



Assyrian Studies  
ASSOCIATION

## **Iraq: Path to the law of “Minority Rights Protection” - Obstacles to reach the goal!**

Conducted by Mikhael Benjamin, representing the Nineveh Center for Minority Rights in coordination with and supported by the Assyrian Studies Association at the end of 2023.

The study examined the obstacles to enacting a law related to Article 125 of the Iraqi Constitution, which states: “this Constitution shall guarantee the administrative, political, cultural, and educational rights of the various nationalities, such as Turkmens, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law.” It also identified the essential provisions that the proposed legislation should include, basing these provisions on the constitutional article and aligning them with international standards for protecting minority rights, particularly the rights of indigenous minorities.

### **Conclusions and Recommendations:**

1. The Iraqi Council of Representatives (COR) should legislate the law stipulated in Article 125 of the Constitution at the earliest opportunity. Failure to do so constitutes a clear constitutional violation, giving stakeholders the right to file a lawsuit with the Constitutional Court and demand a ruling that compels the COR to enact the law.
2. In legislating this law, the Council of Representatives must adhere to the constitutional language in Article 125, ensuring the law includes all administrative, political, educational, and cultural rights, rather than limiting it to specific areas as seen in the draft that underwent a first reading. Otherwise, stakeholders also have the right to seek recourse with the Constitutional Court.
3. The enacted law should specify in its "Justification/ Rationale" section that it is based on the constitutional Article 125.
4. Administrative rights are among the most crucial rights omitted from all versions of proposed laws drafted by various organizations and entities. Article 125 falls under Chapter Four, Title Five of the Constitution, titled "Local Administrations." All chapters in Title Five primarily address administrative issues under "Authorities of Regions" distributed across

"Capital / Regions / Governorates not organized into a region / then Local Administrations."

5. The proposed law should align with international standards and include the four essential pillars for safeguarding minority rights: (1) protection and promotion of existence and survival, (2) protection and promotion of cultural identity, (3) equality and non-discrimination, and (4) protection and promotion of effective and real participation in public life.
6. The proposed law should bear a clear title and content, such as the "Law on Protection of Minority Rights." Other issues such as preventing discrimination, combating incitement to hatred, and ensuring freedom of religion and belief, may be included as supplementary provisions (without duplicating other existing laws, such as the Penal Code). In particular, it should address hate speech through technology and social media. However, framing the law as "Protection of Diversity and Prohibition of Discrimination" while it pertains solely to minority rights and addresses only a few select issues, does not align with Article 125 and fails to adequately protect minority groups. A comprehensive law on "Equality and Prohibition of Discrimination" covering all Iraqis is urgently needed, yet it is a separate and broader issue.
7. The law must explicitly define "minority group" and establish both objective and subjective criteria for such groups based on internationally recognized characteristics, such as smaller population size, have no political dominance, distinct language, culture, religion, or heritage, and self-identification and commitment to preserving and developing these characteristics.
8. The law should recognize that Iraq has different types of minorities, including ethnic, religious, and linguistic minorities. Some may have dual attributes (e.g., both religious and linguistic), and crucially, some are Indigenous Peoples of Iraq (Indigenous Minorities). Therefore, minority rights should be diversified accordingly. It is unacceptable that the proposed law does not protect historical and traditional lands or the economic resources of these minorities who have been present on these lands for thousands of years. Many activists specializing in minority and Indigenous Peoples' rights suggest that "city councils" could be an effective solution for protecting land rights and associated rights, particularly for Indigenous minorities.
9. The proposed law should include a provision granting elected minority representatives in councils, whether local, regional, or national (at the level of regions or the national parliament), a veto right over decisions affecting minority affairs. The law could establish mechanisms for exercising this right or leave it to the internal regulations of these councils. One mechanism could be "double voting," requiring the approval of minority representatives for

decisions affecting minority issues, rather than relying solely on majority votes from non-minority members. Another option could prevent decisions impacting minorities from passing without the approval of a minority council or representative body, either elected or advisory, which the law would mandate.

10. The law could address several key issues for minorities that the Constitution does not cover, such as:

A. Recognizing minorities not mentioned in the Constitution, whether ethnically, religiously, or linguistically. This could involve listing all groups identifying as minorities and meeting objective and subjective criteria, or defining "minority group" based on set criteria, with advantages and disadvantages of each approach discussed earlier.

B. The law should ensure that all recognized minorities are guaranteed a share of reserved seats (electoral quota). These reserved seats should not be subject to political negotiations or fluctuate with each new electoral law but should be legally guaranteed to compensate for the lack of a constitutional quota. Moreover, reserved seats should not be limited to a few specific minorities but available to all. The core idea of a quota system is to ensure representation and a voice in political decision-making for minorities, especially those unable to secure parliamentary seats through general competition. Reserved seats should not be disproportionately allocated based on population size, which is more appropriate for groups with populations exceeding 500,000. Based on this principle, it would be advisable to allocate seats among minorities more equitably, for instance: one seat for populations between 5,000-50,000, two seats for populations between 50,000-100,000, and three seats for higher populations. Additionally, an extra seat could be provided to any minority distinguished by unique ethnic, religious, or linguistic traits or considered an Indigenous minority in Iraq.

11. The proposed law will only be effective if it includes clear implementation mechanisms and sanctions for violations, as well as identifies the authorities and institutions responsible for enforcement, monitoring, and accountability in cases of non-compliance.