**The legal status of the Kurds in the Middle East: The twenty-first**

century policies of Turkey, Iran, Syria and Iraq towards the Kurds

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I clarify that all material in this thesis which is not my own work has been identified and that no material has previously been submitted and approved for the award of a degree by this or any other university.

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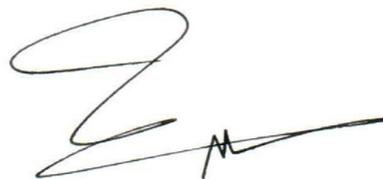
Abstract

The process of decolonisation has led to the emergence of a number of ethnically complex states in the Middle East. The present thesis addresses the Kurdish minority in Turkey, Iraq, Syria and Iran, investigates and analyses the nature and structure of these four states. The nature of the four states is complex in terms of their population; each one contains more than one faith, ethnicity, and language. One ethnicity, faith or sect may dominate the state which may not necessarily reflect the majority of the population, for example, the minority of Alawis dominating Syria, or the constitution, penal code and political system may be biased to a majority sect (Shia in Iran). The present study investigates, compares and contrasts the twenty-first century policies of Turkey, Syria, Iran and Iraq towards the Kurds, it examines whether the concept of equal citizenship does exist or not in the four states.

The minority rights including the Kurds are the key to pluralism and peace in the Middle East. Over the last 50 years, many Middle Eastern and North African minorities have been oppressed or have struggled to survive, national groups (Berbers, Kurds, Turkmens, etc.), religious communities (Christians, Zoroastrians, Baha'is, etc) or both (Armenians, Jews, etc.). Sects, such as Shia in the Gulf States and Sunnis in Iran have not been successfully integrated within Islam itself.

The central argument the present thesis seeks to examine is how equal citizenship (equal access for political, educational, social and economic institutions of the country) can be delivered for the Kurds in the four countries. In order to achieve this, the legal status of the Kurds needs to be changed via reforming and amending the constitution and penal codes of the four states. Recognition of the legal rights of the Kurds and abolishing the discriminatory laws are the cornerstone of a healthy civil society and the key to pluralism and peace in the region.

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1 Chapter one: Introduction

The status and treatment of ethnic minorities are vital political, moral and academic issues and it is the intention of this thesis to address them in relation to the Kurds here. Although there are a significant number of minorities in the post-colonial states in the Middle East, this study is concerned with investigating the legal status of the Kurds living in the states of Turkey, Iran, Iraq and Syria in the twenty first century. It examines whether the concept of equal citizenship exists in these states, it compares and contrasts the states' policies towards the Kurds, and outlines possible solutions for the successful inclusion and fair treatment of the Kurds in these states.

After the collapse of the Ottoman Empire, the 1920 Treaty of Sevres promised the Kurds an independent state. The 1923 Treaty of Lausanne superseded that promise and the Kurdish people were divided between four countries without being legally incorporated. Now the majority of the Kurds live in Turkey, Iran, Iraq and Syria as dominated minorities. Statelessness and lack of recognition of Kurdish rights have caused domestic instability in all the mentioned states. The absence of political consensus has also led to conflicts in the region.

The Kurds have a unique position in the Middle East as a politically organised minority, with territorial claims, known as Kurdistan, within the four states. This built in antagonism over the four states allows for a clearer comparison to take place. The states have controlled parts of Kurdistan have all, to various degrees, failed to guarantee the basic rights of the Kurdish people. This thesis analyses the extent to which these states and their apparatuses have been problematic and questionable in the Middle East.

Contemporary international law and the international community have recognised all the declared states in the Middle East. However, the question remains whether these states represent the aspirations of their populations. The level of success in the

international arena and being a member of the United Nations do not guarantee state competency within its own society. They cannot be considered democratic states without complying to the principles of democracy including: managing their internal and domestic affairs according to the rule of law and basic principles of human rights, especially the rights of minorities including the legal rights of the Kurds.

In this study the concept of equal citizenship is discussed in the context of these four Middle Eastern states. Even though the states claim to implement the principles of democracy, to protect the rights of their population, to hold general elections, and to create modern institutions such as parliament and ministerial administration, they have shortcomings in implementing principles of democracy and democratisation. There is no a genuine effort by the international community and the United Nations to take measures to protect the Kurds' basic rights in the Middle East. An obvious example was the international community's silence about the massive human suffering of the Kurdish people during the period of Ba'th regime in Iraq 1968-2003. Another issue is the international community's silence about Turkey's continuous oppression of the Kurds. Undoubtedly, the main policy of the international community has been to respect the sovereignty of the states. A number of questions arise out of this: To what extent does the theory of sovereignty constrain international efforts to end atrocities against a minority? Can major human rights violations in the Middle East constitute a threat to the security and stability of the international community? Should the international community interfere when a state commits major atrocities against its own minority groups?

Regarding the relationship between the state and its citizens, this thesis defends the argument that the rights of citizens, including the rights of minorities, regardless of their colour, language and ethnicity, should be protected by the state. In addition, the state should represent the wishes and interests of its citizens. In response, citizens should

respect the state and its apparatuses and not harm the interests of their state. To what extent has this hypothesis been achieved in the Middle East? It is argued the western states contributed to the oppression of the Kurds in the Middle Eastern states, by bypassing the international laws, norms and treaties and sided with the states' to oppression by the states of the Kurds.

This thesis is divided into eight chapters. After outlining the issues in this chapter the thesis addresses the historical background of the region in chapter two. This discusses colonisation and decolonisation and provides a short history of the Middle East. To understand the current situation in the Middle East, and particularly the four states, it is important to understand the processes of colonisation and decolonisation and their legacy. Colonisation, decolonisation and the collapse of the Ottoman Empire in the aftermath of World War I are investigated followed by the emergence of the new states as four independent nation-states. Chapter three gives an overview of the modern Middle East and the four covered countries of the study. It would be difficult to investigate the legal status of the Kurds without addressing the structures and backgrounds of the four examined countries. This chapter also gives an overview of the Kurds in general.

Chapter four will discuss the phenomena of nationalism, statehood and ethnicity in Iraq. The major components of this chapter are: the Ba'th party and its policies towards the Kurds and the Iraqi state's failure in incorporating and dealing with the Kurds. In addition, the implications of the current constitution of the country are examined. The paper argues the unsuccessful policies of the Ba'th regime are still practiced in the region by different people towards the Kurds and other minorities of the region. Thus, the Ba'th's agenda is not behind us, but is still ongoing. An understanding of Ba'thism and its relationship with nationalism, ethno-religion and the nation-state in Iraq are outlined here.

Chapter five emphasises Turkey. The political developments in Turkey, which has the largest Kurdish population, are assessed. The chapter analyses the current constitution and legal system of Turkey with emphasis on dealing with the Kurds. The current legal status of the Kurds in Turkey is examined extensively. The chapter concludes by its findings in light of the theory of equal and constitutional citizenship which has been stated in the first chapter.

Chapter six is mainly about the current legal status of the Kurds in Iran. The assimilation policies of the state of Iran towards the Kurds are investigated. The ill-treatment of the Kurds by the Iranian authorities exposes the absence of a system which handles its citizens equally. Investigation is carried out on three issues and how they interact with one another; the dominance of the Shia sect in political and judicial systems of Iran, the consequences of the Persian-Shia concept on the Kurds and the constitutional attempts in Iran to assimilate the Kurds into the framework of the Iranian nation. Articles of the Iranian constitution, legal structure of the country and the policies of the government are addressed.

Chapter seven examines the false ethnic homogeneity of Syria. Assimilation of the Syrian Kurds is assessed here. Treatment of the Kurds according to the Syrian constitution and the penal code of Syria are analysed. Examining equal citizenship (equal access for political, educational, social and economic institutions of the country) for the Syrian Kurds are the major aim of this chapter. The judicial system, internal oppression and absolute denial of the Kurds in Syria are highlighted.

Chapter eight sets out discussions and conclusions; the necessary discussions which surrounded the legal status of the Kurds is one of the conclusions. This chapter highlights the major and significant reforms and approaches needed in order to establish a state which guarantees the equal rights for the Kurds. Absent of equal citizenship for the Kurds should be taken seriously and further research is necessary. In order to

achieve this aim, this chapter addresses five issues and how they interact with one another. These will be how the identities of the countries of (Iraq, Turkey, Syria and Iran) are in crisis, the absence of a liberal constitution and existence of a biased political system to a sect, language or ethnicity and the consequences of this climate on the Kurds. This chapter summarises the constitutional attempts of the above four countries to assimilate the Kurds rather than guarantying equal citizenship for them, and finally what can be done through international organisations and conventions to change the legal status of the Kurds.

1.1   Theoretical Framework: The theory of citizenship

The concept of citizenship, based on rights, was a Roman development with roots in Greek thought and practice. For the Greeks citizenship was an inherited privilege and clearly marked the boundary between non-citizens and citizens. From the very beginning the term entailed exclusion since not everyone was in possession of it. It was restricted to a small group of privileged people and this led to inequality and injustice. For the Romans citizenship became established as a strictly legal status defining membership of the Roman political community.

   This conception of citizenship as a legal category was connected with the distinction made between state and society whereby a legally codified set of relationships defined the rights and duties of the individual. Huddleston and Kerr (2006:13) define citizenship '[T]he term 'citizenship' has several different meanings: A legal and political status, in its simplest meaning, 'citizenship' is used to refer to the status of being a citizen – that is, to being a member of a particular political community or state'. Citizenship in this sense brings with it certain rights and responsibilities that are defined in law, such as the right to vote, the responsibility to pay tax and so on. It is sometimes referred to as nationality, and is what is meant when someone talks about 'applying for', 'getting', or being 'refused' citizenship. Involvement in public life and affairs, the term 'citizenship' is

also used to refer to involvement in public life and affairs – that is, to the behaviour and actions of a citizen. It is sometimes known as active citizenship. Citizenship in this sense is applied to a wide range of activities – from voting in elections and standing for political office to taking an interest in politics and current affairs. It refers not only to rights and responsibilities laid down in the law, but also to general forms of behaviour – social and moral – which societies expect of their citizens. What these rights, responsibilities and forms of behaviour should be is an area of on-going public debate, with people holding a range of views. An educational activity, finally, 'citizenship' is used to refer to an educational activity – that is, to the process of helping people learn how to become active, informed and responsible citizens. Citizenship in this sense is also known as citizenship education or education for citizenship. It encompasses all forms of education; from informal education in the home or through youth work to more formal types of education provided in schools, colleges, universities, training organisations and the workplace. On the importance of teaching citizenship and its relationship with the democracy, Crick (199:30) argues '[c]itizenship is more than a subject. If taught well and tailored to local needs, its skills and values will enhance democratic life for all of us, both rights and responsibilities, beginning in school and radiating out'.

The concept of citizenship has two uses. The first is expressed by Turner as 'that set of practices (judicial, political, economic, and cultural) which define a person as a component member of society, and which as a consequence shape the flow of resources to persons and social groups'. (Tuner 1994:2). Citizenship can be refer to the way in which a variety of institutions-most typically the state, historically at least-apprehend and incorporate individuals as equal members of a polity, rather than outsiders. In another sense, citizenship refers to a 'status' or more precisely to a complex and shifting set of statuses that determines a set of rights and responsibilities, and the relation of

individuals to the state, and to each other. As Narayan (1997:27) argues '[w]hilst citizenship has been used as critical tool by groups seeking to achieve inclusion and participation within a given community, it has at the same time functioned as a mechanism for excluding minority groups'. On the nature of exclusions, she explains further and states '[T]he Exclusions are two types: external exclusions-those abroad or exiled, the genuine outsiders who live beyond the geographical borders of the political community. But there are also internal exclusions. Some people are present, and presumed at the founding of citizenship regimes; but simultaneously absent, and excluded from citizenship as a practise'. (Narayan 1997:27). The second type of exclusion (internal exclusion), to large extent, is relevant to the legal status of the Kurds in the four examined countries of this thesis.

Citizenship as a social fact and legal status, as an idea and an ideal, continues to be a problematic concept with no agreed-upon definition. Even within a single society, citizenship has many dimensions and bears many meanings. Scholars of citizenship have analysed the concept in a variety of ways. Four dimensions seem to capture citizenship's essential, normative and positive meanings. These four dimensions are: political, legal, psychological, and sociological.

After briefly defining each aspect of citizenship, this chapter discusses the most important policy variables that states deploy when they enact their collective visions of citizenship into law. The political dimension of citizenship (at least in a democratic state) affirms the value of public participation in the project of self- government. This is tempered by an exclusionary principle that certain type of political activity, notably voting, is limited to those who meet the standards for full membership in the polity. These standards are defined by the state. The legal dimension of citizenship is the most easily defined and measured aspect. It emphasises the positive law that determines the distinctive status of citizens in a constitution or other fundamental charters. It

specifically prescribes the citizen's rights and obligations, not including others who may be living on the state's territory.

The psychological aspect is dependent upon the political identity of citizens. Political identity, on the other hand, is determined by whether individuals conceive of themselves primarily as members of a particular state rather than another political community, by how salient this identity is for them, and by the identity that others ascribe to them. Political identity is consistent with other facets of identity such as ethnicity. It is also compatible with the possibility that citizens may identify with more than one polity as many dual and single citizens do.

The sociological dimension of citizenship looks to how individual citizens are integrated into civil society. This has a stronger normative resonance in public debates than the other dimensions. A notion like "second-class citizenship" is used colloquially to criticise the effective exclusion of women, minorities, or other groups from full participation in the economic, cultural, political, or other aspects of community life despite their legal status as citizens. Conversely, critics may point to a polity's failure to accord citizenship status to long- resident groups, such as third-generation Turks in Germany, that may be integrated in some ways (e.g. socially and linguistically) more than others (e.g. in terms of economic mobility).

The state's laws regarding citizenship, immigration, and the rights of aliens' instantiate its values about how inclusive it should be, along which dimensions, and on what terms. Although immigration is the only gateway to citizenship for most foreign-born individuals, few states viewed themselves as countries of immigration until very recently. Even states that did, such as the U.S.A., Australia, Canada, and Israel, had imposed certain racial, religious, or ethnic barriers. Italy, Ireland, and some other European states still think of themselves as countries of emigration even after experiencing net migratory inflows. Peter H. Schuck (2000:211) argues:

> The extreme example is Germany despite almost 10% of its population now being foreign-born (a larger share than in the U.S.) and a demographic profile that ensures that this share will steadily grow. Millions of German residents were born, raised, and are permanently settled there without having gained German citizenship for them- selves or even for their German-born children or grandchildren. (The German nationality law enacted in 1999, however, should gradually reverse this pattern through liberalisation of the rules governing just sanguineous [of or relating to blood] citizenship, dual citizenship, and naturalisation.

Hammar (1999:201) outlines four interrelated meanings of citizenship; namely legal, political, social and cultural, and psychological. The legal dimension is formal membership in a state, based on specific rules which guarantee a number of rights and duties. The political dimension specifies the position of the individual in the polity as citizen, and thus forms the basis of the state. In the cultural and social sense it signifies membership of a nation. And finally, psychologically it provides an expression of individual identification. From Hammar's perspective, it is obvious that citizenship is more than a legal status. It is seen as an identity expressing an individual's membership in a definitive politico-cultural community. Generally speaking, citizenship can be acquired in some or all of the following ways: birth within the state's territory, birth to parents who are citizens of the state, marriage to a citizen, naturalisation after a prescribed period of legal residence, or as a result of ethno-cultural ties. Other, less common routes to citizenship include service in a state's military and incorporation through annexation. Although these rules are generally a matter of national law, some federations legislate them at the sub-unit level.

Another leading scholar of citizenship and multicultursim, Kymlicka (2002:32) connects the term of citizenship with the liberal ideas and he argues 'citizenship is initially linked to liberal ideas of individual rights and entitlements on the one hand, and to communitarian ideas of membership in and attachment to a particular community on the other. Thus it provides a concept that can mediate the debate between liberals and communitarians. It is not surprising, therefore, that there has been an explosion of

interest in the concept of citizenship amongst political theorists'. It could be confidently stated that 'the concept of citizenship has gone out of fashion among political thinkers'. (Herman 1990:9).

According to Marshall (1949:27), citizenship is essentially a matter of ensuring that everyone is treated as a full and equal member of society. And the way to ensure this sense of membership is through according people and increasing number of citizenship rights. Marshal divides citizenship rights into three categories which he sees as having taken hold in England in three successive centuries: civil rights, which arose in the eighteenth century; political rights, which arose in the nineteenth century; and social rights-e,g. to public education, health care, unemployment insurance, and old-age pension-which have become established in the twentieth century. For Marshall, the fullest expression of citizenship requires a liberal-democratic welfare state, By guarantying civil, political, and social rights to all, the welfare state ensures that every member of society feels like a full member of society, able to participate in and enjoy the common life of society, Where any of these rights are withheld or violated, people be marginalised and unable to participate. This is often called 'passive' or 'private' citizenship, because of its emphasis on passive entitlements, and the absence of any obligation to participate in public life. It is still widely supported. When asked what citizenship means to them, people are much more likely to talk about rights than responsibilities or participation. For most people, citizenship is, as the American Supreme Court once put it 'the right to have rights'. Citizenship is not just a certain status, defined by a set of rights and responsibilities. It is also an identity, an expression of one's member- ship in a political community. Marshall saw citizenship as a shared identity that would integrate previously excluded groups within British society and provide a source of national unity. He was particularly concerned to integrate the

working classes, whose lack of education and economic resources excluded them from the "common culture" which should have been a "common possession and heritage".

The events of twentieth century have made clear that the health and stability of a modern democracy depends, not only on the justice of its basic institutions, but also on the qualities and attitudes of its citizens: e.g. their sense of identity, and how they view potentially competing forms of national, regional, ethnic, or religious identities; their ability to tolerate and work together with others who are different from themselves; their desire to participate in the political process in order to promote the public good and hold political authorities accountable; their willingness to show self-restraint and exercise personal responsibility; in their economic demands, and in personal choices which affect their health and the environment. Without citizens who possess these qualities, democracies become difficult to govern, even unstable. As Habermas note 'the institutions of constitutional freedom are only worth as much as a population makes of them'. (Habermas 1992:7).

