

Legal Aid Analysis Framework Iraq Pilot Exercise – Summary Report

July 2023

About the LAAF Exercise

The Legal Aid Analysis Framework (LAAF) is a tool developed by the Global Protection Cluster's Task Team on Law and Policy to assist humanitarian actors in conducting a comprehensive analysis of the legal aid landscape and general access to legal services within a specific humanitarian context. Iraq was selected as a pilot country for the LAAF tool and the exercise was led by a Steering Committee under the umbrella of the Iraq Protection Platform. Iraq is a unique location to pilot the tool, which was designed to assess legal aid in conflict scenarios where an active humanitarian response is ongoing, given that the decision was made to deactivate the cluster system in Iraq at the end 2022. Since the beginning of 2023, protection actors in Iraq have transitioned away from direct humanitarian assistance towards more sustainable development approaches. The flexibility of the LAAF tool proved successful in measuring and analyzing access to legal aid and other legal assistance services within this transition context.

It was decided by the LAAF Iraq Steering Committee to focus the initial pilot exercise on **access to legal aid and other legal assistance services for members of ethnic and religious minority communities in the Kurdistan Region of Iraq (KR-I)**. The KR-I is home to a large number of ethnic and religious minority communities, including those which have lived there for many years as well as those who were displaced from other parts of Iraq due to conflict and violence. Additionally, the unique political status of KR-I as a semi-autonomous region of the Iraq and the subsequent applicability of (sometimes contradictory) federal and regional laws and policies makes the situation in KR-I particularly unique as a case study.

The LAAF Iraq exercise was conducted over a period of three months (April-July 2023) with two distinct research phases. The first phase entailed a desk review of the existing data and literature on access to legal aid and other legal assistance in KR-I and the overall access to justice systems for different ethnic and religious minority communities in the region. Additionally, a mapping of the legal framework pertaining to legal aid and access to rights for ethnic and religious minority communities in Iraq (both at Federal and regional level) was conducted during this phase. Findings from this phase were presented by the LAAF Iraq principal investigator in an initial workshop in May 2023, and discussions with workshop participants informed the design of the second phase of research. During the second phase, the LAAF Iraq team designed and administered a survey to more than 90 legal and judicial personnel on access to legal aid in KR-I. Additionally, the team conducted 27 key informant interviews with a wide variety of political and legal experts as well as civil society activists and members of ethnic and religious communities in KR-I to discuss the situation of access to legal aid and other legal services in KR-I for different communities. Key themes from this data collection and additional desk research informed the final version of the LAAF Iraq report. Findings and recommendations were presented by the LAAF principal investigator at a final workshop in July 2023.

Summary of Key Findings

Different ethnic and religious minority communities are recognized and protected under the Federal Iraqi and KR-I legal frameworks.

The Iraqi Constitution (2005) recognizes three “religious minority”¹ communities (Christian, Ezidi, Sabean) and five “ethnic minority” communities (Turkmen, Assyrian, Chaldean, Syriac, Armenian). Another Federal law, the Iraqi Supplementary System to the Religious Sects Welfare System Law No. 32 of 1981 additionally recognizes the Jewish community in Iraq. The KR-I Law on the Protection of Minority Rights No. 5 of 2015, only applicable in the Kurdistan Region, recognizes the same five ethnic minority communities as the Federal Iraq Constitution but recognizes seven “religious minority” communities (Christian, Ezidi, Sabean, Kaka’i, Fayli, Shabak, Zardashti). Thus, some communities are recognized and protected in both frameworks, some are represented in one or the other. Additionally, other minority communities present in Iraq, such as the Baha’i, have no legal recognition: in fact, practice of the Baha’i faith has been legally prohibited in Iraq since the 1980s.

Different protections are afforded to recognized minority groups under the Federal and KR-I legal frameworks.

