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IRAQ: HUMAN RIGHTS IN JEOPARDY

The Iraqi people face considerable human rights challenges as their political leaders continue to try to forge a new government to advance the political process, and as U.S. coalition forces and their Iraqi counterparts address serious, ongoing security concerns. In the last year, there has been a grave escalation of Sunni-Shi'a violence, and religiously motivated violence at the hands of insurgents and Islamic militants continued unabated. These attacks have had an impact on all elements of Iraqi society, including ChaldoAssyrians, Sabeen Mandaeans, and Yazidis—non-Muslim groups targeted on account of their religion—as well as secular Muslims, Sufi Muslims, Roma, women, homosexuals, and others. As the U.S. Department of State acknowledged in its 2005 *International Religious Freedom Report*, “While the general lawlessness that permitted criminal gangs and insurgents to victimize citizens with impunity affected Iraqis of all ethnicities and religions, many individuals were targeted because of their religious identity or secular leanings.”

The Commission has concluded that because the United States has been so directly involved in Iraq's political reconstruction, it has a special obligation to act vigorously, together with the Iraqi leadership, to identify and promptly remedy the systemic flaws which continue to undermine the protection of universal human rights in Iraq. Specific policy recommendations for the U.S. government are presented at the end of this chapter.

Sunni-Shi'a Sectarian Violence and Intra-Shi'a Strife

There has been an escalation in the level of sectarian violence between Sunni and Shi'a Muslim factions, which some observers liken to a so-called civil war either already in progress or increasingly inevitable. The Commission has previously called attention to the danger posed by sectarian violence. In early 2006, there was a dramatic spike in these attacks and reprisals, particularly following the bombing of Samarra's Askariya shrine, or Golden Mosque, a site revered by Shi'a Muslims. In retaliation for this attack, media sources reported that mobs struck 27 Sunni mosques in the capital, killing three imams and kidnapping a fourth. The UN Assistance Mission for Iraq (UNAMI) reported at the end of February 2006 that violence following the destruction of the Askariya shine resulted in “hundreds of cases of killings, torture, illegal detention and displacement,” and cited figures provided by the Sunni Muslim Iraqi Islamic Party reporting damage to 106 mosques and the assassination of 20 imams and sheikhs.ⁱ At the time of this writing, murderous attacks by insurgent groups and

sectarian militias continue on an almost daily basis. Moreover, there are reportedly mounting intra-Shi'a tensions, including the recent flare-ups of violence between the country's two largest Shi'a militias, the Supreme Council for Islamic Revolution in Iraq's (SCIRI) Badr Brigade and Moqtada al-Sadr's Mahdi Army.

The growing level of sectarian tension is exacerbated by reports of related human rights abuses, including the unlawful abduction, torture, and extrajudicial killing of Sunni Arabs at the hands of Iraqi Security Forces, including the Ministry of Interior's (MOI) Quick Reaction Forces (Wolf Brigade), and others.ⁱⁱ Likewise, Sunni insurgents and other forces were responsible for the kidnapping and killing of Shi'a Muslims. Although the MOI announced it would launch investigations into these incidents, according to the State Department, no information regarding such investigations had been released to the public. Human rights organizations have asserted that the Iraqi government has failed to establish an effective mechanism for monitoring abuses by law enforcement personnel or the armed forces, and for bringing those accused of such offenses to justice.

Throughout the past year, there were numerous bombings targeting worshippers at mosques, as well as assassinations of clerics and other community leaders. Additionally, UNAMI and media sources reported that Shi'a and Sunni families are being forcibly evicted from their homes in certain neighborhoods,ⁱⁱⁱ and Sunni Muslims arbitrarily detained and arrested, "often on the basis of their Sunni-sounding last names."^{iv}

The Future of Religious Minorities Hangs in the Balance

Amid this growing cycle of sectarian violence, religious minorities in Iraq continued to suffer a disproportionate burden of violent attacks and other human rights abuses. Minority communities, including Christian Iraqis, are forced to fend for themselves in an atmosphere of impunity, and lack any tribal or militia structure to provide for their security. The result is that members of these communities continue to flee the country in the face of violence, in an exodus that may mean the end of the presence in Iraq of ancient Christian and other religious minority communities that have lived on those same lands for 2,000 years.^v The UN has reported on "an explosion of Islamist extremist movements and militias which target, among others, members of religious minorities," concluding that religious minorities "have become the regular victims of discrimination, harassment, and at times persecution, with incidents ranging from intimidation and threats to the destruction of property, kidnapping and murder," and that "members of the Christian minority...appear to be particularly targeted."^{vi} As discussed below, this violence is also directed against women, including non-Muslim women, who are deemed as not complying with Islamic strictures, which are being imposed unlawfully.