On the emergence of equality which has a link with the used concept of this thesis (equal citizenship), Armstrong (2006:29) argues '[I]t has recently re-emerged in response to the 'equality of what' literature; this idea has a long heritage. A theoretical link between equality and citizenship can be found in the work of Marx and Rousseau, in the socialisms of Tawney or Titmuss, and in the New Liberalism of a century ago the link between equality and citizenship was explicit'. In relation to inequality and its consequences, Warbner (1999:39) states 'Inequality occurs when we can identify oppression, when individuals or groups exist in relations of hierarchy, or are prevented from standing together as peers'.

If the sole implication of the concept of equal citizenship or equal protection is merely to ensure that the government enforces all laws fairly, and passed no discriminatory measures, and then while it would still be important, the concept would not have been

implemented towards the Kurds in the four examined counties of the thesis. What the international courts and legislatures have understood is that equal protection or equal citizenship is a root concept of citizenship. Just as a person cannot fulfil the duties of a citizen without the ability to speak freely and hear different viewpoints, so one cannot be a full member of the community if subject to discriminatory classification.

An essential component of equal citizenship is respect, the recognition by one person of another's parity in the social contract and in public affairs. Any irrational form of stigmatisation is based on race, gender, or religion, automatically assigns individuals who have that trait to an inferior category. Tied in with this is the value to the polity of participation. How can the majority take seriously efforts by the minority to participate in civic life if that minority has been branded as invariably inferior? Also, how can the minority be expected to behave responsibly if its members are consigned to a category that implies they cannot do so? These questions are relevant to the legal status of the Kurds and the viability of delivering equal citizenship for the Kurds in the four examined countries of this thesis.

On the values of equal citizenship, Warren (1967:21) writes '[t]hese three values of equal citizenship – respect, participation, and responsibility – are the characteristics one expects of all citizens in a democratic society. It is impossible to legislate social or economic equality; few people would, in any case, want that. But the courts and the legislatures in a democratic society have attempted to ensure that at least in three areas deemed "fundamental" no person or group of persons will face discrimination'. Through examining the articles of the constitutions, penal codes and policies of the four countries (Iraq, Turkey, Iran and Syria), the thesis investigates to what extent the values of equal citizenship are implemented towards the Kurds.

Citizenship can be defined as a document regulating the relationship between the individual and the state, and specifically between the individual and the modern state,

whose midwife has been the American and French revolutions of 1775 and 1789 respectively. Davis (1997:212) states:

> The right to citizenship is a right that is won by the people from the state through struggle (sometimes necessitating revolution), often with a huge sacrifice against the sustained resistance of the state. In Western liberal democratic states citizenship represents a recognised basic claim of the individual vis-à-vis the state of which he is a citizen, a right to equal access to the resources of the state: equal access to the civil resources of the state (e.g. courts of law); the power-political resources (e.g. the vote and elections); social services resources (e.g. land and water). Elements of citizenship: Political, Civil and social. Democratic citizenship empowers equal citizenship by allowing the people to have equal access to the civil, political, social and economic resources of the state.

Citizenship has come to determine equality in relation to a largely centralised state during the twentieth century. The modern conception of citizenship has been based on the idea that membership of society must rest on a principle of formal equality (Davis 1997:232). This means that in order to be a full member of a community, one should have the same rights and duties as the others and that all citizens should be equal in the eyes of law without discrimination based on race, ethnicity, class, gender or sexuality. Similarly, The UN International Convention on the Elimination of All Forms of Racial Discrimination, 1966 and the International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973 states:

> In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

In light of the above international document, the legal status of the Kurds in the Middle East is examined in this study. The major question of this thesis is examining equal citizenship for the Kurds in Turkey, Syria, Iran and Iraq. There is, however, a tension between equality and the recognition of difference. On the one hand the Kurds want to have the same basic rights as members of the dominant group, while on the other they want to be recognised as a different entity in society. Both of these issues have caused

problems with the central states in the Middle East. While Iran may be more tolerant in recognising the Kurds' differences, Turkey, Iraq and Syria have used violent strategies to suppress these differences. These differences are explored in this thesis.

Gewirth (1978:33) outlines 'the general principle of human rights' which states all persons have equal rights to freedom and to well-being. Gewirth's guiding idea is that we have equal rights to freedom and well-being because they are the necessary conditions of agency and the achievement of our goals. His general approach to grounding special obligations is to say that the principle of human rights justifies social rules and institutions if they express or protect people's freedom and well- being. In this way Gewirth overcomes what might be thought of as a general difficulty with a Kantian approach to justifying special obligations to compatriots: that it is committed to a voluntarism account of special obligations according to which these obligations can arise only from promises or contracts, and there has been no such contract between citizens or between citizens and the state.

Will Kymlicka's Multicultural Citizenship represents an extraordinary attempt to put applied political philosophy to work in the empirical context of contemporary political debates about immigration and ethnic minorities in western society (Favell 255:1998). Of the many people pursuing these concerns across different applied fields, Will Kymlicka is rightly seen as one of the leading exponents of applied philosophy and public affairs on multiculturalism in pluralist liberal societies. In his work, *Multicultural Citizenship* (1995), Kymlicka offers a defence and justification of the range of special group-based allowances and protections-and their limitations- that national or ethnic minority groups may justly claim within a host liberal society. The text is throughout interspersed with illustrations taken from a range of pluralist liberal societies said to face the problems that *Multicultural Citizenship* identifies. Kymlicka's raw material stretches beyond his Canada, to the US, to other 'new world' immigration societies such

as Australia, to old world problems faced in Europe by France, Britain, Belgium, or Germany, and even situations involving minority 'national' cultures such as the Basque region or parts of Eastern Europe. Kymlicka (1989:23) argues '[S]pecial rights are consistent with the liberal commitment to individual autonomy (i.e., the view that we have a fundamental interest in our moral power of forming and revising a plan of life). Our capacity to form and revise a conception of the good is intimately tied to our membership in a culture, since the context of individual choice is the range of options passed down to us by our language and culture'. He emphasises on multiculturalism and citizenship in the liberal societies of Western countries and giving special rights to groups in a liberal society. However, the present study's context is Middle Eastern societies which are not liberal yet. Therefore, despite that Kymlicka's work is beneficial for this study (in particular giving special rights to minority groups) his theory cannot be used by this study to investigate the legal status of the Kurds in the four examined countries.

This study's claim has been more modest: that none of these principles can justify the idea that compatriots should have special obligations to each other, to participate fully in public life, and to give priority to each other's needs. If there are such special obligations, then they can be defended only on the basis of a particular ideal of equal citizenship. It is vital to mention the view of Andrew Mason (1997:435) who writes:

> Citizenship has intrinsic value because in virtue of being a citizen a person is a member of a collective body in which they enjoy equal status with its other members and are thereby provided with recognition. This collective body exercises significant control over its members' conditions of existence (a degree of control which none of its members individually possesses). It offers them the opportunity to contribute to the cultural environment in which its laws and policies are determined, and opportunities to participate directly and indirectly in the formation of laws and policies.

In order to investigate the legal status of the Kurds, this thesis utilises Andrew Mason's theory of citizenship, especially the first part of the above quote which states '[c]itizenship has intrinsic value because in virtue of being a citizen a person is a

member of a collective body in which they enjoy equal status with its other members and are thereby provided with recognition'. This is relevant to the question of this research. The theories of friendship and special obligations of the citizens are not the necessary tools to examine the legal status of the Kurds in the four relevant countries. In light of the Mason's theory, the present thesis attempts to examine whether Kurds enjoy equal rights with others and whether they are provided with recognition.

1.2   Methodology, thesis questions and hypothesis

Modern societies unfolded within the confines of nation-states. On the one hand, the modern principles of democracy, citizenship, and popular sovereignty allowed for the inclusion of large sections of the population previously confined to the status of subjects and subordinates. On the other hand, however, new forms of exclusion based on ethnic criteria developed. Belonging to a specific ethnic group determines access to the rights and services which the modern state is supposed to guarantee for all its citizens. Wimmer (2002:123) states:

> The main promises of modernity- political participation, equal treatment before the law and protection from the arbitrariness of state power, dignity for the weak and poor, and social justice and security- were fully realised only for those who came to be regarded as true members of the nation. The modern principles of inclusion are intimately tied to ethnic and national forms of exclusion.

By contrast, pre-modern empires integrated ethnic differences under the umbrella of a hierarchical, yet universalistic and genuinely non-ethnic political order, in which every group had its properly defined place. This pyramidal mosaic was broken up when societies underwent nationalisation and ethnic membership became a question of central importance in determining political loyalty and disloyalty towards the state.

   In the first few decades following decolonisation, talk of multiculturalism and pluralism was often discouraged, as states attempted to consolidate themselves as unitary and homogenising nation-states. Today, however, it is widely recognised that states in the region must come to terms with the enduring reality of ethnic and religious

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cleavages, and find new ways of accommodating and respecting diversity. The pursuit of national homogenisation has led to resistance movements, and even civil war-in countries like the Philippines, Papua New Guinea, China, Burma, Indonesia, India, Sri Lanka, Pakistan, to name a few.

Kymlicka and He (2005) argue '[w]hatever the explanation, Asia is witnessing the rise of 'identity politics'. People are mobilising along ethnic, religious, racial, and cultural lines, and demanding recognition of their identity, acknowledgment of their legal rights and historic claims, and a commitment to the sharing of power'.

Expressions of ethnic discontent arose. Indeed, several ethnic conflicts have become so rooted that it is difficult now to reconstruct the sense of unity that accompanied independence. The specific explanations for this vary from country to country. Moreover, these explanations are themselves matters of intense political contestation. According to some minority leaders, members of the dominant group betrayed a promise to share power, and have used the postcolonial nation-state as a tool to promote its particular identity, culture, and economic interests at the expense of other groups. According to some state officials, minority ethnic discontent is the artificial legacy of colonial divide-and-rule policies, or of communist subversion, or of other forms of external interferences. Other commentators explain the rise of ethnic mobilisation as the result of state weakness, with people fallings back on ethnic ties when the state has proven unable to provide basic security or basic needs. Yet others suggest that democratisation itself encourages ethnic mobilisation, either because local politicians have an incentive to appeal to an ethnic constituency, and/or because democratisation is linked to human rights, which in turn is linked to resistance to inherited ethnic and racial hierarchies.

In terms of categorising minorities Kymlicka and He (2005) make a distinction between Western models and Asian models. Western models of multiculturalism and

minority rights have been adopted in response to the demands of particular types of groups. In Western theories of multiculturalism, it is common to distinguish a. Indigenous people, b. National minorities, c. Immigrant groups. A similar distinction is found in the emerging international law of minority rights, with some international norms targeted at indigenous peoples (e.g. the UN Draft Declaration on the Rights of Indigenous Peoples), others targeted at national minorities (e.g. the Council of Europe's Framework Convention for the Protection of National Minorities), and others applying to migrants (e.g. the UN's Convention on the Rights of All Migrant Workers).

These sorts of categories may make sense in the Western context, but are they applicable to Middle East? Western scholars and international organisations have been quick to apply these categories to various minorities in Middle East and Asia. For example, many 'hill tribes' in Thailand or Bangladesh have been labelled as 'indigenous peoples', in part because their traditional culture and their economic and political marginalisation compares with that of indigenous peoples in the Americas. Similarly, many movements for regional autonomy, such as in Aceh or Tamil Nadu, have been labelled as forms of 'minority nationalism', in part because their claims seems comparable to those in, say, Catalonia or Scotland.

   These are just some of the more obvious and consequential differences between the West and Asia including Middle East. The individual chapters below identify a number of other issues, often specific to individual countries. Taken together, these factors suggest that Western models may have limited relevance to several Middle Eastern contexts including the four case studies of the present study.

Kymlicka (2005) provides a coincide overview of recent developments, focusing in particular on three trends 1. Emerging models of multination federation to accommodate national minorities. 2 Emerging models of self-government and land claims for

indigenous peoples. 3. Emerging models of multicultural citizenship for immigrant communities.

The thesis attempts to pose questions that are in direct relation to the different aspects of equal citizenship and then to provide research-based answers to the posed questions. The following questions are part of the central argument of the present thesis: Why should the Kurds be represented by their own representatives rather than by members of the majority or other groups? To what extent the constitutions and judicial authority of the four relevant countries (Iran, Turkey, Syria and Iraq) implement the policy of equal citizenship towards their Kurdish indigenous populations? Is it true that recognition of the Kurds would assist the stability of the nation-state system in the four relevant countries? And would it be possible for the four relevant countries to deal with the Kurdish issue without thinking of them as a security concern?

This study uses the comparative approach and document analysis. This part analyses the relevant articles of the twenty-first century constitutions and penal of the four mentioned countries and examining the practical policies of these four countries towards the Kurds in the chapters of three, four, five and six. An extensive investigation of the notion of nation-state and the nature of post-colonial states in the Middle East are carried out in chapter two. This part emphasises on the theories of states and arguments in favour of or against the nation-state. The nature of states of Turkey, Iran, Iraq and Syria is compared with nation-states in Europe. Can the term 'nation-state' be used to describe states which are ruled by one faith, sect or ethnicity? The application of this term to the four countries is discussed. Here it is acknowledged that despite differences between these complex states there is a consensus on dealing with the Kurds at a theoretical level. In terms of handling the Kurds successfully, theoretical approaches are introduced as solutions in the conclusion sections of each chapter and in the final chapter (discussions and conclusions).

1.3   Literature review

This study differs from the current literature on the Kurds in the following aspects. Firstly, current literature has emphasised on the Kurdish nationalist movements and their opportunities and challenges. This thesis, on the other hand, focuses on the twenty-first century policies of the four states (Iraq, Syria, Turkey and Iran) towards the Kurds. Secondly, this study emphasises the failure of these states in securing the legal status of the Kurds and this, it is argued, has amounted to discrimination. Thirdly, the twenty-first century constitutions and policies of these four states are examined. It is shown how a radical change in the policies of these states is necessary and there is an urgent need to implement the policy of equal citizenship. Fourthly and finally, without recognising the rights of minorities, including the Kurds, a stable Middle East is not viable.

There is no doubt that the treatment of minorities within a state is an issue of global importance and it has a long history across the world. It is significant that the post-colonial states in the Middle East were carved out in this area constituting various, non-homogenous entities. This research intends to make a significant contribution to addressing these issues and to the study of the rights of the Kurds. It is an examination of political phenomena that have consequences on the lives of a significant number of people in the region. It will be shown that several massacres have been carried out behind borders. Research concerning the twenty-first century policies of Turkey, Iran, Syria and Iraq towards the legal status of Kurds has not been particularly extensive. There is, to my knowledge, no existing single study devoted to the question of my thesis. Extensive research has been carried out by different authors and institutions about the rights of minorities in the region. A wide range of literature also exists on the Kurdish nationalist movements. In the following sections, this section highlights few

major studies which have been carried out about the Kurds and the Kurdish nationalist movements.

Wadie Jwaideh (1961) was the first scholar to write a history of the Kurdish nationalist movement. He emphasised the significance of the Sheikh Said rebellion. Jwaideh traces the Kurdish culture and roots with emphasis on the Kurdish Nationalist Movement. This research was conducted at the end of 1950s, thus it is not directly relevant to the question of my thesis. It is an extensive research on many aspects of Kurdish society such as: Culture, language, politics and social life and geography of Kurdistan. The origins and development of Kurdish nationalist movement is analysed extensively, including the rebellions of Muhammad Pasha of Rawnduz and Sheikh Ubayd Allah of Nehri. The rise and fall of the south Kurdistan confederation has also been discussed here including the Sheikh Mahmud's rebellions, Sheikh Sa'id of Piran's revolt, Barzani rebellion of 1931-1932 and 1943-1945, the Kurdish Republic of Mahabad, and developments in the Kurdish question since the fall of Mahabd. Jwaideh's (1961) study is unique in addressing the Kurdish nationalist movements and their structure. In his conclusions, the author was speculating the protection of the rights of Kurds under the Qasim regime in Iraq. Unfortunately history proved that the Qasim regime was unable to handle the Kurdish issue.

Robert Olson's book (1989) is concerned with British policy towards Kurdish nationalism. However, Olson places this discussion within the overall context of Kurdish nationalism as it developed from the last quarter of the nineteenth century, and he concludes with a chapter describing the international implications of the Sheikh Said rebellion. As Olson (1989:153) writes '[w]hile the Sheikh Said rebellion was a nationalist rebellion, its mobilization, propaganda, and symbols were those of a religious rebellion'. Olson admits that banditry, tribal feuds, and personal vendettas were "prominent causal factors in the rebellion" and that the Kurds of the cities did not

support the rebels. Kurdish nationalism was thus not nationalism in the European sense, not nationalism of the people. He accurately states the religious character of the rebellion was of use to Kemal Ataturk in his drive to secularism. Whether or not the rebellion was a nationalist one, it is obvious that the Turkish government treated it as a religious rebellion which justified actions against the traditional place of Islam in government and society. Olson deals with the continuity of Kurdish nationalist movement over the past century and the weaknesses within the movement that continue to prolong the struggle. The author examines the characteristics of Kurdish society in this regard: multiple dialects, urban- rural distinctions, Sunni- Shia- Alevi rivalry, and tribal- nontribal differences. He also chronicles the development of international support for the idea of an independent Kurdistan, as expressed in the Treaty of Sevres and by the League of Nations. This book has a substantial contribution, both for its history and as one element in the debate on Middle Eastern nationalism.

