad* (15 July 2017) 1.

⁴⁷ Olivia Jackson and Ruth Watson, *IRAQ: Compound structural vulnerabilities facing Christian women under pressure for their faith* (Report, Open Doors, November 2018) 6.

⁴⁸ Saad Salloum, 'Iraqi official denies Bahaism as religion' *Al Monitor* (11 December 2018).

- b) Rescue and protect the thousands of people from religious minorities who remain the captives of IS and other terrorist groups;
- c) Prosecute and punish all cases of religiously-motivated violence against individuals, as well as vandalism and destruction of places of worship, and continue working to eliminate the occurrence of such acts;
- d) Repeal or revise the national identity card law, and grant redress to individuals whose rights have been violated by this law;
- e) Ensure the preservation of the cultural and religious heritage of religious minorities, and investigate cases of destruction of cultural property and bring perpetrators to justice;
- f) Take all measures that guarantee the greater representation of religious minorities in social and political areas;
- g) Develop and implement a set of measures aimed at promoting peaceful coexistence between all groups of the population and at combating marginalization that may target individuals or communities, including religious minorities; and
- h) Repeal all laws that negatively impact religious freedom, and in particular, those that prohibit conversion.



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