The indigenous, ancient Iraqi Christian community has been the target of coordinated bombing attacks. At the end of January 2006, five simultaneous bombings targeted two churches in Baghdad, two churches in Kirkuk, and the Vatican embassy. According to press reports, 16 people were killed and 20 injured in these coordinated attacks, prompting Archbishop Fernando Filoni, the apostolic nuncio in Iraq, to conclude that the situation in Iraq:

is insecure and continues to be difficult, very, very difficult. It has worsened because of the fact that threats against Christians, against ecclesiastics, are increasing. Kidnappings continue to take place. All this makes the situation totally precarious.^{vii}

During the past year, as a consequence of this constant threat of violence, many worshippers reportedly did not attend religious services or participate in religious events. In addition, the destruction and looting by Islamic extremists of businesses deemed un-Islamic resulted in approximately 95 percent of stores that sell alcohol being closed, according to Iraqi officials. As traditional owners of these establishments, this violence has had a disproportionate economic and social impact on Christian and Yazidi communities in Baghdad, Mosul, and Basrah, among other places.

Reports also alleged that the Kurdish Regional Government (KRG) engaged in discriminatory behavior against religious minorities. According to the State Department, Christian and other minorities “living in areas north of Mosul asserted that the KRG confiscated their property...without compensation and...Assyrian Christians also alleged that the Kurdish Democratic Party-dominated judiciary routinely discriminated against non-Muslims.^{viii} Additional reports alleged that reconstruction assistance for ChaldoAssyrian communities was being diverted and/or controlled by the KRG without input from legitimate community leadership.

Sabeian Mandaean organizations continue to report that extremist Islamic elements are targeting individual members of the Iraqi Sabeian community, solely on the basis of their religious belief. In a number of instances, attackers reportedly attempted to forcibly convert their victims before murdering them, sometimes going so far as to leave the victims' valuables behind to underscore the religious motivation for their acts. Other violence directed against the Sabeian community reportedly included kidnapping, rape, immolation, and the gouging of eyes. According to the Germany-based Society for Threatened Peoples, 17,000 of the 30,000 Madaeans have already fled Iraq in the

wake of this violence. According to sources cited by the UN, Iraqi religious leaders issued several *fatwas* during the past year which “have provided Islamic fundamentalists with the religious justification for acts carried out against the Mandaeans, and have accentuated the level of fear among the Mandaean community.”^{ix}

A 1970 law still on the books in Iraq effectively outlaws the Baha’i religion in the country and criminalizes any Baha’i activities.^x Despite constitutional protection of the religious freedom for all Iraqis, to date no action has been taken by the Iraqi government to repeal this law.

Religiously Motivated Abuses Against Women in Iraq

The security situation for women in Iraq continued to deteriorate because of the actions of extremist Islamic elements. Over the past year, the Commission has called attention to the fact that women are being forced to contend with the unlawful imposition of Islamic laws and principles by grassroots vigilante groups, as well as by the operation of illegal courts that seek to impose an extremist version of Islamic law on all Iraqis, regardless of their beliefs. The UN Special Rapporteur on Freedom of Religion or Belief received similar reports during this period concerning religious groups targeting women perceived to be politically active, and the issuing of death threats by these groups against women pursuing advocacy or other political work.^{xi}

In the past year, religiously motivated attacks on women continued, including acid attacks, kidnappings, and killings. Attackers reportedly sprayed or threw acid onto women, including their face and eyes, for being “immodestly” dressed. Widespread reports also continued of both Muslim and non-Muslim women being compelled to wear headscarves or veils in order to protect themselves from such attacks. Among other reports, according to the State Department, education officials in Basrah have instituted a policy requiring all females in the schools to cover their heads, and “all female university students in Mosul, even non-Muslims, were required to wear the *hijab*, or headscarf.” This manner of dress was not forced, required, or even expected of women under the previous regime. The UN Special Rapporteur on Freedom of Religion or Belief concluded that these developments “led to a reduction in the number of girls and women attending schools and universities,” reporting that Iraq’s “Ministry of Higher Education and Scientific Research had been informed of 3,000 cases of women and girls who had requested postponement of their studies as a result of the security situation linked to this matter.”^{xii}

Stalled Formation of a National Unity Government and Implementation of the Constitution

The escalation in sectarian violence and continued deterioration in security conditions have obstructed efforts of the Iraqi government to consolidate control over law and order in the country. Militia groups, insurgent elements, and religious extremist groups continue to commit human rights abuses with impunity. As noted above, severe human rights violations by Iraqi security forces continue without an effective response by the government.