In addition to the difference in legally recognized and protected groups across the Federal and KR-I legal frameworks, different types of protections are afforded to communities under each framework. Article 14 of the Iraqi Constitution (2005) guarantees equality before the law for all persons and prohibits all forms of discrimination. Article 41 guarantees the right of minority communities to educate children in their mother tongue, and Article 44 states that, in areas where there is a significant presence of a minority community, their mother tongue will be considered an official language in that area.² Per Article 49, the representation of minority communities in the Iraqi Parliament should be taken into consideration.

Beyond the Constitution, there are several Federal laws that pertain to the representation of minority communities in governance and policymaking structures. The law governing the Iraqi High Commission for Human Rights No. 53 of 2008 requires at least one member and one substitute member of its Board of Commissioners must represent a minority community. The Iraqi Parliament, Provincial and District Council Election Law No. 12 of 2018, sets a quota for nine seats for minority representatives in the Iraqi Parliament: five for Christians and one seat each for Ezidis, Shabaks, Sabeans and Fayli Kurds). The law also sets a quota of ten seats in provincial and district councils for minority representatives (four seats for Christians, two seats each for Sabeans and Fayli Kurds and one seat each for Ezidis and Shabaks). The Christian, Ezidi and Sabean Endowment Office was established through Law No. 58 of 2012 to manage these communities’ religious affairs and is linked to the Iraqi Council of Ministers.

Protections and representation for minority communities are different in the KR-I legal framework. In KR-I there is a specific law dedicated to the protection of the rights of ethnic and religious minority communities. The Law on the Protection of Minorities’ Rights No. 5 of 2015 provides a broad range of rights protections for the minority communities recognized within it, including freedom of religion, expression and protection from discrimination. The KR-I Parliament Election Law No. 1 of 1992 allocates 11 quota seats (out of 111 seats in the KR-I Parliament) for minority representatives: five seats for members of the Chaldean, Assyrian and Syriac communities, five seats for Turkmen representatives and one seat for Armenians. For KR-I provincial councils, the Provincial and District Election Law No.4 of 2009 allocates nine quota seats for minorities: five seats for Chaldean, Assyrian, and Syriacs, three seats for Turkmen and one for Armenians. The KR-I Law of the Ministry of Education No. 4 of 1992 established two regional General Directorates for Syriac and Turkmen Education. The KR-I Law of the Ministry of Endowment and Religious Affairs No. 11 of 2007 provided for the establishment of additional regional General Directorates for

¹ It is important to note that many of the minority communities identified in the legal frameworks self-identify as ethno-religious communities, and thus it is not accurate to define them as singularly ‘ethnic’ or ‘religious’ minorities.

² This is also guaranteed in the Iraqi Official Language Law No. 7 of 2014.

Christians and Ezidis. There are representatives from Kaka'i and Zardashti communities in the KR-I Ministry of Endowment as well.

The protections laid out within the legal framework vary by community and location. This is further complicated by the unpredictable application of Federal laws in the KR-I. For example, the Ezidi Survivors' Law No. 8 of 2021 allows members of the Ezidi, Shabak and Christian communities to apply for compensation for crimes committed against them during the Da'esh period. Despite the presence large populations of members of these communities in KR-I, including those who are still displaced, the law is not applicable in KR-I.

There are gaps in the legal framework for the protection of minority rights in Iraq. There are also marked differences in the implementation of these laws in practice for minority communities.

Whilst there are several Federal and KR-I laws dedicated to the protection of minority rights, significant protection gaps were identified by key informants. For example, key informants raised concerns about Article 26(2) of the Iraqi National Unified ID Card Law No. 3 of 2016, which stipulates that children whose parents have converted to Islam are considered to be automatically converted to Islam along with their parents. This is seen as a threat to the security of minority communities, especially in the context of conversion under duress associated with the crimes of Da'esh.