Martin van Bruinessen (1992) emphasises on the study of "primordial loyalties" which inhibit the formation of national and class consciousness in Kurdish society. The 1961-75 national movement of Iraqi Kurdistan led by Mustafa Barzani was, according to the author, a "people's war, a peasant war" (1992:2) comparable to the Mexican, Chinese, Vietnamese, Algerian and Cuban revolutions (1992:10). While these movements were progressive (justice-seeking, anti-exploitation and anti-imperialist), the Kurdish movement had a conservative and even reactionary appearance, in spite of the justness of its demands. Bruinessen looks for 'internal reasons why the Kurdish movement in Iraq became more openly conservative during 1964-66' (1992:2). Conservatism is due to the persistence of "primordial loyalties" which are, according to Bruinessen, those to family, tribe (tribal chief and landlord), and religion (the shaykhs, i.e., leaders of tariqas). The main body of the book, chapters 3-5, examines the formation and gradual decline of tribal and religious loyalties, and their interaction with external factors such

as the states ruling over Kurdistan, and the formation of Kurdish nationalism in interaction with these primordial loyalties.

In chapter five Bruinessen deals with Sheikh Sa'id's revolt of 1925 in Turkey. He addresses the controversial question: was it nationalist or religious? He argues it 'was neither a purely religious nor a purely nationalist one' (1992:298). The author concludes in the last chapter '[A]ll in all, although we seem to perceive a general trend toward the weakening of primordial loyalties, these take a long time to disappear, and may re-appear'. Although the book provides a considerable documentation of class struggle in rural areas, it does not provide an adequate picture of the nationalists' suppression of class conflict in favour of national struggle. The book is probably the best study of the social and political structure of Kurdistan. A major shortcoming of Bruinessen's discussion of Sheikh Sa'id's rebellion is that the conflict was much more important than he suggests. First, its direct and indirect consequences influenced Turkish and Kurdish history for the remainder of the 20th century, and, second, Kurds and "Kurdistan" played a large role in European, especially British, policy toward the peoples and governments of the Middle East. Bruinessen's work is invaluable because he was able to do research in, or at least to observe and visit, many Kurdish areas in Iran, Iraq, and Turkey.

Gareth Stansfield's doctoral thesis (2003) is devoted to the Kurdish Nationalist Movement in Iraq with emphasis on the performance of Kurdistan Regional Governments (both Kurdistan Democratic Party-KDP and Patriotic Union of Kurdistan-PUK) during the 1990s in Iraqi Kurdistan. Stansfield argues the KRGs strongly linked the political divisions between (PUK) and (KDP). Therefore, he states in the introduction '[M]y hypothesis is that the current divided political and administrative system is a direct manifestation of the historical developments and characteristics of the political system in Iraqi Kurdistan' (2003:5). The author also questions whether the

experiment of the Iraqi Kurdistan can be used for the whole Iraq or not. He addresses the theoretical and methodological approaches. He assesses the development of political party system in Iraqi Kurdistan. The ideologies and foundation of political parties are illustrated. The Kurdistan Regional Government(s) from 1992-2002 are dealt with in chapter seven.

The author concludes a possible solution to the de-facto state of Iraqi Kurdistan and warns of the dangerous consequences of quick unification of the KRGs as agreed by both political parties in Washington Agreement in 1998. He points out 'internal needs' and 'external pressures' are challenges for the KRGs. He argues both democratic progresses internally and dealing with external issues carefully is necessary for the political system in Iraqi Kurdistan. In his conclusion, he emphasises the advantages of keeping the two KRGs separate for internal and external reasons. This study has made contribution to the study of Kurdish nationalist movements in Iraqi Kurdistan and the KRG administrations during 1990s. The legal status of the Kurds in Iraq has not been addressed in this book.

Denise Natali's (2005) study is mainly about Kurdish ethnicity and 'Kurdayeti' - or Kurdish national movement. The major question which the book wants to answer is how Kurdayeti has become ethnicised. Comparison between Kurdayeti and its challenges is the focused of this book. Political space is a term which is widely used here. Natalie emphasises the relationship between central governments of Iraq, Turkey and Iran and their citizens and how this affects Kurdayeti considerably. Natalie approaches the question of Kurdish nationalism differently by reconsidering the phenomenon of Kurdish nationalism which she strongly links to political space. The author argues 'Whether Kurdayeti becomes ethnicised and salient depends upon the positive and negative incentives offered by central governments and the actions and reactions of Kurdish groups to these incentive structures. What it means to be a Kurd,

therefore, must be considered in relation to what it means to be a citizen of Iraq, Turkey, and Iran' (2005:xviii). She states 'Whereas the political space in Iraq was relatively large for Kurds, for Kurds in Turkey it became virtually nonexistent' (2005:70).

On the status of the Kurds of Iran, Natalie argues political space was more accommodating to the Kurds, as compared with Turkey and Iraq. She then concludes: 'Political space is not constant across space and time. Variations have created differences in the manifestation of Kurdeyeti in three different settings over period of 150 years' (2005:180). In each setting after the early 1990s, Kurdayati became highly ethnicised across Kurdistan, regardless of the different political space inside each state. The policies of the above countries towards the legal status of the Kurds in the twenty-first century have not been covered in this thesis.

David Romano (2006) addresses different Kurdish nationalist movements and how they compare amongst the Kurdish political parties of PKK, KDP, and PUK. He compares their structure, policy and leadership. Romano uses synthesis of the theoretical framework: opportunity, structures, resource mobilisation, and cultural framing approaches to understand social movements and revolutions. This study emphasises on the Kurdish movement in Turkey. In relation to the PKK, the author has makes an interesting statement. He argues 'If the PKK had succeeded in convincing Turks in general that it was not seeking a separate Kurdish state, but rather a better society in Turkey that would be to everyone's benefit, the Turkish populace's appetite for continued conflict might have diminished' (2006:179). David Romano's research is more theoretical one and states '[t]he main contribution of this book is theoretical one. The analytical approaches that I planned to apply to the Kurdish cases of nationalist mobilisation (resource mobilisation and national choice theories)'. Romano extensively covers the Kurdish nationalist movements in the region with emphasis on the Kurdish nationalist movements and the PKK in Turkey. The author touches upon opportunities

and challenges for the Kurdish nationalist movements in the region. The legal statues of non-dominate ethno-religious communities and the Kurds in the region have not been covered.

   Christopher Houston (2008) argues the foundational practices of nation building and state formation in the Middle East after the First World War have led to many writings about the Kurds. He states his book 'brings these two processes together: the production of knowledge about Kurds and the ceaseless instituting of the nation by the regional states of Iraq, Iran and Turkey' (2008:2). The book does not include Syria. It argues important similarities and differences between Kemalism and Khomeinism. Kemalism is a key concern of the book. He argues 'Kurdish ethnicity is a relational and creative act, something made by-not given to- every Kurd. The genesis, context and content of Kurdish ethnic or nationalist discourse may be historically explicable, but its assertion is not inevitable.... because of the relationally of ethnic or national identity, this book is as much about the imagining and producing of Turkish, Persian and Arab identities as it is about those Kurds' (2008:6). He acknowledges his study devotes more space to Turkey and does not extend to consider national selves of Iraqi Kurdistan which currently under way.

The book concludes by proposing de-Kemalisation of the Turkey. The author argues Kemalism is a phenomenon of the region and emphasises on de-Kemalisation in the education system. It is obvious that legal status of the Kurds and equal citizenship are not examined by Christopher Houston.

   This chapter addresses theoretical framework, methodology, questions of the thesis, chapter outlines and literature review. The question of this thesis which is the legal status of the Kurds in the four examined countries is examined in light of the theory of equal citizenship. The status of Kurds is different in each country (Iraq, Turkey, Iran and Syria); however, there are common concerns and issues which are interacted. This

chapter briefly outlined the structure of each chapter. In the section of literature review, an effort has been made to cover all related academic papers to the question of the thesis. They have touched many aspects of Kurdish nationalism and policies of the four countries in dealing with the Kurds. This thesis differs from other studies by emphasising that there is lack of guarantying equal citizenship for the Kurds in the four countries.

2   Chapter two: Emergence of Nation-States in the Middle East

In order to understand the current status of the Middle East and the four studied countries of this thesis, it is necessary to study the colonisation and decolonisation of the region. These processes have had vital affect on the current status of post-colonial states of the Middle East. The historical background of the colonised and coloniser countries is outlined here alongside the process of decolonisation, the post-colonisation period, the collapse of Ottoman Empire, and the emergence of new post-colonial states. The notion of racial otherness is discussed in this chapter because of its importance in the construction and maintenance of nineteenth century colonisation. Another important factor is the rise of nationalist aspirations in the Middle East which played an important role in the decolonisation process. Nationalism was also an important factor in the shaping of the post-colonial states within their current borders.

2.1   Historical background of the colonised countries and colonisation

The term 'colonisation' has been used and defined differently by experts from various fields. Whereas linguists may go back to the root of the word philosophers and academics explain the term through its problematic moral consequences. Bush (2006:46) argues '[C]olonisation is a phenomenon of colossal vagueness. Originating from the Latin colonial, a farm or settlement, in the Roman Empire, a colony was defined as "a public settlement of Roman citizens (especially veteran soldiers) in a hostile or newly conquered country'. The author then goes on to point out 'colonialism' in the modern sense of the term was not in usage until 1850. He defines 'colony' as a certain kind of 'socio-political organisation' and 'colonialism' to be 'a system of domination'. Thus, according to Bush, colonialism in its modern sense has roots in the nineteenth century and is closely tied to the concept of domination.

According to Bush (2006:54) colonialism started as a 'discourse analyses in the literary and cultural studies developed in the travel narratives and it expanded into the field of politics. It is believed that colonialism is strongly linked to human life and experience and it has reached every aspects of human knowledge. Loomba (2005:53) points to the role of colonialism in relation to the structures of human knowledge. The author states '[c]olonialism reshaped existing structures of human knowledge. No branch of learning was left untouched by the colonial experience. A crucial aspect of this process was the gathering and ordering of information about the lands and peoples visited by, and later subject to, the colonial powers'. Edward Said (2003: xiv) as a modern theorist of orientalism and colonisation states '[M]y argument is that history is made by men and women, just as it can also be unmade and re-written, always with various silences and elisions, always with shapes imposed and disfigurements tolerated, so that "our" East, "our" oriental becomes "ours" to possess and direct'. Therefore, colonisation is seen as a division between those who 'posses and direct' and those who are possessed and directed. In other words it is a division between those who dominate and those who are dominated.

Colonialism, however, is not just related to the European empires. In fact it has always been a part of human history. Various non-European empires and colonisers have emerged throughout history. Loomba (2005:8) defines colonialism to be 'the conquest and control of other people's land and goods'. He then goes on to argue that colonialism 'is not merely the expansion of various European powers into Asia, Africa, or the Americas from the sixteenth century onwards; it has been a recurrent and widespread feature of human history'.

Colonial studies emerged as a result of European expansions. Thus, 'the colonised' was studied in the nineteenth century as 'the other' or 'the subject'. The colonisers' institutions studied 'the colonised' due to the policies of hegemony and domination.

Dutch universities were the first which started studying colonised peoples. Wesseling (1997:27) argues:

> Tropical colonial studies, as they used to be called, have a long tradition in the Netherlands. From the very beginning, European expansion stimulated some forms of study of the East, its flora and fauna, its geography, and its topography. All the same, one might say that the systematic study of the East started only in the nineteenth century. This was obviously due to the expansion of colonialism. Colonial studies were introduced into some Dutch universities, especially in Leyden, where the training of colonial civil servants was incorporated in the University in 1877.

The majority of the world was under colonised rule before the Second World War. Loomba (2005:3) points out that European colonialism has been the most extensive form of colonialism in history in terms of the size of colonised regions across the world ']B]y the 1930s, colonies and ex-colonies covered 84.6 per cent of the land surface of the globe. Only parts of Arabia, Persia, Afghanistan, Mongolia, Tibet, China, Siam and Japan had never been under formal European government. Such a geographical sweep, and colonialism's heterogeneous practices and impact over the last four centuries, makes it very difficult to-theorise- or make generalisations about the subject'. There have been different kinds of colonisation but the nature and the relationship between colonisers and colonised have always been unstable.

   To sum up, colonisers have been different and they have had different kinds of agenda. While colonisation was starting in some parts of the world decolonisation was already happening on other parts.

2.2   'Racial otherness' and nineteenth century colonialism

The nineteenth century European expansions to the East, in particular to the Islamic East, were led by Great Britain and France. This process was constructed militarily, economically and culturally. The colonial discourse was well supported by European schools of thought. Notions, myths and images of the "other", complemented the colonial project. This section examines how notions of 'difference' and distinctions

drawn between 'us' and 'them' through Orientalism helped maintain colonialism. The racial discourse alongside notions of class and gender served to create and maintain a hierarchical social structure. These discourses were combined to support colonialism both at home and abroad. In the oriental discourse the distinction between 'us' and 'them' has been a starting-point to define the 'other'. Racial, cultural and gender differences were important elements in the 19th century Empire structure of power and dominance. Historically, the primary aims of the majority of European travellers, especially in the nineteenth century, were to gather and record information about a place and a people which were unknown by their countrymen. The question that arises here is: What was the intention behind this process? Through understanding the discourse of Orientalism, it would be seen the 'otherness' imagined in a vast literature was constructed by European travellers.

The colonists and in particular European colonists invented and conceptualised Orientalism. Orienalism is a type of study about the East, which concerns geography, culture, language etc. To define Orienalism, it is useful to go back to one of the major theorists, Edward Said (1935-2003), who had a key role in analysing and exploring this term. In his famous work *Orienalism*, Said (2003:3) states 'Orientalism is a style of thought based upon an ontological and epistemological distinction made between 'the Orient' and (most of the time) the Occident'. Said, through his career as a university professor of English and Comparative Literature at Columbia University and his well-known two books (*Orientalism, 1978* and *Culture and Imperialism, 1993*) studied eighteenth and nineteenth century European literature. He observed how the Westerners collectively imagined and described the Easterners.

The power of knowing was one of the most important elements Said refers to. Through this process the Occident has imagined the Orient. Not understanding the Orient in reality, they made myths about 'them'. For example, the East and its people were seen

as exotic and alien as Edward Said (1995:45) mentions '[T]he Orient was almost a European invention , and had been, since antiquity a place of romance, exotic beings, hunting memories and landscapes, remarkable experiences'. The author goes on to say that a discourse of differences between 'us' and 'them' has coloured the European narration. Although these differences were constructed through the imagination and mythical discourses, this did not happen unconsciously but was rather deliberate. Ranna Kabbani (1986:06), states in the European narration of the Orient, there was a deliberate stress on those qualities that made the East different from the West, exiled it into an irretrievable state of 'otherness'. The idea of the erotic Eastern was discovered by travellers. A place like a Harem or a Seraglio was pictured as very exotic where a vast number of naked, pretty women served a Sultan's desire. A Harem was not only perceived as an immoral place but it also showed lack of humanity and barbarousness. Hence, the travellers made a distinction between 'us' as respectable and rational civilians and 'them' as romantic and irrational creatures. The travellers did not always create these images. They inherited them from a historical discourse. Kabbani (1986:22) points out '[t]he European retained a sense of sexual expectancy from the East, having encountered in both mythological and theological texts the prototype of the seductive Eastern women'.

One of the best-known works of oriental literature in the West, between eighteenth and nineteenth centuries, was 'A thousand and one nights' (*Alf Laila Wa Laila*), which was widely translated into many different languages. The travellers keenly selected these tales and re-told these stories because of their personal backgrounds and class position. The following figures are just some examples of travellers who collected and translated 'A thousand and one nights' from various disciplines and interests; Sir Richard Frances Burton (1821-1890), Rev. Edward Forster, Antoine Galland (1646-

1715), Edward William Lane (1801-1876), John Payne (1847-1916), Jonathan Scott (1754-1829), and Henry Torrens (1779-1828).

The relationship between modernity and colonialism is controversial. Scholars have argued that exporting the values of modernity to the Eastern countries was an important factor in justifying colonialism. Therefore, colonialism, and in particular the European nineteenth century colonialism, had many different directions. A co-operative enterprise in which military, intellectual and cultural elements were significant, led the modern West to the tribal East, as Said (1993:229) ARGUES '[C]ultural texts imported the foreign into Europe in ways that very clearly bear the mark of the imperial enterprise, of explorers and ethnographers, geologists and geographers, merchants and soldiers'. The nineteenth century European countries were hierarchical and patriarchal societies dominated by the privileged class and the notion of masculinity. Reflection of the notions of class and gender are difference in the Orientalism discourse. The notion of gender indicates to women travellers and femininity point of view towards 'other' in this case Easterner in particular. Unlike the male travellers there were some significant women figures who had different views on Eastern women; they also had a different interpretation of the harem. Many studies show that women travellers had different representations compared to their countrymen. As Dianne Sachko Macleod (1998:63) states 'Nonetheless, in picturing the harem as a place of female autonomy, women travellers in the Ottoman Empire provided an alternative discourse to the male representation of the harem as a site of sexual submission'.

Few liberated women disagreed with the masculine stereotyping of the exotic and erotic Easterner. They admired the Turkish women, for example, for their rights and freedom compared to the women from their home country. Lady Mary as wife of British representative to Constantinople in 1717, Lord Wortley Montagu, had an opportunity to get involved in the women's movement. Her 'Embassy Letters' explained the

impression she had about the women's situation in the Ottoman Empire. In one of these letters to her sister, Mary Montagu writes '[I]t is very easy to see they have more Liberty than we have…Neither have they much to apprehend from the resentment of their husbands, those Ladies that are rich having all their money in their own hands, which they take them upon a divorce with an addition which he is obliged to give them. Upon the whole, I look upon the Turkish women as the only free people in the Empire' (Macleod 1998:69). Thus, some British women regardless of how Westerners imagined Eastern women wore Turkish women's dress when they got back to their country 'Mary Montagu's fascination with the luxurious texture, colouring and design of Turkish garment is a reversal of the standard relationship between coloniser and the colonised' (Macleod 1998:70).