As of this writing, despite certification of the election results, a new government has yet to be formed, in part due to Shi'a infighting and other disagreements among the main political parties. Due to the delay in setting up a new government, plans for an expected constitutional amendment process have been set back. This, in turn, has stalled implementation of the new constitution, as well as legal, judicial, and other institutional reforms necessary to implement human rights protections.

An Ambiguous Permanent Constitution

In the face of continuing religiously motivated violence in Iraq, the Commission strongly reiterates its longstanding recommendation that Iraq's government be urged to incorporate—into both the constitution and related implementing legislation—clear protections for the individual right to freedom of thought, conscience, and religion or belief in accordance with the international standards Iraq has pledged to uphold, as well as strong protections for related human rights.

While international standards explicitly bestow upon every individual the right to freedom of thought, conscience, and religion or belief, this right has all too frequently been diluted or misconstrued. For example, international attention typically is directed toward protecting the freedoms of religious groups or communities, including their freedom to worship, educate, and organize affairs according to their own doctrines. As important as these communal aspects of freedom of religion are, particularly for religious communities themselves, protecting religious freedom extends beyond guaranteeing the freedom of groups to engage in religious activities.

Advancing the right to freedom of religion or belief in a manner that fully comports with international standards requires that protection from repression by the majority not be limited to members of religious minorities. Rather, freedom of religion or belief also entails protection for individual members of a majority religion from those who use prevailing religious orthodoxy as a weapon to stifle political dissent and democratic debate. In other words, the right to religious freedom ought to include the freedom of every Iraqi, including individual Muslims, not only to worship and to practice

his or her faith, but also the right to debate and dissent from state-imposed orthodoxy on issues related to religion.

Given the content of Iraq's new constitution, this undertaking remains in jeopardy. Although the new constitution incorporates positive provisions related to human rights protections, the Commission has concluded that several provisions remain cause for concern and may threaten to compromise the scope and extent of human rights protections. Specifically, the Commission remains troubled by the constitution's overarching ambiguities and contradictions, and particularly by references to Islam which ultimately may be interpreted to negate these guarantees and to discriminate against and repress non-Muslims and non-conforming Muslims alike. Furthermore, sectarian tension between Shi'a and Sunni Muslims is also liable to be exacerbated by the interpretation and application of sharia in favor of the dominant sect's beliefs. In its discussions with senior Iraqi leaders, the Commission was concerned that these leaders did not appreciate fully the distinction between the individual right of freedom of religion or belief and the collective or communal aspect of the right to freedom of worship; questions the Commission raised with regard to individual rights for all Iraqis were met with answers focused only on the rights of collective entities—religious minority groups.

The constitution's contradictions underscore two competing visions of Iraq, and leave up to the future how—if at all—these visions may be reconciled. On the one hand, the constitution promises a country based on protections for individual freedoms and rights, and on the other, augurs a country where every Iraqi is required to conform to the religious strictures of one group. If Iraq is to indeed become a state that genuinely respects fundamental freedoms, including freedom of thought, conscience, and religion or belief, and the principles of equality and non-discrimination, the scales must be tipped more decisively in favor of individual human rights guarantees. All ambiguity and contradictions with respect to these rights should be clarified to leave no uncertainty regarding the supremacy of human rights.

Commission Activities on Iraq

During the course of the year, the Commission met with senior U.S. officials, Iraqi political leaders, congressional staff, representatives from religious groups, and others concerning matters related to Iraq's constitution, conditions for religious minorities, and the promotion of international human rights standards. In addition to meeting with President Bush, the Commission briefed Zalmay Khalilzad, U.S. Ambassador to Iraq; David Welch, Assistant Secretary of State for Near Eastern Affairs;

Richard Jones, Senior Advisor to the Secretary of State and Coordinator for Iraq; and Meghan O'Sullivan, Deputy National Security Adviser for Iraq and Afghanistan, on its concerns and recommendations.

In June 2005, Commission Vice Chair Felice D. Gaer and staff met with senior Iraqi leaders attending the International Donors' Conference in Brussels, including the National Security Advisor, the Ministers of Justice and Interior, the Chair of the Constitutional Drafting Committee, and senior representatives of several political parties. Then-Commission Chair Preeta D. Bansal and staff also participated in international conferences held in Jordan designed to bring Iraqis and international experts together for discussions concerning the constitution. In August 2005, Commissioner Bansal and Vice Chair Nina Shea published an op-ed in *The Washington Post*, calling attention to some of the existing shortcomings in Iraq's draft constitution and recommending steps for ensuring the final document's compliance with international human rights standards.