Another concern that was raised by multiple informants is the administration of personal status affairs for persons from minority communities. The Iraqi Personal Status Law No. 188 of 1959 is derived from Islamic jurisprudence and comes into direct conflict with the laws, traditions and customs of certain non-Muslim communities in Iraq, particularly in relation to marriage and divorce, inheritance, child custody and alimony. While Article 41 of the Iraqi Constitution (2005) grants minority communities the right to rely on their own religious beliefs and customs in personal status issues, and minority communities with personal status cases are referred to the Personal Matters Court which relies on the advice of leaders from the relevant religious minority communities, this is much more complex in practice. For example, different sects of Christianity have different customs regarding marriage and divorce but are not recognized as separate under Iraqi law. Additionally, referral to religious authorities is at the discretion of Personal Matters Judges, and therefore the treatment of non-Muslim persons can vary from case to case.

Key informants emphasized that additional political representation from minority communities in governance and policymaking structures is imperative to address the legal and implementation gaps for protection the legal rights of minority communities.

There is limited access to legal aid services in Iraq for those who need them.

There is no legal framework for the comprehensive provision of reduced-cost or free-of-charge legal aid services for those in need in Iraq. Additionally, no legal framework exists to regulate the provision of legal aid by non-governmental entities. Where free-of-charge legal aid are provided for in the law, they are limited to legal representation for defendants in felony and misdemeanor cases.³ The Iraqi Criminal Procedure Law No. 23 of 1971 states that Courts must appoint a lawyer for a defendant in felony and misdemeanour cases if the defendant has not retained one on their own. The Court provides remuneration for the lawyer, on behalf of the of the state. According to Iraqi Civil Procedure Law No. 83 of 1969, free-of-charge legal aid ("judicial assistance") can be provided to the requester who meets certain criteria: (1) the requester must submit evidence to the Court that demonstrates their

³ Article 19(11) of the Iraqi Constitution (2005) provides for free-of-charge legal representation only for defendants in criminal cases who are unable to afford their own representation.

inability to afford litigation costs; and (2) there must be a possibility that the case could be ruled upon in favour of the requester.

Survey respondents and key informants interviewed for the LAAF exercise expressed concerns about the limited scope and poor quality of legal aid in Iraq. It was noted that lawyers assigned to free-of-charge legal cases are often very junior and are not motivated to perform at a high quality given the limited remuneration provided by the Court.

While current legal aid provisions in Iraqi law are limited, this could change significantly with the passage of the current Legal Aid Bill. The current Legal Aid Bill was drafted in 2021 and was submitted to the Iraqi Parliament, where it is still under consideration. The Bill provides for a broader and more comprehensive legal aid system in Iraq, not just for criminal defendants. While nothing has been finalized, this can be recognized as an important step toward ensuring that state-funded legal aid is available free of charge to those who cannot afford the costs and fees associated with legal services.

In addition to the limited legal aid framework in Iraqi law, members of ethnic and religious minority communities in KR-I experience additional challenges and discrimination in trying to access effective legal remedies.

Key informants and survey respondents reported diminished confidence in the protection of minority rights by the State, and some respondents from minority backgrounds shared experiences of discrimination whilst trying to access effective legal remedies.

Recommendations

A series of recommendations have been developed based on the findings of the LAAF research and analysis as well as discussions with participants in the two workshops held during the LAAF exercise.

- Whilst there are several laws both at Federal and KR-I legal frameworks that pertain to the protection of rights for ethnic and religious minority communities, the communities protected by law and the protections afforded to them vary by region, which creates significant protection gaps. There is a need to clarify which laws take precedence for the protection of minority rights and to amend provisions in existing laws which are contradictory to Article 14 of the Iraqi Constitution (such as Article 26 of the National Unified ID Card Law).
- There is a need to improve access to free-of-charge legal aid services for all persons in need in Iraq, not just those from ethnic and religious minority communities. The current framework for legal aid is very limited in scope and is not conducive to the provision of high-quality legal assistance for those in need. The proposed Legal Aid Bill in Iraqi Parliament represents a significant step towards improving access to legal aid and should be prioritized for passage into law.
- Additional measures should be taken to ensure coherent and fair implementation of the legal framework and to prevent discrimination against ethnic and religious minority communities attempting to exercise their rights, including those related to effective legal remedies.

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