In European literature boys and men were conceived of as heroes who gave their lives to the imperial enterprise. Linguistically, terms such as hero, boy, man, hunter and explorer all referred to masculine metaphors which fed into the empire literature in the Victorian era of Great Britain. These terms were linked because they all shared one function which was 'discovering' the exotics. For example it could be seen how Angela Woollcott links the hunting of wild animals in Africa with the imperial project. The author goes on to point out how colonial administrators hunted for leisure but this came within a cultural and historical context '[i]f actual big game hunting was the pastime of the privileged few, its cultural celebration was partly the result of the many published travelogues based on hunting narratives: The British manliness such as coolness, bravery, restraint and humour that the hunter reputedly embodied' (Woollcott 2006:71).

In Victorian society, in the late nineteenth century colonialism, distinction between the classes was obvious. Thus, notions of identities in terms of culture, gender and class were strongly constructed in the context of colonialism. There is plenty of literature, writing, and exhibitions which reflect the Victorian hierarchical society. Similarly, to

exclude others from their realm of superiority, the upper and aristocratic class saw the lower class as 'the other'. Therefore, the notion of difference widely reinforced colonialism in both situations external and internal. Grace Moore (2004:22) looks at Dickens' involvement with issues such as race and class '[t]he connections between the colonised and the urban poor went far deeper than mere metaphor. The British territories overseas replicated the class and labour relations of the home market, replacing class division with the even more rigid and insurmountable category of race'.

To conclude, nineteenth century colonialism was intellectually constructed and maintained by the notions of 'difference' to create 'othernesses. Thus, 'the other' was not only people who belonged to a different race or religion, but also those who came from a different class and gender of the colonialists' peer group.

2.3   Colonies in the nineteenth Century

There are two main groups of colonies: full colonies and semi-colonies. Besikci (2004:18) states '[F]ull colonies are societies which have not yet reached the stage of founding a state. The capitalist state, in the process of expanding and taking on imperialist qualities, subjects the economy of a traditional society under its domination to its economy'. To facilitate such exploitation politically a particular order is established in the colonised lands. This order is undoubtedly the product of the imperialist or colonised power and under the latter's political, administrative, military, cultural, and economic control. Administrators known as governors, inspectors, regents and viceroys are placed at the heads of bodies through which the colonial power rules the colony.

As this organisation establishes sovereignty over a specific territory, it is possible to speak of the resulting entity as a colonial state. Besikci (2004:18) provides number examples of 'full colonies'. These include British colonies such as India, Ceylon, Malaysia and Burma in Asia; Kenya, Uganda, Somalia, Botswana, Sudan and Tanzania

in Africa, French colonies in Morocco, Algeria, Tunisia, Senegal, Ghana, Mauritania, Upper Volta and Dahomey and Portuguese colonies in Angola, Mozambique, and Guinea Bissau. Besikci (2004:18) goes on to say '[t]he establishment of such economic, political, social, cultural, and even religious institutions in colonies, in the service of colonial powers, called for a native staff'. He points out this staff were trained and brought up to defend and protect the interest of the metropolitan country. Therefore, they were the extension of colonial policies. (Besikci (2004:18). Semi-colonies are societies which have a founded state, a traditional social order and they have a long history. China, Iran, and the Ottoman Empire were in the position of semi-colonies at one time. In the nineteenth century, faced with increasing pressure for expanding imperialist states, such countries (semi-colonies) felt the need to train their own administrative cadres and recognise their economic, social, political, cultural, and military institutions. It is widely accepted that most people worldwide, have experienced Western values and polices during the nineteenth century through the process of colonialism.

2.4   Decolonisation

Decolonisation was experienced differently by the various colonies. Hall (1996) warns of the dangers of carelessly homogenising experiences as disparate as those of white settler colonies, such as Australia and Canada, the Latin American continent whose independence battles were fought in the nineteenth century, and countries such as India, Nigeria, or Algeria that emerged from very different colonial countries in the post-World War Two era. Hall (1996:246) suggests that the concept of decolonisation may nonetheless help us 'describe or characterise the shift in global relations which marks the (necessarily uneven) transition from the age of Empires to the post-independence and post-decolonisation moment'.

The history of the place and the experience of colonisation and decolonisation played vital roles in the process of post-colonialism. Bush (2006:51) explains this and says '[p]ost colonialism, then, is not contained by tidy categories of historical periods or dates, although it remains firmly bound up with historical experiences'. There are debates about when the postcolonial period began. This has been pushed back to the American Revolution, the decolonisation of Latin America and the founding of Australia. The following sections address the explanation of decolonisation.

2.4.1   The nationalist explanation

The superpowers and colonisers have always been challenged with the vision of independence. The idea of independence was born at the early stages of colonisation. Occupation and hegemony have always been parallel with the struggle for liberation and independence. There is a fundamental link between imperialism and emancipation and power and liberation, operating at both a global and local level. The process of enlightenment and its consequences have had significant role in inspiring many nationalist movements and liberation theorists. In this respect, the European revolutions such as the French inspired many people across the world to liberate themselves from the foreign powers and to end subordination. Kramer (1997:534) argues '[T]he French revolutionary ideas of the 1790s spread to the Caribbean and stimulated major slave revolts that made a contribution to the ending of slavery equal to, if not greater than, that of European abolitions'. Wesseling (1997:119) points out that within the colonised societies '[t]he new elite came to the conclusion that they had more to gain by resistance than by collaboration and they managed to install these sentiments into a large section of the population. Here we are confronted with a crucial problem in the history of colonisation'. Nationalism played a vital role in the process of decolonisation, especially after the Second World War. Wesseling (1997:122) argues 'England, France, and the Netherlands were all three confronted with a new, powerful nationalism in their

colonies after 1945. England conceded to the Indian wish for independence. France and the Netherlands, in Indochina and in Indonesia, respectively, followed another course, that of resistance'. Nationalism, nation state and modernity are interlinked. Kramer (1997:536) argues '[C]laims to independence are themselves linked to Western, Enlightenment conceptions of progress, so that the definitions of a "new nation" such as India necessarily depend on both the existence and effacement of an "other" that never disappears'. Nationalism as a political movement became a challenge for colonial domination.

Nationalist movements also played a vital role in the process of decolonisation. Intellectuals and narratives have fuelled the process of creation national identity or unity. Media played a role in escalating the process of decolonisation. Resistance existed in earlier empires but intensified in the twentieth-century age of mass media and communications. In the Roman Empire communities remained relatively isolated and Roman imperialism had a less transformative impact on local cultures. The anti-colonialism process has been strengthened since the beginning of twentieth century. Stimulated by uncertain economic conditions, anti-colonial resistance gained its strength after 1918. A new sense of race-consciousness strengthened anti-imperialism.

The impacts of colonisation have varied and it depends on the experiences of the colonisers and colonised countries. The history of decolonisation has always been turbulent. Colonial history cannot be reduced to a simple dichotomy of canonicalisation and decolonisation, submission or freedom. It is a history of collaboration and resistance. While colonial administrators who earned their wages from the coloniser wanted to maintain the status quo, the intellectuals and revolutionaries wanted to change things. Decolonisation was a transition to a different stage of power. Wesseling (1997:121) argues '[D]ecolonisation was always considered to be a possibility for the future'. In a sense, every modern nation state is a product of colonisation.

The collapse of the European empires left a legacy in this region. Weiner (1992:335) argues '[t]he reconfiguration of the world's largest empire is sure to have profound consequences for international relations, as well as for the types of regime or regimes that emerge, and for their subsequent economic, social and cultural development'. The World War Two is the beginning to the collapse of the era of empire.

2.4.2   Decolonisation since World War Two

The end of World War Two considerably affected the process of formal decolonisation. Springhall (2001:1) argues '[O]ne of the most momentous changes to take place in the post-1945 world has been the dismemberment and almost complete removal of the European colonial or maritime empires set up in Africa, Asia, the Middle East, the Pacific, the Mediterranean and the Caribbean. When the Second World War broke out in 1939, roughly a third of the world's entire population lived under imperial or colonial rule; today less than 0.1 per cent of the global population lives in dependent territories'.

Post-colonialism has taken different directions since 1945. Decolonisation signifies the surrender of external political sovereignty, largely Western European, over colonised non-European peoples, plus the emergence of independent territories where once the West had ruled, or the transfer of power from empire to nation-state. The historical process that this overarching term draws the attention to has not yet acquired a fixed definition among historians. Decolonisation usually means the taking of measures by indigenous peoples and/ or their white overlords to end external control over overseas colonial territories and the attempt to replace formal political rule by some new kind of relationship. Nation-states have been central to most peoples across the world since post-World War Two. Springhall (2001:3) states '[C]itizens of the new nation-states, and their admirers, often prefer to speak of 'national liberation' rather than use the term 'decolonisation' generally favoured by Western scholars. This reflects different views (push out versus pull out) of what actually took place. 'Decolonisation' would,

perhaps, be a more neutral academic term'. Moreover, 1945 was a turning point in the world politics. Post-1945 decolonisation effectively demolished the old international system- economic, geographic, and cultural- by which the developed or urban-industrial Western nations had once dominated the rest of the world.

Neo-colonialism emerged since 1945. The former colonisers started exercising their power and domination in different forms and through various means. The nationalist explanation is compatible with understanding the process of decolonisation since 1945. Springhall (2001:9) states in the post-1945 period '[b]y increasing the productive capacity of their colonies, the European powers created the very conditions which encouraged the colonised peoples to challenge imperial rule: rapid urbanisation, plus social and political mobilisation behind the ideology of anti-colonial nationalism'. The economic development of the colonies and acceleration in world economic growth created the structural conditions throughout the colonial world in which indigenous nationalism could flourish. Hence, a combination of political and economic pressures on the European decision-makers reinforced existing international pressures for retreat or withdrawal.

The establishment of the United Nations led to the emergence of a new political system in the world which affected the relationship between colonisers and colonised countries. The United Nations, established at San Francisco in October 1945, with its firmer conditions for trusteeship as compared with the old League mandates, reflected a stronger bias in favour of advancing the colonial territories to independence. International pressures increased with the admission of new independent states such as India, Ceylon and Indonesia to the UN. These states skilfully used the UN as a platform to isolate and embarrass the old colonial powers. In 1960, alongside the entry of many new African states, the UN General Assembly passed the Declaration on the Granting of Independence to Colonial Countries and Peoples which typified colonial rule as a denial

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of fundamental human rights and as contrary to the UN Charter. With this, the post-colonial period has gradually started and power relations between colonies and colonised took a different direction. Post-colonialism is mainly about the balance of power and the relationship between race, gender, sexuality and imperialism have been reshaped since then.

2.5   The collapse of Ottoman Empire and the emergence of the new Middle East

Many mighty and multiracial empires have collapsed throughout history. Mansfield (2003:27) points out that Ottoman Empire, which lasted from 1299 to 1922 and at the height of its power spanned over three continents, was far more extensive and enduring 'than the powerful states that had been established by other warrior nomads from central Asia- the Seljuks, Mongols and Tartars'. The author (2003:28) goes on to argue the empire's decline started halfway through its life and 'from then on the decadence was virtually unremitting'.

Failing to take Vienna in 1683 was probably a major blow to the Empire. Similarly with the death of Sultan Abdul-Majid in 1886, the Ottomans handed over Cyprus to Britain in 1878. In 1878 the Treaty of Berlin was signed in which Turkey lost 4/5 of its territory, in Europe had considerable affect on weakening of the Ottoman Empire. In the final stages efforts made to reform and revive the empire in the 1920s contributed to its break-up and decline.

Modern Middle East emerged as a result of the Ottoman Empire's disintegration in the wake of World War One. Owen (2004:6) points out that this disintegration began just before 1914 because '[a] series of Balkan wars led to the loss of most of the empire's remaining possessions in Europe, while the Italians took advantage of Ottoman weakness to make a sustained attack on the region around Tripoli in North Africa'. Meanwhile, the Young Turks' Revolution of 1908 had brought to power a group of officers and officials. This group were dedicated not only to the accelerated

reform of Ottoman institutions but also to an incipient Turkish nationalism. This threatened to drive a wedge between the Turks who controlled the empire and the Arabs who had previously been regarded as their main partners. There were significant reasons behind the collapse of the empire. Catherwood (2004:15) states

> In 1918, following the fatal decision of the Ottomans to ally themselves with Germany against France and Britain in World War One, their once-great empire was defeated and utterly shattered. The same year saw imperial collapse on a previously unimaginable scale, with the downfall of the Austro-Hungarian, Russian, and German empires as well. The end of empires is often the result of great tides of economic fluctuation and of ideological passions- in the case of the empires that fall in 1918, a wave of nationalism and the corresponding desire of subject peoples to rule themselves.

On the political nature of the Ottoman Empire, in the first place the empire was a huge military organisation. It was also highly centralised, in the sense that virtually all land within the empire belonged to the Ottoman state. It was feudal in so far as much of the best land was allocated as fiefs to the Ottoman military aristocracy; but only in rare cases could this land be inherited, and thus the empire never developed a European kind of feudal nobility to balance the power of the monarch. Mansfield (2003:29) on the treatment of indigenous peoples of the empire states '[T]he Muslim Arabs who formed the great majority in the empire's Middle Eastern and North African provinces were not treated as second-class citizens in this institutionalised manner, but in Syria/ Palestine and Iraq an Ottoman ruling class of governors and administrators was imposed upon them'.

In terms of the Turkish monopoly of the Ottoman Empire, that there was no Turkish colonisation of the land. Officials were frequently moved to other provinces of the empire, which might not be Arabic-speaking, and they normally expected to retire to the Turkish heartland. There was also no attempt to Turkify the non-Turkish Muslims who were Ottoman subjects. On the attitude of the Ottoman leaders towards modern life, Mansfield (2003:33) notes '[a]s the empire weakened and declined, its leaders- sultans, pashas, generals and men of religion- turned in upon themselves to become increasingly

hostile and outwardly contemptuous towards innovation, originality and external influences of all kinds'.

The collapse of the empire was a complicated process and it involved different factors. Kamrava (2005:28) argues death of '[t]he Ottomans was a slow and painful process. The Empire reluctantly entered the war on Germany's side at the beginning of the war. The allies, as a consequence, decided to chip away at the empire's Middle Eastern provinces. Russian advances in Anatolia were halted only after 1917 communist revolution. That same year Britain captured Baghdad, and Jerusalem fell a year later. A rebellion calling for independence also broke out among the Arab population of the Hejaz'. The Ottoman Empire was being systematically dismembered.

Wimmer (2002:2) argues nationalism and ethnicity played a role in the weakening of the Ottoman Empire '[p]re-modern empires integrated ethnic differences under the umbrella of a hierarchical, yet universalistic and genuinely non-ethnic political order, in which every group had its properly defined place. This pyramidal mosaic was broken up when societies underwent nationalisation and ethnic membership became a question of central importance in determining political loyalty and disloyalty towards the state'. The political structure of the peoples of the Ottoman Empire dramatically changed and new groups and ethnicities emerged. Millets such as Maronites, Shias, Sunnis, Druze, Christians were turned into ethno-national groups, and the leaders of semi-independent tribal confederacies or emirates tried to forge nations out of their former subjects and allies. Kamarava (2005:65) points out '[T]he end of the Ottoman era brought with it a fundamental redrawing of the map of the Middle East, resulting in the creation of a host of new national entities. But the termination of Istanbul's imperial control did not necessarily mean that indigenous, national forces could now assert themselves, at least not for another twenty years or so'. Even before the end of the Ottomans, Britain and France had begun a contest for the spoils of the Middle East, carving it up into

respective protectorates with little regard for or understanding of what the locals wanted. The slow death of the Ottoman Empire and its collapse left a power vacuum. New politicians and leaders amongst the peoples of the empire emerged. Kamrava (2005:28) maintains:

> The war raised the fortunes of one Ottoman general, a certain Mustafa Kemal, whose strategic genius had spared his forces from defeat in all the military campaigns in which they were involved. As the war was drawing to a close in 1918, the Young Turk government in Istanbul went into hiding and Kemal took over the reins of power. For the next three years he fought a series of successful military campaigns against the Armenian republic in the Caucasus, the French in Cilicia, and the Greeks in central Anatolia, as well as Ottoman troops remaining loyal to the sultan. Emerging victorious, in 1921 he established a Grand National Assembly in the interior city of Ankara and promulgated a new, republican constitution the following year.

The Turkish republic was proclaimed on October 29, 1923. That same year the independence of Turkey was recognised within its present boundaries through the Treaty of Lausanne. Mustafa Kemal was declared president. In the coming decades, Kemal and his successors methodically set out to dismantle the political, socio-cultural, and religious vestiges of the Ottoman rule. The era of the Ottomans and everything they stood for: the caliphate, Turko-Islamic tradition, social and cultural conservation, rule over disparate millets religious communities came to a dramatic end, and a new era of Kemalist republicanism began. The French and British as major colonisers in the beginning of the twentieth century played a vital role in deciding the destiny of the peoples of the region. Owen (2004:7) elaborates that despite local resistance the British and French were masters of the Middle East by the mid-1920s. They were the ones who determined the new boundaries, decided what form of government should be established, and chose their favourites to rule in the region. The author (2004:8) states it was the British and the French in association with the Americans who 'had a major say in how access to the region's natural resources should be allocated'. In other words the winning allies played a major role in shaping the modern Middle East. The modern Middle East status, to large extent is the outcome of post-colonial process.

Kandiyoti (2002:279) argues the term 'post-colonial' is relatively new in the social science terminology '[a]lthough discussions about the effects of colonial and imperial domination are by no means new, the various meanings attached to different understandings of what characterises the post-colonial continue to make this term a controversial one'. For the purpose of analysing the Middle Eastern political systems of the post-First World War period, a useful starting point may be to note that there existed a particular pattern of control known as the "colonial state". Wimmer (2002:3) states after the collapse of the colonial states notions such as democracy, citizenship, and national self-determination 'became the indivisible trinity of the world order of nation-state'. Nation-states can have a variety of forms depending on the circumstances and the nature of the state.