Throughout the May–October 2005 constitution-drafting period, the Commission worked closely with the State Department and the White House to make recommendations on constitutional drafts, among other things, assessing how draft articles measured up to human rights norms. In addition, the U.S. Embassy in Baghdad and others involved in the constitutional drafting process widely disseminated the Commission's comparative analysis of the constitutions of predominantly Muslim countries.^{xiii} Following ratification of the Iraqi constitution in October 2005, the Commission published its analysis of articles identified as being of potential concern to the future status of individual human rights and freedoms in Iraq, as well as recommendations for potential modifications to be considered by the constitutional amendment committee in 2006. This analysis was subsequently translated into Arabic and has been distributed to U.S. policymakers, international experts, and others. The Commission's constitutional analysis and recommendations were also adopted by a number of Iraqi non-governmental organizations, including "The Pledge for Iraq," a nationwide campaign organized by Iraqi activists and organizations seeking to ensure protections for human rights, rights for women, and political freedoms in Iraq's emerging political order.

During the year, the Commission also served as an information resource for Members of Congress, holding a number of private meetings, as well as larger briefings with congressional staff and the Congressional Working Group on Religious Freedom.

The Congress has explicitly endorsed a key Commission recommendation that the U.S. Embassy in Baghdad increase efforts directed towards the promotion of human rights in Iraq. In the Conference Report attached to H.R. 2862, Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, the conferees expressed their expectation that:

[W]ithin the planned personnel complement for Baghdad, Iraq, that one Senior Foreign Service Officer who reports directly to the Ambassador will be assigned as the lead human rights official in Baghdad. This officer should be tasked with encouraging incorporation of human rights principles during Iraq's constitutional and legal reconstruction, and especially to secure for all individuals strong human rights provisions, including freedom of thought, conscience, religion or belief, and due process of law, through the Iraqi legal system and the implementation of the Iraqi constitution.^{xiv}

It remains up to the State Department to implement this recommendation by selecting and appointing the appropriate candidate, which the Commission hopes will occur without delay.

Commission Recommendations

In order to advance protections of human rights, including freedom of thought, conscience, and religion or belief, for all Iraqis, the U.S. government should:

- speak out at the highest level against religiously motivated violence, including violence targeting women and members of religious minorities, as well as efforts by local officials and extremist groups to enforce religious law in violation of the Iraqi constitution and international human rights standards;
- take steps, in cooperation with Iraqi law enforcement, (a) to enhance security at places of worship, particularly in areas where religious minorities are known to be at risk, and (b) to locate and shut down illegal courts unlawfully imposing an extremist version of Islamic law;

- immediately appoint and dispatch a senior Foreign Service officer to the U.S. Embassy in Baghdad to report directly to the Ambassador and to serve as the lead human rights official in Iraq, as endorsed by the Congress;

- urge Iraqi leaders, with direct U.S. government support, to:
 - establish effective Iraqi institutions to protect human rights in accordance with international standards, including the establishment of an independent and adequately financed national human rights commission;

 - undertake transparent and effective investigations of human rights abuses, including abuses stemming from sectarian, religiously motivated, and other violence by Iraqi security forces and others; and

 - enhance efforts to bring perpetrators of such abuses to justice;

- immediately appoint one or more U.S. advisors under the Department of State's Iraq Reconstruction Management Office (IRMO) to serve as liaisons to the Iraqi Ministry of Human Rights;

- advocate constitutional amendments to strengthen human rights guarantees, including the specific recommendations formulated by the Commission in its analysis of the constitution;^{xv}

- urge Iraq's new government and Council of Representatives to include underrepresented religious minorities, i.e. Sunnis and Christians, in the work of the constitutional amendment committee;

- give clear directives to U.S. officials and recipients of U.S. democracy building grants to assign priority to projects that seek to encourage the inclusion of effective human rights guarantees for every Iraqi in the permanent constitution and its implementing legislation, and also emphasize projects that promote multi-religious and multi-ethnic efforts to address religious tolerance and understanding, as well as knowledge among Iraqis about universal human rights standards;