Identities of the communities were nationalised and ethicised as a result of the First World War. Kings and caliphs were replaced by representatives of the nation. Wimmer (2002:9) argues nation-states are '[t]he product of four closely interconnected processes of institutional closure; a political one (democracy tied to national self determination), a legal one (citizenship tied to nationality), a military one (universal conscription tied to national citizenship), and a social one (the institutions of the welfare state linked to the control of the immigration of foreigners)'. The colonial event lies between these two moments; that of the old experience of a difference and that of a racially determined conflict. Ethnic identity and the role of elites played a vital role in the process of independence.

2.6   Concluding Remarks

This chapter has addressed colonialism, decolonisation and related themes to both processes. It concludes colonisation has been strongly linked to hegemony and imperialism. Imagining 'othernesses and the theories of Orientalism have had an impact on the relationship between colonies and colonised. On the other hand, the rise of

nationalism in the colonies, the French revolution and enlightenment played a significant role in the process of decolonisation. Formal colonialism has ended in many parts of the world, but there are still cases of indirect rule or informal colonialism. In other words, the processes of colonialism and decolonisation exist in different forms in the twenty-first century.

The collapse of the Ottoman Empire is a vital point while addressing the current status of the Middle East. The emerging new Middle Eastern states following the end of First World War is a starting point to analyse post-colonial states in the Middle East. Therefore, understanding components of the states of this region, studying the beginning of establishment of these states is significant. In terms of the geographical and cultural definitions of Middle East, there is not a consensus amongst scholars and researchers. This is not the interest of the current thesis what is more relevant to this study, it is widely accepted that the four examined countries (Iraq, Turkey, Iran and Syria) are part of the Middle East.

3   Chapter three: Modern Middle East and an overview of the four countries covered

In light of the above political developments, the chapter addresses the new geographic structure of the Middle East and the four examined countries (Iraq, Turkey, Iran and Syria). Regarding the borders of the Middle East, Mansfield (2006:240) points out that, generally speaking, international borders are never completely just. There are, the author argues, degrees of justice in this regard and this depends on whether people were forcibly put together or divided. He then goes on to say that not having any choice in how the borders were drawn makes the difference between 'freedom and oppression, tolerance and atrocity, the rule of law and terrorism, or even peace and war'. Mansfield (2003:1) states:

> "The Middle East" is a modern English term for the most ancient region of human civilization. Before and during the First World War, "the Near East", which comprised Turkey and the Balkans, the Levant and Egypt, was the term in more common use. The Middle East, if employed at all, referred to Arabia, the Gulf, Persia (Iran)/ Mesopotamia (Iraq) and Afghanistan. After the First World War Allies had destroyed the Ottoman Turkish Empire and established their hegemony over its former Arab provinces, the Middle East gradually came to encompass both areas.

Mansfield (2003:6) argues, it was centuries for the Middle East and North African regions to become Arabised. The most arbitrary and distorted borders in the world were drawn in Africa and the Middle East. Driven by self-interest the Europeans (who have had sufficient trouble defining their own frontiers) drew Africa's borders. Catherhood (2004:14) states '[a] great number of Africa's borders were created by European conquerors in the nineteenth-century era of colonial expansion; the sole concern of the officials who drew them was often to apportion how much land would go to each of the competing companies'. The arbitrary choices made by Europeans continue to cause tensions of local inhabitants.

Similarly the borders of the Middle East, which were created at the beginning of the twentieth century, continue to cause problems. The peoples of the region are currently ruled and governed by authorities whose legitimacy is disputed. Catherwood (2004:14) argues '[T]he ethnic problems that the peacemakers could not solve after the First World War did not end with the Allied victory in the Second. In the twenty-first century, we still live in a world created early in the twentieth by Wilson, Lloyd George, Clemenceau and Orlando'. The borders in the Middle East generate more trouble that can be consumed locally. Jordan, Iraq, and Syria, owe their existence as separate entities to the European dismemberment of the Ottoman Empire after World War I. Morocco, Algeria, Tunisia, Lebanon, and Syria witnessed various forms of French rule. The rest of the region, apart from Italian Libya and the Spanish possessions in Morocco, came under British control. The complex diplomatic history which accounts for these outcomes is an indication of the complexity of state formation in the region, but the process actually began in most of the Middle East well before the Europeans set the region's internal boundaries. The boundaries of the new states were rarely congruent with indigenous social formations or economic systems. The often arbitrary borders bequeathed to the newly independent states by the Europeans left many of the states with heterogeneous and partial social structures and economies. Tribes, such as those in Jordan, were deprived of their markets. Geographical and ethnic units, such as the Kurds, were often divided among the new states. This meant that for some countries the further development of state capacity required simultaneous reorientations in economic links, social relations, and political loyalties. Because of the novelty and, in some cases, the weakness of many of the states of the Middle East, their legitimacy is often correspondingly low.

  The notions of citizenship, patriotism, and love of country which undergird loyalty to the modem state frequently face competing conceptions of identity, loyalty, and

legitimacy. Indeed, even state elites often find themselves better served by non-state ideologies: the pan-Arab nationalism of the ruling Ba'th in Iraq and Syria, the international vocation of the Libyan revolution, and the Islamic republic in Iran all constitute efforts to inspire loyalty based on ethnicity, ideology, and religion, all of which deny the primacy of the state as an object of loyalty. In part this is a consequence of the historical development of political identity in the Middle East. The reforms of the nineteenth and twentieth centuries were justified by a variety of ideological positions-the defence of the empires and of Islam, for example, or the revival of the language and culture of Arabs, Turks, Persians- which were espoused by social classes and groups whose ties extended throughout the region.

Anderson (1987:12) states 'With the exceptions of Iran, Morocco, and the periphery of the Arabian peninsula, all of the countries of the Middle East and North Africa are successors of the Ottoman Empire. Apart from Iran, Saudi Arabia, North Yemen, and Turkey, all the countries of the region experienced decades of European rule during this century'. The collapse of the Ottoman Empire and the beginning of European colonialisation played an important role in shaping the geography, politics and status of the states in this region. Owen (2004:7) argues the collapse of the Ottoman Empire in the early 1920s led to the introduction of European colonialism which last until the 1940s. He states:

> European colonialism took place under historical circumstances radically different from those that had existed during Ottoman rule. Nevertheless, the basic pattern of relationship between the colonial states and their subject societies-one of detachment, minimal contact, and top-down flow of power-remained largely the same. The emergence of sovereign, independent states in the Middle East in the 1940s and 1950s dramatically altered domestic power equations and the traditional foundations for state-society relations in each Middle Eastern country.

Countries of the Middle East had different experiences and structures. In addition the uniting factors of ethnicity, language, and religion are the curse and the blessings of a common historical heritage. Much of the Middle East, with the exception of Iran and

Morocco, experienced centuries of Ottoman rule, generally from the mid-sixteenth century up until the waning years of the nineteenth century. The Ottomans' hold on the Middle East was often tenuous and frequently interrupted. Over the centuries, however, for better or for worse, from their capital in Istanbul the Ottomans managed to leave their mark on far-off places such as Cairo, Tripoli, and Tunis.

The Ottoman power's disintegration had an unmistakable pattern: superiority in the fifteenth and sixteenth centuries, parity in the seventeenth and early eighteenth centuries, and steady decline thereafter, so that the Ottoman Empire eventually became the Sick man of Europe. Because of the conditions in which they had obtained power, the rulers of the newly independent Middle Eastern states faced many of the same problems as their colonial predecessors. It was one thing to create a nationalist coalition against the retreating imperial power, quite another to obtain the allegiance of all its new citizens. Just as the First World War had created the conditions that led to the grant of formal independence to Egypt in 1922, so too did the Second World War pave the way for the end of colonial domination in many other parts of the Middle East. Iran had remained outside the Ottoman's control. In 1501, a militant Shia Sufi named Ismail, at the time only thirteen years old, rose to prominence and established the Safavid dynasty. The status of Safavid was different from Ottoman one. The former was Shia sect of Islam dominated while the latter was Sunni sect of Islam dominated. In addition, the Ottoman Empire was under the influence of the European empire more than the Safavid. The following section explains this.

Inspired by the political ideals prevalent in Europe and dazzled by the industrial accomplishments of Britain, yet remaining committed to their Islamic religion and Ottoman heritage, the Ottomans sought to reform the system from within. With their attempts at turning the dynasty into constitutional parliamentary system, presumably along the Westminster model, they gave rise to a number of different, competing

factions. By the early years of the twentieth century, the idea of multinational, multireligious, empire had become increasingly untenable, and the birth of competing local identities and loyalties was tearing the empire part. This problem was not unique to the Ottoman Empire. At about roughly the same time, the two other dynasties bordering the Ottomans, the Hapsburgs to the west and the Qajars to the east, also faced crises that threatened their very survival, eventually leading to their collapse. Though the specific causes of the crises facing the imperial household were different in each case, the Ottomans and the Hapsburg shared similar challenges in ruling over vast, multinational territories. In terms of the nature of the region, Serberny (2006:188) states:

> The Middle East is an extraordinary region. It is not continental. It is geographically leaky. The name itself is a geopolitical label given to the region by western powers after the First World War. The region is now most usually referred to by international organizations such as the World Bank as MENA, the Middle East and North Africa. It is a highly differentiated region, along many different kinds of social variables. There are the mixed legacies of the Ottoman empire and English and French colonisation, and enduring territorial disputes traceable to the arbitrary lines in the sand by which European powers used to demarcate some national boundaries after 1918. A number of the region's peoples (Palestinians, Kurds, and Armenians) remain proto-states.

In relation to the political changes, the region has experienced moments of constitutional reform (the Iranian Constitutional Revolution of 1905); westernised modernisation (Turkey under Ataturk, Iran under Pahlavi) and republican revolutions in the 1950s (Iraq, Egypt, Syria), some of which remain highly centralised mobilising regimes. Regarding the ruling of the region in the beginning of the twentieth century, Kamrava (2005:50) observes that after the end of Ottoman rule there was a republican system in Turkey and the rest of the region was dominated by Britain and France:

> Britain and France became the region's dominant powers, each having mandates of its own: Palestine and Iraq for Britain, Syria and Lebanon for France. Egypt and the Emirate of Transjordan existed in a state of precarious independence, with Britain remaining the true master of their destinies. The Maghreb had already fallen to the French in the closing decades of the 1800s, and Libya was under Italian control in 1911. Finally, Iran and the Kingdom of Hejaz clung to an independence of sorts.

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By October 1916, Britain and France had finalised the Sykes-Picot Agreement, in the form of eleven letters exchanged between the two sides. In this agreement they divided the Ottoman provinces into different spheres of influence. The treaties that shaped the borders in this region and national designations of areas are of historic importance including: the Sykes-Picot Agreement (May 1916), the Balfour Declaration (November 1917), the conference of San Remo (April 1920), and the Treaty of Sevres (August 1920). Accordingly, countries were carved out of former Ottoman territories: Turkey, Palestine, Syria, Lebanon, Transjordan, Iraq, and Saudi Arabia.

Perhaps the biggest remains of the British rule, aside from the drawing of artificial national borders, was the institution of monarchy, which they secured in almost all the lands they ruled in Egypt, Jordon, Iraq, and the Arabian Peninsula. The French colonial inheritance was less political and more cultural. Nevertheless, the powerful unifying forces in the Middle East-religion, ethnicity, and language – have at times also been source of division and conflict. In many historical episodes subtle differences in dialect or ethnic identity have served as powerful catalysts for the articulation of national or sub national loyalties and even for political mobilisation. In short, the Middle East is far from monolithic and homogenous. The following sections gives an overview of the four countries covered and the Kurds who are the case study of the present thesis.

3.1   Creating the state of Iraq

Iraq as a new political entity was established in 1921 and it was administrated by Britain until its independence in 1932. Stansfield (2006:3) explains the centralised structure of Iraq was only rationalised by and useful to the British '[c]hairing the Cairo conference in March 1921, Churchill's main concern was to secure Mesopotamia from any threat from Turkey or Russia'. The British Empire was determined to create a united Iraq out of the three disparate provinces under the Ottoman Empire, namely Baghdad, Basra and

Mosul. Ironically, Iraq has been a fragile country since then. Initially, when the monarchy was established in 1921, its shape was still in dispute because the republic of Turkey laid claim to the Mousel *vilayet* (Rubin, 2005:5). Kreyenbroek (1990:48) explains, despite the fact that the majority of the people in northern Iraq are Kurds there is a significant Turkish (Turkmen) minority. This is why the status of the Mosul province, whether it should be part of Iraq, part of Turkey or become independent, was undecided until 1926 when it became part of Iraq. However, the author (1990:49) points out 'Turkish nationalist circles have not yet resigned themselves to the loss of this region'. Annexing the Kurds, 'the province of Mosul', to the new state was a defective decision. Anderson (2004:6) argues one of the reasons for incorporating the Mosul province into Iraq was '[T]o help reduce the numerical dominance of the Shia'. The author goes on to point out, that practically this was a bad decision which would have large repercussions because '[t]he Kurds of northern Iraq have never accepted central rule'. Similarly, when speaking about the status of the Kurds in Iraq O'Leary (2009:12) states:

> The British invented modern Iraq by attempting to solder part of historic Kurdistan to al-Iraq al-Arabia. They broke their promise to create an autonomous Kurdistan and invented a deeply dysfunctional and divided polity. A Sunni Arabian Hashemite monarchy, despite intermittent good intentions, re-entrenched the Ottoman hierarchy of Sunni over Shia and a new racial and ethnic hierarchy of Arab over Kurd.

Iraq consists of three major groups: Sunni Kurds in the North, Sunni Arabs in the centre and Shia Arabs in the south. There are various statistics about the population of Iraq. According to Rangwala (2005:4) '[A]bout 80% of Iraq's population is Arab- 75% of them Shia, the rest Sunni Muslims. The Kurds make up another 15% of the total population. Other significant minorities include are 400,000 Assyro-Chaldaean Christians, 400,000 Turkmens, 70,000 Shabaks, 500,000 Feili Kurds, 18,000 Armenians and less than 5,000 Mandaeans'. Henri Barkey (2009), on the other hand, relies on different demographics. According to the July 2008 estimate the total population of Iraq

is 28,221,181. The various ethnic groups comprise the following percentages in Iraq: The Arabs 75%-80%, The Kurds 15%-20%, and Turcoman, Assyrian, or other 5%. The following map shows the geographical region of each component of the Iraqi population.

Radio Free Europe (2009)

There is no consensus on the exact number of the Kurds and other minorities in Iraq. For example: the head of the committee of census of Kurdistan Regional Government, Dr Jamal Rasul Mohammed Amin (2008:4) states '[D]despite the fact that in the Iraqi budget the Kurds are %17, according to the assessment and census, the population of Kurdistan is %18.5 of the whole population of Iraq'. Other minorities in Iraq include the Christians, the Turkmens who have strong cultural and historical links with Turkey, and the Yazidi Kurds whose faith combines elements of Zoroastrianism with the major monotheist creeds. Until the 1950s a large Jewish population also lived in Iraq, but the majority migrated to Israel. Thereby, Iraq is a complex state.

The Monarchy in Iraq lasted from 1921 until 1958. King Faisal I was appointed by the British Empire. There was an extensive conflict between the Iraqi people's desire for

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independence and the British policy to run Iraq under its administration. Speaking of Iraq's independence Rangwala (2005:2) states '[i]n 1920, the San Remo Conference of Allied Powers granted Britain a mandate over Iraq, on the understanding that independence would be given in time. Iraq finally achieved independence in 1932, but Britain, and later the US, retained considerable control until the revolution of 1958'. Notwithstanding the attempted coup in 1941 which was led by Rashid Ali, the period of 1921-1958 was the most stable time in the history of Iraq. The popularity of King Faisal played a major role in that period of stability. Anderson and Stansfield (2004:6) note '[A] decade of political chaos (1958-1968) gave way to rule by Saddam Hussein's Ba'th Party and from 1979 onward, to a totalitarian dictatorship under the direct (and violent) control of the "Great Leader" himself. Throughout, this period, Iraq has maintained its territorial integrity. What it has never succeeded in becoming is a nation'. It other words Iraq has lived through violence and instability since 1958.

3.2   Emerging of Turkey

This section addresses the early years of Turkey emerging as one of the successors of the Ottoman caliph and as an independent state. Then, the socio-political structure of the country is examined.

  Unlike Iraq and Syria, Turkey was not always an independent state. It came into existence just before the beginning of the twentieth century. Regarding the establishment of Turkey, Kamrava (2005:56) argues '[t]he establishment of a republic in Turkey on October 29, 1923, had served as an inspiration to political modernisers in much of the Middle East, and circulated in Iran of establishing a similar system in preference over the archaic monarchy of the Qajars'. Determined to create a new Turkey and a Turkish national identity, Kemal Ataturk went about his task in incremental steps. First, in 1922, he abolished the Ottoman Sultanate literally 'family

dynasty'. He allowed one of the Ottoman princes to remain as the caliph, thus appeasing the religious sensibilities of his associates and the masses at large.

Following the war of independence and the establishment of the republic in 1923, Turkish officials embarked on a project of what Watts (1999:647) calls 'authoritarian high-modernism', in which progressive but non-democratic elites attempted to re-map the new country using 'radically simplified designs for social organisation'. (Watts 1999:647). In 1924, when his powers had become more secure, Kemal Ataturk abolished the caliphate as well. The cultural and ideological underpinnings of this new social organisation were Turkish nationalism, which strongly emphasised the country's Turkish culture and ethnic roots, downplaying and even suppressing religious or ethnic groups who voiced alternative sources of community. The Turkish mother tongue either assimilated into or joined the Turkish national project faced little formal discrimination. '[C]onversely, open demonstrations of a Kurdish (or other minority) identity, such as speaking Kurdish or celebrating traditional Kurdish holidays, were strongly discouraged under the new principles of nationalism' (Zurche 1993:189).

This fearful attitude toward ethnic minorities is common to new states presiding over invented nations, but ethnic exclusivity was not an inevitable outcome of the formation of the republic. Kurds had freely represented themselves in the 1920-22 Turkish Grand National assembly as Kurdish tribal leaders, and Article 88 of the 1924 constitution had laid the groundwork for a potentially inclusive understanding of national identity by acknowledging the existence of ethnic variety. Watts (1999:647) points out '[E]veryone in Turkey is called a Turk without discrimination on the basis of religion or race'. A potential evolution toward civic nationalism was halted by the Kurdish-led Sheikh Said Rebellion of 1925 and the measures used to suppress it. The rebellion fuelled fears of a division of the republic along the lines of the 1920 Treaty of Sevres, which promised Kurds a separate state, and therefore encouraged the institutionalisation of authoritarian

nationalism, as Robert Olson (1989:220) argues. After the rebellion, notions of a civic understanding of Turkish nationalism were superseded-in fact if not in constitutional edict-by the notion that the territorial integrity of the republic needed to be protected through ethnic commonality Turkish leaders saw the presence of a "Kurdish people" within Turkey's border as a clear territorial threat.

A brief sketch of the history of the democratic ideal in Turkish government indicates that democratic principles have been previously and now remain an important component of the ideology of the state. The democratic provisions of the 1924 constitution remained mostly on paper, it was important simply that they were there, and more, that the basis for sustained one-party rule was not. 'During the authoritarian rule of the Republican People's Party (RPP), both constitutionally and electorally, a democratic facade was carefully maintained, so much so that the transition to multiparty in 1946 required not a single change in the Constitution and only relatively minor changes in other laws' (Ozbudun 1981:92). Between the election of the Democratic Party (DP) in 1950 and the coup of 1971, dramatic demographic and social changes such as urban migration and increased university enrolment embedded state agencies in a new social landscape shaped as much by student activists and populist leaders as by Kemalist elites. Although the DP was forcibly removed from office by a military coup in 1960, the years following the coup and the return of civilian government were some of the more liberal in Turkey's history. The 1961 constitution, structured closely along the lines of the European Convention on Human Rights, introduced proportional representation and a bill of civil rights, and a variety of student and political associations flourished. For the first time, the ideological supremacy of Turkish nationalism faced a substantial challenge from political demands for pluralist democratisation. However after the "coup by memorandum" of 1971, Turkish officials backed away from full democratisation, in particular by limiting freedom of speech.

In the decades following, official policies toward public expressions of Kurdish identity were largely subsumed within the imperatives of Turkish nationalism. In official discourse, democracy became something that could survive in Turkey only within carefully prescribed limits. As General Kenan Evren's speech to the nation on 12 September 1980 expresses '[t]he goal of the operation that has been undertaken ... is to re-establish the authority and existence of the state and to do away with the causes that are preventing the democratic order from functioning' (Watts 1999:647). The 1982 constitution granted the state extensive powers to restrain democratic expression if national unity was perceived to be threatened. Article 13 stipulates '[f]undamental rights and freedoms may be restricted by law, in conformity with the letter and spirit of the constitution, with the aim of safeguarding the indivisible integrity of the republic' (Dodd 200:1990).

In a departure from previous legislation, Turkish language was now declared the mother tongue (as opposed to the official language) of all citizens of Turkey, and certain languages, including Kurdish, were restricted through a new set of laws. In this atmosphere, general use of the word "Kurd," let alone "Kurdistan," might well be viewed as constituting treason. The emergency rule laws were used by the Turkish authorities throughout the 1980s in the southeast, which bolstered the activities of Kurdistan Workers Party (PKK).

3.2.1   Ethnic structure and the Kurds of Turkey

According to Andrew (2007: 47) 'there are 47 different ethnic groups in Turkey'. He states '[t]he main religious, linguistic and ethnic groups in Turkey are: Kurds, Jews, Greeks, Armenians, Syriacs, Alevis, Yazidis, Albanians, Georgians, Circassians, Bulgarians, Laz, Arabs and Roma'. Regarding the population structure of Turkey, Barkey (2009) states 'Population: 71,892,807 (July 2008 est.), Ethnic groups: Turkish 80%, Kurdish 20% (estimated)'. The estimated number of Kurds in Turkey is

approximately 15 million and they represent 20 percent of Turkey's population. They predominantly live in the southeast of Turkey but as a result of migration, currently a significant proportion of Kurds live in the western cities of Turkey. A majority of Kurds are Sunni-Muslim and there are large numbers of Kurds from the Alevi religion. They speak two dialects of Kurdish, Kurmanji and Zazaki. Kurds have been seen by the Turkish authorities as a potential threat to the integrity of the state since the foundation of the Republic of Turkey. Turkey's policy has been shaped on the basis of this fear and Kurds have faced human rights violations and a policy of assimilation.

The Kurds Today (KHRP 2008:10)

Regarding the other minorities, David (1995:20) states 'Alevis are the second largest religious group (after Sunnis) in Turkey and their estimated number is between 12 and 15 million. They belong to different ethnic groups i.e. Turks, Kurds, Arabs or Azeris. They consider themselves to be part of the Shia sector movement who revere Ali (Muhammad's cousin and son-in-law) and the Twelve Imams of his house'. Alevis are not officially recognised as a minority, thus, they cannot practice their religious rights effectively. Armenian Orthodox Christians, Greek Orthodox Christians and Jews are the only officially recognised religious minority groups in Turkey. 'There are around 60,000 Armenians, 26,000 Jews and, according to estimates, 5,000 Greeks in Turkey.

They are recognised by their religion but not by their ethnic identity. Most of these three religious groups live in Istanbul but there are important Jewish communities living in Adana, Ankara, Bursa, Çanakkale, Iskenderun, and Kirklareli' (IHF 1995:12). Roma is another minority in Turkey, registered on Ottoman territories for the first time in 1475 primarily for taxation purposes. 'According to official records they are over 500,000 and they live throughout Turkey. They are either Muslim or Christian and they speak the Romani language which is influenced by Turkish, Kurdish and Greek languages' (IHF 1995).

To recapitulate, it is clear social discrimination from an ethnic or religious point of view; political pursuits by direct or structured force, not guarantying equal citizenship and lack of basic freedom are the major obstacles of integration in Turkey. In the following sections, examples will be mentioned. Throughout its history the Turkish state has not given equal citizenship to the Kurds who are non-Turkish and to the Syriacs who are a non-Muslim minority. Following a long procedure, Turkey has entered the membership negotiations phase with the European Union. During these negotiations the rights of non-Turkish and non-Muslim minorities' people should be considered under the Copenhagen Criteria.

3.3   The state of Iran and its ethnic structure

This section addresses the history of the state of Iran and its ethnic structure. Persia was renamed Iran in 1925, Owen (2004:80) argues 'Iran was occupied during the Second World War by British, American and Soviet forces, who deposed Reza Shah in 1941 and replaced him with his son, Mohammed Reza'. On the whole, as compared to Turkey, Iran was ethnically and tribally more divided, economically and industrially less developed, and had a more powerful, conservative clerical establishment with which the modernising state had to contend. Regarding the state of Iran, Lisa Anderson (1987:15) argues:

With the exceptions of Iran, Morocco, and the periphery of the Arabian Peninsula, all of the countries of the Middle East and North Africa are successors of the Ottoman Empire. Apart from Iran, Saudi Arabia, North Yemen, and Turkey, all the countries of the region experienced decades of European rule during this century.

World War I leading to the overthrow of the Qajar regime and replacement by Reza Shah was pivotal in the history of modern Iran. The Constitutional Revolution of 1906-09 aimed to abolish the arbitrary regime and bring in a modern constitution and parliament. Iran was on the brink of disintegration, modernisation had failed, and growing frustration and pressure from the disillusioned middle classes, intelligentsia and urban population, set the stage for centralisation of power under Reza Shah. Resistance to foreign occupation and the establishment of a new order in Iran also owed much to the efforts of one man, this time Colonel Reza Khan, who took advantage of the political crisis of the early 1920s to manoeuvre himself into such a position of personal dominance that he was able to have a constituent assembly depose the previous Kajar ruler and the imperial throne in December 1925. (Anderson 1987:19).

Iran is the remnant of an empire, '[o]ver 3000 sq km of Iran were seceded from it in18th and 19th centuries in wars with Russia and Britain after Shiaism alienated millions of Sunnis'. (Hosseinborr 2007:71). Afghanistan and a large part of Pakistan were separated from Iran when Sunni Afghans and Baloch refused to convert to Shiaism. Hosseinborr (2007:72) argues:

> The Sunni and Christian in republics of central Asia were adequately alienated by the Shia regime of Iran before Iran-Russian wars started. They preferred to accept a Russia that did not force them to abandon their religion. Afghanistan and Tajikistan are Farsi speaking nations that were separated from Iran. The Arabs are separated from the Arabs of Gulf. The Baloch are separated from Baluchistan, Pakistan. The Kurds are separated from Kurds of Turkey, Iraq and Syria. The Azeri Turks are separated from Azerbaijan. Turkmen have also separated from Turkmenistan.

The struggle of minorities in Iran to decentralise the ruling system has taken a long time. Iran was called the United States of Iran (Mamalek-e Mahrooseh Iran with a

decentralised system / Anjoman-haye Eyalati-va-Velayati). Iran has 30 provinces, 20 of them are dominated by minorities such as; Arabs, Baluchs, Kurds, Lur & Bakhtiyari, Azeri Turks, Turkmen, Mazendarani, Gilakis and Taleshis. Hosseinborr (2007:34) states '[t]he others are mixed. For example: About 65% of the population of Tehran is from Iranian minorities (none-Persian). There are 11 provinces which have Sunni minority. These Provinces include: Kurdistan, Baluchistan, West Azerbaijan, Northern Khorasan, Southern Khorasan, Golestan, Bushehr, Khuzistan, Kermanshah, Gilan (Talyshis areas) and Ilam'.

Programmes of nationalisation and of a large-scale industrialisation provided the state with further opportunities for expansion and control. Everywhere else, the creation of an industrial base was seen as the essential component of economic modernity, expanding state involvement in the economy and the policy of carrot and stick to monopolise the society. Regarding the ethnic structure of Iran, Aghajanian (1983:219) states:

> Iran is a country of diverse ethnic and linguistic communities. There are Kurds in the west and northwest, Baluchis in the east, Turks in the north and northwest, and Arabs in the south. Persians are situated today in the central areas. Through the history of Iran these various ethnic groups have lived in geographically distinct regions and provinces. Along with this residential separation, social and economic distance has long persisted and still continues among ethnic communities. Yet, regrettably, there is very little known about these inequalities in the contemporary history of Iran.

It is clear that ethnic diversity goes back to pre-Islamic times. Iran has always been predominantly populated by groups of people of distinct linguistic and cultural identities. Today there are five major ethnic groups in Iran, each organised around distinct familial and cultural patterns and has its own religion, language, and Iranian nationality. There has been some internal migration and movement of people to and from various ethnic communities, but the majority of the people still live where their ancestors lived. Owing to the polices of the Iranian authorities, knowledge of the minorities of Iran is limited. Aghajanian (1983:219) states '[t]here is not much known

about the exact population figures for each ethnic community. The Iranian censuses in the last two decades have not considered the question of ethnicity'.

Iran is a very large country. It is three times the size of France (Iran is 632,457, France is 210,026 square miles). (Shekofteh 2008:20). Therefore, from north to south, and east to west, there is vast variation in climate and terrain, as well as ethnic groups and languages. According to research of March 2008, there are 11 main ethno-linguistic groups in Iran, which are as follows: 1- Persian [(Fars or Pars), 34.5%], 2- Azeri Turks (25.7%), 3- Kurds (12%), 4- Lur & Bakhtiyari (8%), 5- Arab (4.8%), 6- Mazendarani (4.4%),7- Gilaks (3.2%), 8- Baloch (3%), 9- Turkmen (1.2%), 10- Talyshi (1%), 11- Ghashghayi [(Qashqayi), (0.8%)], 12- Others (1.5%) .(Shekofteh 2008:8). There may be some disputes about population size and problems with the reliability of these population statistics. All of these ethnic minorities have their own languages, cultures, and often literature. However their languages, traditions and cultures are banned. In addition they suffer poor legal status at the hands of the Iranian government and judiciary. Their differences usually emerge as political ambitions and demands, Shekofteh (2008:10) argues:

> Minorities of Iran are not homogenous, most of them are from different nationalities; they face further oppression and marginalization due to religious, cultural & linguistics, illiteracy, politic affairs, poverty, gender and some other factors. Government has also implemented a systematic and organised policy of integration of all minorities, and assimilation of their culture and languages. Minorities in Iran are the poorest and most marginalised people in the society. They lack access to political power, with no political parties and no cultural forums, face discrimination and severe human rights abuses, and there is development policies imposed upon them.

The common language and script of the Iranian people is Persian or Farsi; however Azeri, Kurdi, Luri, Arabic and Baluchi dialects or languages are also spoken by the linguistic minorities. The official texts and documents, correspondence and textbooks must be in the Persian language and script. The Shia sect of Islam is the dominant religion of the Turks of Iran. Turkmens hold to Sunni beliefs. The Baluchi language is

linguistically close to Pashtu, the language spoken in Afghanistan and Pakistan. Baluchis are Sunni. The Arabs speak Arabic as their mother language and adhere to Sunni Islam, which further separates them from other Iranians. (Anderson 1987:15).

A full examination of the historical development of the Kurds in Iran is beyond the scope of this chapter. The Kurds, who speak Kurdish, generally belong to the Sunni sect of Islam. There are a number of Kurds in Kermanshah who adhere to Shiaism. The Iranian Kurds, who mainly inhabit the province of Kurdistan, Kermanshah, Llam and the south-west of the Western Azerbaijan province, have been dwelling in Iran since ancient times. The minorities of Iran face further oppression and marginalisation due to religious, cultural and linguistic differences, illiteracy, political affairs, poverty, gender and some other factors. The government of Iran has implemented a systematic and organised policy of to assimilate of their culture and languages.

Minorities lack access to political power, with no political parties and no cultural forums. They face discrimination, human rights abuses, and low legal status. It is clear that recognition of minority and indigenous peoples' rights is crucial to establishing and maintaining justice, stability and peaceful societies.

In addition to the population statistics as outlined above from research in March 2008, according to the World Fact Book (2008:33), ethnic structure differs and is as follows: Population: 65,875,223 (July 2008 est.), Ethnic groups: Persian 51%, Azeri 24%, Gilaki and Mazandarani 8%, Kurd 7%, Arab 3%, Lur 2%, Baloch 2%, Turkmen 2%, other 1%, 4,611,265 Kurds DOS Background Notes (retrieved September 26) Population (2007 est.): 70.5 million, Ethnic groups: Persians 51%, Azeri 24%, Gilaki and Mazandarani 8%, Kurd 7%, Arab 3%, Lur 2%, Baloch 2%, Turkmen 2%, other 1%, 4,935,000 Kurds. Barkey (2009:24) states '[t]he term Persia was adopted by the West through the Greeks and was used as an official name for Iran until 1935'.

Therefore, Iran's history, will label many non-Persian Iranian's as Persians. Historically the use of the term "Persian" has included all the various regional languages of Iran, which is also debatable, because other main ethno-linguistic minority groups are not Persian. The Persian people's language is called Farsi (Parsi or Persi), which is used as an official language and also in the academic curricula currently, (all other languages are totally banned in schools and academia) in Iran. Hamidi (1990:78) argues:

> Persian people mainly live in some of the State's central Provinces such as Isfahan (about 3.7 million), Kerman (about 2.5 million), Qom (about 0.5 million), central province (about 1.3 million), Fars Province (about 3.7 million), Razavi & southern Khorasan Province (about 3.5 million), Semnan Province (about 0.6 million), Yazd Province (about 1 million) and also in Tehran (5 million, about 36% of Tehran's population is Persian), and about 3 to 4 million are scattered in other provinces across the state. All of the borders' provinces of Iran are not Persian.

Farsi hugely dominates all other languages, as the central government has got an organised and systematic policy of promoting the language and, spends a lot of money on this. it. The minority's revenue and their natural resources income are used against them by an ultra centralised government. All cultural and civil activities across the state must be in Farsi; this discrimination is marginalising minorities' talents and squandering minorities' cultures, languages and traditions.

Accurate population censuses are difficult to come by and there are speculations available '[t]here are a considerable number of Kurds that estimates approximately 1.5 - 2 million who are living in Major cities in Iran, such as: Tehran (about 7% of Tehran & Karaj's population is Kurds), Varamin and Firoozkoh, Mazendaran Province (countryside of Cities such as: Daylaman, Sari, Kurdkoy and Noor), Gilan Province (Cities such as: Kalardasht, Roodbar, Manjil, Hashtpar and Assalem regions), and Kuhak region in the South of Qom'. (Iran Federal 2007:12).

Kurdish inhabited regions of Iran. (The Columbia Encyclopaedia 2005:57)

There are also about 1.5 million Kurds who are living in Khorasan Province in the north-east of Iran**.** These are descendents of the Kurds who were forcefully resettled there approximately 400 years ago by the Iranian government of the time. (The Columbia Encyclopaedia 2005:57). The total population of Kurds all over the state of Iran is estimated between 8.5 to 9 million, which is about 12% of the total population of Iran. Cameron and Danesh (2008:32) state '[t]he Kurds are one of Iran's largest ethnic minorities. There are about 6.5 million Kurds in Iran, constituting between 7-9% of the total population and living primarily in the west and northwest of the country'. The above different figures show that there is no consensus about the population of the Kurds in Iran.

There has never been any census on the number of Iran's ethnic groups. In the national census of 1986 there was a box asking people about the language spoken at home. But later, the officials changed their mind and asked people not to check that box. But now it seems it is necessary to have a census to find out the number of Azeri Turks, Kurds, Baluchis, Persian, Arab, Talyshis, Gilakis, Mazendaranis, Lur & Bakhtiyari, and Turkmen people in order to determine accurately Iran's ethnic diversity.