- re-allocate Iraq Relief and Reconstruction Fund^{xvi} money to support human rights by:
 - directing unobligated Iraq reconstruction funds to deploy a group of human rights experts for consultations with the Iraqi Council of Representatives and the constitutional amendment committee, and to assist with legal drafting and implementation matters related to strengthening human rights provisions, including freedom of thought, conscience, and religion or belief;
 - declaring a proportional allocation of funds for ChaldoAssyrian communities, ensuring that the use of these funds are determined by independent ChaldoAssyrian national and town representatives, and establishing direct lines of input by such independent ChaldoAssyrian structures into the allocation process of the Iraqi central government in Baghdad, separate from the Kurdish Regional Government;
 - funding workshops and training sessions on religion/state issues for Iraqi officials, policymakers, legal professionals, representatives of non-governmental organizations (NGOs), religious leaders, and other members of key sectors of society who will have input on constitutional amendments and implementation; and
 - establishing an Iraqi visitors program through the State Department to focus on exchange and education opportunities in the United States related to freedom of religion and religious tolerance for Iraqi officials, policymakers, legal professionals, representatives of NGOs, religious leaders, and other members of key sectors of society;
- ensure that U.S. funding and other forms of support are not going to Iraqi political parties or other organizations that advocate or condone policies at odds with Iraq's international human rights obligations, or whose aims include the destruction of such international rights guarantees;
- address with regional Kurdish authorities reports of attacks on religious and other minorities and the expropriation of ChaldoAssyrian property, and seek the return of property or restitution, as well as assurances that there will be no official discrimination practiced against minority communities; and

- urge the Iraqi government to reconsider and revise a proposed new law regulating NGOs, drafted by the Ministry of Civil Society, which reportedly imposes harsh restrictions on both national and international NGOs; any such regulations should comport with international human rights standards.

In addition, the U.S. Congress should:

- ensure continued funding through Fiscal Year 2007 for democracy and governance programs in Iraq, including the specific programs discussed above; and
- invite Iraqi legislators to visit the United States to interact with U.S. legislators, government officials, and civil society leaders on human rights protections and religion/state issues.

ⁱ UN Assistance Mission for Iraq (UNAMI), “Human Rights Report,” (1 January-28 February 2006), pp. 1-2 (<http://www.uniraq.org/aboutus/HR.asp>).

ⁱⁱ See U.S. Department of State, *International Religious Freedom Report 2005*. These allegations are reinforced by the UNAMI, which recently reported that “extra-judicial executions [carried out by forces linked to the Ministry of Interior] underline a deterioration in the situation of law and order.” UNAMI, “Human Rights Report,” (1 July – 31 August 2005), p. 2.

ⁱⁱⁱ UNAMI, “Human Rights Report,” (1 January-28 February 2006), p. 4.

^{iv} Sabrina Tavernise, “As Iraqi Shiites Police Sunnis, Rough Justice Feeds Bitterness,” *The New York Times*, February 6, 2006 (<http://www.nytimes.com/2006/02/06/international/middleeast/06enforcers.html?ex=1296882000&en=3679c6a4af45c6a4&ei=5088&partner=rssnyt&emc=rss>).

^v According to the UNHCR, “Iraqi Christians continue to arrive in Syria and Jordan, however, in smaller numbers than in 2004.” UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers* (October, 2005), p. 9 (<http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=RSDLEGAL&id=4354e3594&page=publ>).

^{vi} *Ibid.*

^{vii} Zenit News Agency, “Nuncio in Iraq: The Situation is Insecure,” February 1, 2006.

^{viii} U.S. Department of State, *2005 Country Reports on Human Rights Practices*.

^{ix} UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers* (October, 2005), p. 11.

^x Official Gazette of Iraq No. 1880, May 18, 1970. Among other things, Law 105 outlawed the approval or promotion of the Baha’i faith, as well as association with any Baha’i organization; banned the sale, distribution, printing, and possession of Baha’i literature; ordered all Baha’i institutions shut down; and seized properties and assets associated with these institutions. Anyone found in violation of the law was originally subject to a minimum ten-year imprisonment. Law No. 141 of 1979 increased the penalty to

life imprisonment and, in some cases, the death penalty. Official Gazette of Iraq No. 2741, Nov. 19, 1979 and Decree No. 1447 of 1979 of the Revolutionary Council.

^{xi} UN Special Rapporteur on Freedom of Religion or Belief, “Addendum: Summary of Cases Transmitted to Governments and Replies Received,” March 27, 2006, UN Doc. E/CN.4/2006/5/Add.1, p. 50.

^{xii} *Ibid.*

^{xiii} Tad Stahnke and Robert C. Blitt, “The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries,” 36 *GEO. J. INT’L L.* 947-1078

(http://www.uscirf.gov/countries/global/comparative_constitutions/03082005/03082005_study.html).

^{xiv} Available at http://www.rules.house.gov/109/text/hr2862cr/109_hr2862cr.htm.

^{xv} The analysis of the Iraq constitution and related recommendations, in English and Arabic, is available on the Commission’s website, www.uscirf.gov.

^{xvi} Pub. Law 108-106, 117 Stat. 1209 (November 6, 2003).