(Cameron, G and Danesh, T 2008:71). The United Nations has 191 member countries. About 179 of them are multi-ethnic countries. At the top of the multinational countries is India with 1300 nationalities. Only 12 countries have nearly one nationality. Iran is among the top ten multinational countries of the world with about eleven distinct major minorities / nationalities and a few others. '[i]n 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, which proclaimed that all human beings are born free and equal in dignity and rights. Sadly, for all minorities and indigenous peoples in Iran, this inspirational text, with its emphasis on equality and non-discrimination, remains a dream, not a reality'. (Cameron and Danesh, 2008:73). The mosaic of peoples living in Iran reflects the geographical situation of the country throughout history. One of the major internal policy challenges during the centuries up until now for most or all Iranian governments has been to find the appropriate and balanced approach to the difficulties and opportunities caused by this diversity. To illustrate this, the following section examines the policy framework of the current state of Iran.

3.4   Ethnic groups and languages in Syria

This section addresses the ethnic structure of Syria with emphasis on the demographic status of the Syrian Kurds. Syria as an independent country was formed in 1920. The Syrian Arab Republic (its official name) is an Arab country in southwest Asia, bordering Lebanon and the Mediterranean Sea to the west, Israel to the south-west, Jordan to the south, Iraq to the east, and Turkey to the north. 'The modern state of Syria was formerly a French mandate, but can trace its roots to the Eblan civilization in the third millennium BC. Its capital city, Damascus, was the seat of the Umayyad Empire and a provincial capital of the Mamluk Empire' (The Columbia Encyclopaedia 2007:27). Syria is a complex country and the population is made up of different religious and ethnic groups with various languages. The population is mainly Muslim,

of various schools and branches, but with a significant Christian minority. Kurdish Human Rights Project (KHRP 2004:10) describes the ethno-religious structure and ethnic groups of Syria as follows. The 'ethnicities' are; Arabs 80%, Kurds 15%, Armenians and Syriacs 5%. The religions are; Sunni Muslim 74%, Alawi, Druze, and other Muslim sects. Ethno-religious minorities are; Christian (various sects) 10%, Yezidi (Ezidi) Kurds under 1%, and Jewish (25,000 in tiny communities in Damascus, Qamishli, and Aleppo), mostly elderly. The languages are; Arabic (the official language), Kurdish, Armenian, Aramaic, Circassian (widely understood), English and French (somewhat understood).

Syrians are commonly categorised as an Arab people (as are most of the other now Arabic-speaking people in the Arab world) by virtue of their modern-day language and bonds to Arab culture and history. They are in fact largely a blend of the various groups indigenous to the region who were at one time largely Christian and Aramaic speaking but who became 'Arabised' and the large majority converted to Islam, following the Muslim conquest of Syria. Syrians today, whether Muslim or Christian, are a thoroughly Arabised people. In relation to the culture and languages of Syria, the CIA World Fact Book (2007:39) states:

> Together, Syrian Arabs (including some 400,000 Palestinians) make up over 90% of the population. Syria also hosts non-Arabised ethnic minorities. Most Kurds reside in the north-eastern corner of Syria and many still speak the Kurdish language. Sizeable Kurdish communities live in most major Syrian cities as well. The majority of Syrian Turkmen live in Aleppo, Damascus and Latakia. Assyrian/Syriacs Christians are a significant minority that live in the north and northeast (al-Qamishli, al-Hasakah) and number around 700,000 in Syria, although their numbers have been boosted by many Iraqi refugees since the Iraq War. The Assyrian Democratic Organization is also banned in Syria by the current Syrian government. Armenians number approximately 190,000. Syria holds the 7th largest Armenian population in the world. In addition, approximately 1,300,000 Iraqi refugees were estimated to live in Syria in 2007. Roughly %50 of these refugees were Sunni Arab Muslims, 24 percent Shia Arab Muslim, and 20 percent Christian.

Arabic is the official and most widely spoken language. Kurdish is widely spoken in the Kurdish regions of Syria. Many educated Syrians also speak English and French. Armenian and Turkish are spoken among the Armenian and Turkmen minorities. Aramaic, the lingua franca of the region before the advent of Islam and Arabic. As Syriac, it is used as the liturgical language of various Syriac denominations; modern Aramaic (particularly the Turoyo language and Assyrian Neo-Aramaic) is spoken in the Jazeera. Tejel (2009:42) states:

> Syrianisation and Arabisation of the minorities such as Druzes and Alawites have been undertaken by the regime and Syrian authorities. The general population became the target of nationalist political projects which claimed that the state and the nation were indivisible. Thus, in 1953, Armenian associations were subject to a first wave of restrictions aiming to discourage all activities based on denominational or racial solidarity. At the time of the United Arab Republic, emphasis was placed on the pan-Arab discourse of the state, and spaces of autonomy for culturally diverse groups were further restricted.

The perception that the minorities are tools of foreign powers aiming to destabilise their internal affairs has become pervasive in the new states of the Middle East. There is no consensus on the statistics for the ethnic and religious minorities of Syria – different sources state different figures. According to the CIA World Fact Book (2007:47), the structure and figures of the Syrian population are as follows. The national population is 19,747,586. In addition, about 40,000 people live in the Israeli-occupied Golan Heights; 20,000 Arabs (18,000 Druze and 2,000 Alawites) and about 20,000 Israeli settlers (as estimated in July 2008). The ethnic groups are; Arab 90.3%, Kurds, Armenians and others 9.7%, of which 1,777,282 are Kurds (DOS Background Notes, updated May 2007). According to current estimates, '[t]here are nearly 1.5 million Kurds in Syria or approximately 9 percent of a total population of 22 million, making them the largest non-Arab minority in the country' (Minority Rights Group 2009:51). The above sources states diffident figures about the population of the Syrian Kurds. This shows an official figure and a consensus do not exist on this matter.

The Kurds are concentrated primarily in the north and northeast of the country, in the Jazeera, Efrin, and Ain al-Arab regions. A substantial Kurdish population also lives in Hasakah province in the northeast, and a smaller number live in Damascus. The majority of Syrian Kurds speak the Kurdish language and identify with Sunni Islam. The Kurds' status as a stateless minority in the region has its roots in the post-World War I period, when the Sykes-Picot Agreement of 1916 left the Kurds of the Middle East divided among the four new states of Turkey, Syria, Iran and Iraq. The disenfranchisement of the Syrian Kurds can be traced to 1958, with Syria's official adoption of Arab nationalism and a backlash against non-Arab ethnic minorities, which included the Kurds. This adoption has consequences in the coming years. According to Lynch and Ali (2006:32):

> In October 1962, Syrian authorities issued a so-called special census in Hasakah province, the north-eastern Syrian province in which the majority of Kurds have their origins. The authorities then produced statistical reports on the pretext of discovering people who may have crossed illegally from Turkey to Syria. As many as 120,000 Kurds – nearly 20 percent of Syria's Kurdish population – were denationalized as a result, losing all rights of citizenship, including the right to vote and participate in public life, the right to travel outside the country, the right to private ownership, and the right to employment in the public sector

Thereafter, the Kurds experienced a lack of political representation, poor economic development, and reduced social services. Important elements of Kurdish cultural identity, such as language, music, and publications, were banned. Political parties were forbidden and their members incarcerated. The Syrian government also began to replace the names of Kurdish villages and sites with Arabic names. In addition, the government mandated transfers of population to weaken the concentration of Kurds in sensitive areas. For example, in 1973, the Ba'thist government instituted the so-called 'Arab Belt draft', under which Arab families from the areas of Aleppo and al-Raqqa were forced to migrate to 40 Kurdish villages throughout Jazeera province, covering an area 365 kilometres long and 10–15 kilometres, across that bordered with Turkey and Iraq. This

severely disturbed the region's social balance, especially in Jazeera province, to such a point that social and civic disputes there remain a source of persistent local tension. Many of Syria's denationalised Kurds live in Hasakah province, especially in Malkia and the cities of Qamishli and Ras al-Ain. Over the years, a small number of denationalised Kurds from this region have emigrated to Damascus and other large cities throughout Syria. (Lynch and Ali 2006:37).

Kurds classified as foreigners carry red identity cards that permit them to be recorded as aliens in official records. They cannot, however, obtain a passport or leave the country. 'Concealed' Kurds carry only a yellow definition certificate, or residence bond, issued by a local *mukhtar* (chieftain) and used purely to identify the holder whenever the authorities find it necessary to do so. The Syrian authorities issue the certificates; official Syrian institutions do not accept them, so for all intents and purposes the holders of yellow documents have no official status in Syria at all. The practices above can clearly be seen to contradict the theory of equal citizenship.

3.5   An overview of the Kurds

The Kurds are one of the national and ethnic minorities in the Middle East. Minorities are defined to be '[e]thnic, religious and linguistic communities, who may not necessarily be numerical minorities but their rights, are denied by state rulers and they are non-dominant. Those indigenous people, tribal, and migrant nomadic people (Ashayer), who do not wish to be classified as minorities for various reasons' (minorityrights.org 2008:13).

The Kurds are largely acknowledged as 'the world's largest nation without a state' (Galbraith 2006:148). Encyclopaedia Britannica (2007) states the Kurds are an ethnic and linguistic group living in Iran, Iraq and Turkey. In actual fact, smaller numbers of Kurds also live in Syria and Caucuses. The majority of the Kurds speak in two major dialects of Kurdish, namely Kirmanji (spoken in Turkey, Syria and the Caucuses) and

Sorani (spoken in Iraq and Iran). There are other dialects such as Hawrami, Zaza and Lori which are spoken by smaller groups of Kurds.

Encyclopaedia Britannica (2007) describes Kurdish language as a West Iranian language which is related to Persian. It states the Kurds were traditionally nomadic and they were 'forced into farming by the redrawing of state borders after World War I (1914–18)'. The encyclopaedia then defines Kurdistan (the land of the Kurds) as a region 'that roughly includes the mountain systems of the Zagros and the eastern extension of the Taurus. Since very early times the area has been the home of the Kurds.' The Kurds are said to have played an important role in the history of the region. The most important Kurdish dynasties were 'the Shaddadids, ruling a predominantly Armenian population in the Ani and Ganja districts of Transcaucasia (951–1174); the Marwanids of Diyarbakir (990–1096); and the Hasanwayhids of Dinavar in the Kermanshah region (959–1015)' (Encyclopaedia Britannica: 2007). In more recent history the Kurds were prominent in the wars between the Ottoman and the Persian empires. Speaking of independent principalities the encyclopaedia states 'Several Kurdish principalities developed and survived into the first half of the 19th century, notably those of Bohtan, Hakari, Bahdinan, Soran, and Baban in Turkey and of Mukri and Ardelan in Persia' (Encyclopaedia Britannica: 2007).

The characteristics of the empire are different to the state. Conditions and handling of minorities and the nature of governance during the Ottoman Empire were different from the nation-states which appeared from 1923 onwards. The Kurds experienced political challenges during the Ottoman Empire which were unlike the political treatment of the states that replaced the empire in the Middle East. Kurdistan was between two empires until the early of twentieth century, namely the Ottoman and the Persian empires. Bruinessen (1990:27) states both empires were 'multi-ethnic states, in which there was no clearly dominant ethnic group. There was certainly discrimination among different

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categories of citizens, but it was based on religion and education, not on ethnicity as such'. Political environment started to change since the beginning of the twentieth century. Therefore, the status of Kurdish principalities and governance of Kurdistan changed drastically. Bruinessen (1990:28) explains how the administrative reforms of the Ottoman Empire during the eighteenth and nineteenth centuries 'led to the gradual reduction of the Kurdish principalities and the concomitant expansion of a centralised bureaucracy into the Kurdish districts. By the mid-nineteenth century, the last principalities had been abolished by military force. Kurdish society thus came in more direct contact with the state- and not just with the Ottoman or Persian states'. The following is a map that shows the geographical location of the Kurds and Kurdistan.
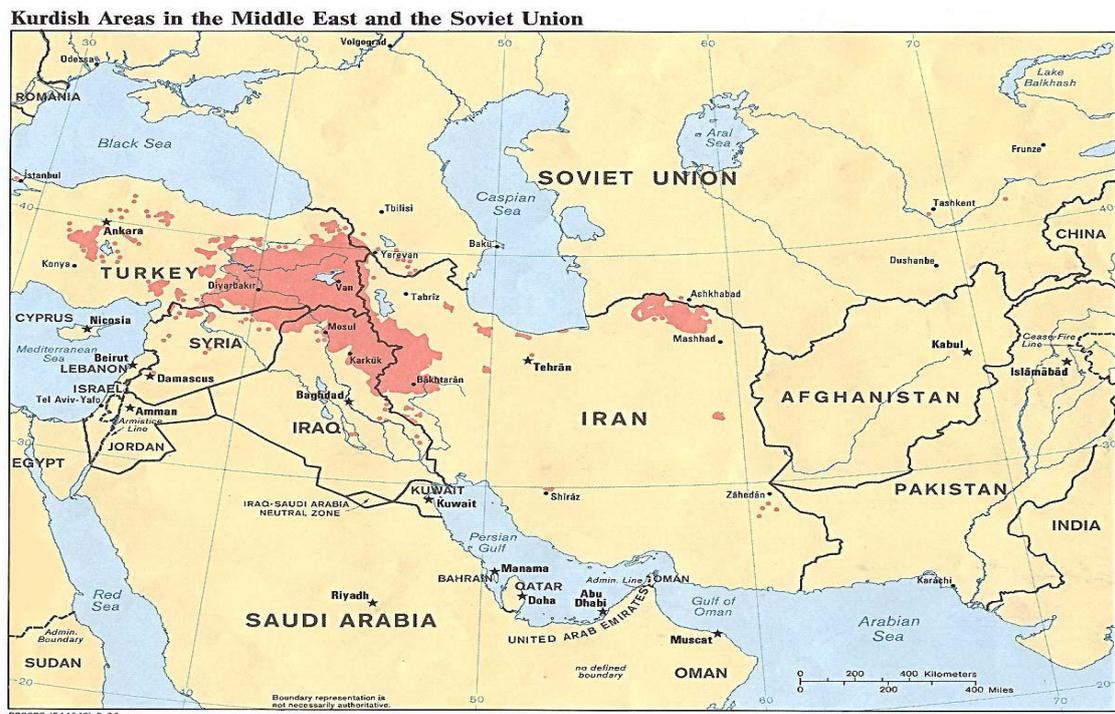
(World History Archive 1986)

Ethnicity became emphasised in the Middle East due to the weakening of the empires and the consolidation of the states in the region. Parallel with other ethnicities, the Kurds chose to pursue their ethnic rights and distinctive characteristics. The Kurds have long been recognised as a distinct people with their own language and a culture different from that of the Arabs to the South, the peoples of the Caucasus to the north and the

Persians to the east. Centuries of persecution and a hard mountain life have isolated them. Romano (2006:6) explains that the geo-political location of Kurdistan and states '[i]t lies within and around the Zagros mountain range, and is currently divided between the borders of Turkey, Iraq, Iran, and Syria. The Kurds roughly constitute twenty-three percent of Turkey's population, twenty-three percent of Iraq's, and ten percent of Iran's population'.

According to McDowall (1997:8) '[i]t is doubtful whether the Kurds form an ethnically coherent whole in the sense of having a common ancestry'. The majority of Kurds are probably descended from waves of Indo- European tribes moving westwards across Iran, probably in the middle of the second millennium BC. Bruinessen (1992:115) states '[t]he Kurds have disparate ethnic origins; the Medes are known to have comprised both nomadic and settled elements'. Hardly any people consist solely of pastoral nomads, as nomads usually have frequent trading or raiding contacts with sedentary cultivators. 'Kurdish is an Indo-European language, which together with Afghan and Persian constitutes the Iranian language group'. (Kendal 1980a:11). There are three major Kurdish dialects: Kurmanji (spoken mainly in northern Kurdistan), Sorani (southern Kurdistan), and Kirmanshani-Leki (south western Kurdistan). Linguists disagree as to whether Zaza (Dêrsim area) and Gurani (south eastern Kurdistan) are dialects of Kurdish or separate languages (Pireh Babi 1999:53).

3.6   Concluding Remarks

This chapter has addressed modern Middle East and background of the four countries covered in this study. It also gave an overview of the Kurds. It can concludes, the modern Middle East and the structures of the four countries have been strongly linked to the legal status of the Kurds.

The four examined countries have different history and political background. However, as the following chapters show, their constitutions and policies are not inclusive towards

the minorities including the Kurds. Therefore, understanding the components of each one of them is necessary.

The following chapters emphasise on the legal status of the Kurds in Iraq, Turkey, Iran and Syria, all of which are complex states and have Kurdish populations. Except Iran, other three counties to large extend were part of the Ottoman territories and Sunni sect of Islam dominated to date. However, Iran was part of the Shia Safavid Empire and unlike other three countries (Iraq, Turkey and Syria), Iran was not the consequence of the First World War. As an independent state, Iran is older than other three countries. These differences have affected the cultural, political and legal status of the Kurds in Iran. These differences are addresses in the following chapters especially in the chapter five (Assimilation of the Kurds in Iran). The above chapter briefly addresses the demographic status of the Kurds, parallel with the legal status; the Kurdish inhabitants of each country are addressed properly in each chapter. Despite that Kurdish inhabitants (as the above map shows) exist in the Soviet Union, the current thesis emphasises on the Kurdish inhabitants of the four countries already mentioned.

4   Chapter four: Iraq: Past and Present

4.1   The Kurds in Iraq

To set the context, a brief overview of Iraq's recent history is necessary, with emphasis on the relationships between the country's three main parts: the Kurdish north, the Sunni Arab centre, and the Shia' Arab south. The relationship between the central government and the Kurds, who account for 15 - 20% of Iraq's 24 million populations and inhabit the mountainous northern part of the country, has historically been tense. Since the overthrow of the Iraqi monarchy in July 1958 the successive governments in Baghdad have been Arab nationalist and, as such, fundamentally antagonistic to the Kurds.

Iraq's Kurds have repeatedly rebelled against the central governments. Fighting was particularly savage in the late 1980s, when the government of Saddam Hussein used poison gas against Kurdish villagers and forced the resettlement of thousands of Kurds in areas south of their traditional homeland. The regime's treatment of Shia' Kurds, known as Faylee Kurds, was particularly savage because of their perceived closeness to Iran (a Shia Islamic Republic) with which Iraq was at war from 1980-1988. Since the overthrow of Saddam Hussein's regime in 2003 steps have been taken towards involving the Kurds in the country's central government.

Iraqi Kurds are often characterised by seeing themselves as victims. The Kurdish struggle for self-determination has been hampered by the bitter rivalry between competing Kurdish groups, some of whom have been used as pawns by regional powers as well as international powers like the United States. President Woodrow Wilson's Fourteen Points sparked the first Kurdish diplomatic ties with the United States, through a Kurdish delegation (consisting of local figures and intellectuals) to the Paris peace conference of 1919. One of President Wilson's fourteen points stipulated that the non-Turkish nationalities of the Ottoman Empire should be 'assured of an absolute unmolested opportunity of autonomous development' (LaFeber 1994:110). Thus, Kurdish nationalists hoped for the establishment of a Kurdistani state.

Wilson pledged to support the creation of a Kurdish state within two years. This promise, however, was soon forgotten as Western powers (Britain and France) applied their own treaties and competed to control the region. When the borders of the Middle East were redrawn, the Kurds were left out. The 1920 Sevres Treaty clearly gave the Kurds the right to independence, Article 64 of the treaty states 'If within one year from the coming into force of the present Treaty the Kurdish peoples within the areas defined in Article 62 (i.e. Turkey) shall address themselves to the council of the League of Nations in such a manner as to show that a majority of the population of these areas

want independence from Turkey, and if the council then considers that these peoples are capable of such independent and recommends that is should granted to them, Turkey hereby agrees to execute such a recommendation, and to renounce all rights and title over these areas' (Galbraith 2006:150).

One of Sevres's articles also mentions 'No objection will be raised by the Principal Allied Powers to the voluntary adhesion to such an independent Kurdish State of the Kurds inhabiting that part of Kurdistan which has hitherto been included in the Mousel valiyet' (Galbraith 2006:150). However, these articles were never ratified, and Severs was replaced by the treaty of Lausanne (1923), which made no mention of Kurdistan or of the Kurds. Thus, the opportunity to unify the Kurds in a nation of their own was lost. Kurdistan after the war was more fragmented than before, and various separatist movements arose among Kurdish groups. The Final stab to the Kurdish self-determination movement was made when Iraq became independent in 1931, and no special arrangement was made for the Kurds. The Kurdish revolution started and continued in Iraq for the periods of 1931–1932 and 1944–1945. Although the pressure of the Kurds to assimilate was less intense in Iraq (where the Kurdish language and culture have been legally recognised), government repression has been extremely brutal. Therefore, armed rebellions occurred in, and a low-level armed insurgency took place throughout the 1960s under the command of Mustafa Barzani, the leader of the Iraqi Kurdish Democratic Party (IKDP), who had been an officer of the Republic of Mahabad in 1946.

The next significant diplomatic contact between the United States and the Kurds was in the 1960s, when the United States was pressuring the Shah of Iran, and began supporting the Kurds as a political tool in that effort. When Saddam began rising as a threat, Iraqi Kurds resisted and held out with assistance from Iran, Israel and the United States, which had sent CIA agents to arm and train the Peshmerga. Galbraith (2006:147)

states '[b]y 1975, Kissinger had secretly channelled $16 million of military aid to the Kurds, who believed that Washington was finally supporting their right to self-determination. But these alliances proved to be fragile'.

In 1975, Saddam agreed to settle a border dispute with Iran in return for the Shah's stopping his support for the Kurdish fighters. The Nixon administration, which had seen the Kurds as a buffer to both the Iraqis and the Soviets, also withdrew its aid. Saddam's army regained control of northern Iraq, continuing his campaign of ethnic cleansing and massive human rights abuses. A congressional report later concluded that the United States and the Shah had not wanted the Kurds to succeed. The Kurds were never aware that they were being used as pawns in a geopolitical game. Galbraith (2006:148) points out that '[e]ven in the context of covert operations, ours was a cynical enterprise'. Secretary of State Henry Kissinger was unremorseful about what many Kurds saw as betrayal. He is famously quoted to have said 'Covert action should not be confused with missionary work' (Galbraith 2006:148). As Iraq wiped out the remaining rebels, the Kurdish leader Mustafa Barzani sent a message to Kissinger stating 'Our movement and people are being destroyed in an unbelievable way, with silence from everyone. We feel, your Excellency, that the United States has a moral and political responsibility towards our people, who have committed themselves to your country's policy'. Kissinger, however, did not send a reply. Deeply disheartened, Mustafa Barzani (who had worked with the US and was then considered the leader of Kurdish independence and autonomy efforts) went into exile in the United States. Before his death in 1979, he wondered plaintively 'Have the Kurdish people committed such crimes that every nation in the world should be against them?' (Galbraith 2006:147). A failed peace accord with the Iraqi government led to another outbreak of fighting in 1975, but the Algeria accord between Iraq and Iran led to a collapse of Kurdish resistance. Thousands of Kurds fled to Iran and Turkey. Low-intensity fighting followed. In the late 1970s,

Iraq's Ba'th Party instituted a policy of settling Iraqi Arabs in parts of Kurdistan—particularly around the oil-rich city of Kirkuk—and uprooting Kurds from those same regions. This policy accelerated in the 1980s, as large numbers of Kurds were forcibly relocated, particularly from areas along the Iranian border. The most brutal atrocities were conducted systematically by the Ba'th regime during the gassing of Halabja and the Anfal campaign, but this does not mean other type of brutalities and human rights abuses did not occur. The regime and its terrifying intelligence agencies played a significant role in detaining and killing young Kurdish activists.

Despite these attacks and atrocities, the Kurds rebelled again following Iraq's defeat in the First Persian Gulf War (1990–1991). They were brutally suppressed once again, sparking another mass exodus. This time the Kurdish uprising started by attacking the Ba'th Party's offices and headquarters in Rania, in the east, on March 6, 1991. The Peshmerga (the word literally means 'those who face death' and is the name of Kurdish fighters) advanced forward until they controlled most of Kirkuk by March 14 1991, 'the place some call Kurdistan's Jerusalem' (Galbraith 2006:149).

This uprising was different from other revolutions and uprisings in that it controlled most of the Kurdistan region and made quite strong progress. Once again this revolt was crushed because the United States changed allies. The uprising had started because of encouragement from President Bush who '[O]n February 14, 1991, he claimed, "And there is another way for the bloodshed to stop, and that is for the Iraqi military and the Iraqi people to take matters into their own hands and force Saddam Hussein, the dictator, to step aside, and then comply with the United Nations resolutions and rejoin the family of peace-loving nations' (Galbraith 2006:147). This sparked uprisings all over Iraq, particularly because Kurds believed that the United States would support them overthrow Saddam's regime. Few weeks after the uprising, the Iraqi troops moved to Kurdistan, crushed the revolt, and Saddam gained control again.

After the war, the U.S. and Britain unilaterally established the No-Fly Zones in the north and south of Iraq, to protect the Kurds and the Shias. Another positive intervention by the United States during the 1990s, implemented by the Clinton administration this time, came with 1998 Washington agreement between KDP and PUK representatives. The Final episode in the Kurdish struggle came during the U.S. involvement with the Kurds in the 2003 invasion of Iraq, where Kurdish peshmerga aided the U.S.-led invasion.

4.2   The differences between the Kurds and Arabs

The Kurds share a common culture and language as well as a history of oppression. A number of factors helped Kurds to discover their unique identity in the last few decades. The establishment of the Kurdistan Regional Government (KRG) in Iraqi Kurdistan has had a strong influence on the flourishing of Kurdish identity, including Kurdish culture and language. Hundreds of newspapers, periodicals and other publications and tens of thousands of books have been published since the KRG's establishment in 1992. Dozens of radio and television stations as well as fourteen satellite stations, established by different factions from different parts of Kurdistan, have also helped unite the Kurds from different parts of Kurdistan, strengthening Kurdish language and identity. The following sections explore a number of factors that have preserved and strengthened the differences between the Kurds and the other groups around them.

  The Kurds are ethnically, linguistically, and culturally different from the Arabs. In a report about the Kurds Human Rights Watch (11 March 1991) states '[I]t is unfortunate that Kurds are described as non-Arab people, which shows the Westerns' lack of understanding of the Kurdish culture and ethnicity. Actually, Kurds do not share much with Arabs, except for long history of conflicts'. There is a theory that the Kurds, who are considered Aryan, are racially different from the Arabs. Izady (1993:234) argues:

Kurdish people are Aryans in race, language and culture and thus are different sharply from Semitic Arabs. Kurdish geography, history, culture, psychology, traditions and values are different. Kurdish language is Indo-European and shares no common ground with Arabic language. Kurdish is close to Farsi (Persian) and is of the same family of European languages such as English, German and Spanish. There is also a move towards giving up the Arabic scripts and start Romanisation of the Kurdish language. In fact, the two Kurdish satellite stations, Kurdistan TV and Kurd Sat, have already started using Roman scripts in writing Kurdish. The contrast can be clearly seen now after 18 years of de facto independence in three Kurdistan provinces.

It is ethnicity, not religion, which is the unifying factor for the Kurds. They are not fundamentalist religious people. Not only are they different from the Shia Arabs, the Kurds are fundamentally different from Sunni Arabs. Historically they have adopted and evolved a different kind of Islam in order to escape the rule of Arabs/ Islam and to suit their own culture. For example, the Kurdish Islamic order of Qadiri is adopted/ evolved by Kurds living on the plains of Kurdistan, such as Kurds who inhabit Garmiyan. However, Naqishbandi Order has been adopted/ evolved by the Kurdish highlanders, such as Barzanis and Hawramis. Unlike the majority of the Muslims in the world the Kurds do not recognise "God" as "Allah". They still use their Kurdish name "Khwda". "Khwda is the combination of two Kurdish words "Kho" and "De", which gives the meaning of "Khoy De" i.e. "self-born", not born from anyone. The Kurds have been condemned for supporting the US-led coalition as well as for alleged links with the Israeli state. The Kurds are regarded by many Arabs as "traitors" and "infidels" for collaborating with the US forces in ousting the former Iraqi regime. Despite worldwide regional Islamic and Arab opposition, Kurds became the partner of the US-led collation and took proactive part in the "liberation" of Iraq and opening up the northern front for the coalition.

The Kurdish leadership has joined the West in order to bring about change in Iraq and to secure better rights and for themselves within the new Iraq. In recent years, and as a reaction to widespread oppression in Iraq, Iran, Syria, Turkey and former Soviet Union, Kurdish nationalism has been on the rise. There is an increasing recognition of a

Kurdistani-wide identity, in particular since the establishment of sizable Kurdish Diaspora outside Kurdistan. The Kurds have come to realise that they can be more effective in pursuing and securing their rights if they unite and support each other. A number of factors assisted Kurds in discovering and utilising this pan-Kurdistan identity. First of all, the Kurdish partnership with the US-lead coalitions and their effective role in the war against the government of Saddam Hussein introduced Kurds to the world, in particular to the Americans. Secondly, Turkey's candidacy for EU membership has put the Kurdish at the heart of the international arena, in particular the European community. The kidnapping of the Kurdistan Workers' Party (PKK) leader in February 1999 and his public trial had a sound effect on politicising the Kurdish issue. Finally, the establishment of a sizable Kurdish Diaspora which consists of Kurds from all parts of Kurdistan has led to the production of literature and research on the Kurdish question. The diaspora has played a major role in lobbying and campaigning for Kurdish issues. A search on the internet will provide thousands of articles and images that express a strong Kurdistan-wide identity.

Throughout Iraq's history friction has resulted from the oppression of the Kurds by consecutive central Arab governments, in particular during the former ruling Ba'th Party. The Ba'th government utilised ethnic and religious differences in Iraq in order to divide and rule the people and to use each group against the other. In this process the differences were enhanced and friction between the different groups reached its highest. Trust has been the major issue between Kurds and Arabs because of decades of domination and oppression. Currently there are major issues on which the Kurds do not agree with Iraqi Arabs. The Kurds demand a greater control on their affairs and on the Iraqi affairs, including control over Kurdistan's oil and resources.

4.3   The Ba'th party and its influence on the Iraqi society

It would be difficult to analyse the recent history of Iraq and its current political situation without understanding the history and functioning of the Ba'th party. This section addresses a number of issues including the Ba'th Party's establishment and ideology, its representation of a particular faith group, its tribal bases, and how it persecuted communities outside its own faith and tribe. Michael Aflaq was one of the founders of the Ba'th Party and his book (*For the sake of the Ba'th*) has become a significant source for Ba'thists. In his book, Aflaq strongly defends the idea of adapting cultural roots for the party's agenda. He maintains that the mission of the Arabs is sacred and all other non-Arab ethnic minorities who live on Arab soil should comply with the Arabs' way of life rather than their own.

The major policy of the Ba'th party is pan-Arabism; this principle rejects the idea of independent Arab countries. It calls for one Arab world uniting all Arab entities and establishing one homeland for the entire Arab population. As a pan-Arab movement the party influenced every aspect of Iraqi people's lives including the processes of nation building and democratisation. Anderson (2004:7) argues '[B]y definition, pan-Arabism is inaccessible to the Kurdish minority. Those who have tried to construct an inclusive vision of nationhood have failed, and many have not even tried, preferring instead to exploit social divisions to preserve power and retain the perquisites of office'. The party's agenda has no space for tolerance and pluralism. Speaking of the foundation and aims of the party John King (2006:17) states '[T]he Ba'th party was founded in Syria in the 1940s by Michael Aflaq and Salaheddin Bitar. The Arabic word Ba'th means "rebirth". The party's aim is to achieve freedom and unity for the Arabs. There are groups of Ba'thists throughout the Arab world. The party believes in democracy in theory, all Ba'thist rulers have been dictators'.

In 1963 the Ba'th Party coup overthrew Abdulkarim Qasim's government. Qasim himself had seized power in the 1958 coup against the monarchy. The Americans supported the Ba'thist coup, fearing Qasim's support of communism. Zubaida (2006:120) points out that it was during this coup that the Ba'thists showed their brutality and aggression when they massacred large numbers of people who were supporters of the government and the communist party. The author (2006:120) then talks about how this group were soon overthrown:

> They were to be displaced later that year by another military clique consisting of conservative nationalist and Islamist Sunni officers from Takrit and its neighbouring cities and constituent tribes, under the leadership of one General Arif (succeeded, after his accidental death, by a brother). This regime, lasting into 1968, was virulently sectarian and communalist, restoring Sunni ascendancy and reversing many of the previous reformist measures.

Finally, on 17-30 July 1968 the successful Ba'thist coup secured their power in Iraq until 2003. Ahmed Hassan Baker became the first Ba'thist president. In 1979, after Baker's resignation Saddam Hussein became the president and he remained in power until March 2003 when his regime was overthrown by the coalition forces. In terms of Saddam's approach, Shiva Balaghi (2006:51) argues '[I]t is clear that Saddam sought to reshape Iraqi society by emphasizing the central and all-encompassing role of the Ba'th party, a role that he hoped would eventually extend beyond Iraq's national borders'. Saddam Hussein, the leader of the party and the president of Iraq, had significant tribal connections with his own al-Abu Nasser tribe and with citizens from the towns of Tikrit, Dur, Sharqat, Huwayja, Bayji, Samarra and Ramadi. These are located in what is known as the Sunni Arab Triangle. Other major Sunni tribes and families who have been loyal to the regime, and have played a key role in the intelligence and security forces include the Dilaim, the Jubur (mixed Shia/Sunni) and the Ubayd tribes. There were also loyalist factions in the Duri and Samarrai families. Many of these tribal elements now live in Iraqi cities. Hussein's regime revived and promoted this tribal structure in two ways. Firstly, Saddam built his regime structure involving a small,

albeit elite, group of tribes. These were mainly Sunni Arabs coming from around Tikrit, his birthplace. Secondly, he oppressed and controlled the society through families. The Iraqi regime promoted oppression on the basis of family connections. The Sunni tribes increased their influence under the former Iraqi government and persecuted the Kurds and Shia.

Saddam Hussein continuously appeared in the media to confirm that he is "Ebin Al-Ashira – the son of the tribe". He was proud of his tribal heritage and promoted tribal culture. The Ba'th Party itself ruled like a dominant tribe and faith. The party was an amalgamation of a number of tribes and individuals that came together for a united objective: getting power and privileges. The Ba'th did not rule as a modern government which could take strength from the Iraqi society's diversity, rather it utilised the entire society's institutions to advance domination by himself, his family, his tribe, his allied tribes and his faith. It had some aspects of a Middle Eastern state but it also had all the characteristic of a tribe or a super tribe. In 2003 the Ba'th government was overthrown by American and Britain. Nevertheless, its legacy and its culture are still effective and ongoing in Iraq. Shiva Balaghi (2006:115) comments '[W]hile an elaborate and ruthless security system was crucial to the maintenance of Saddam's brutal control; he carefully created an entire cultural apparatus of fear and power over the years'. Iraqi society has been ruled by one of the most centralised regime for more than thirty years. Gibson (1988:5) argues '[T]otalitarianism undermines civil society by the atomisation of individual citizens'. Saddam's government acted as totalitarian regime. It devastated and abused most of state institutions, civil society organisations, and social networks. Sami Zubaida (2006:129) assesses the Ba'th regime and argues:

> [O]ne of the few positive elements about the Ba'thist regime was its assault on traditional patriarchal relations and practises. In the 1970s and 1980s, regime polices favoured female education and wide participation in the labour market and professional occupations (but not in the echelons of government power). Reforms in family law, started by the Qasim regime, reversed by the Arifs in the 1960s under religious pressure, were then revived by the Ba'thists in the

1970s. Many of these positive steps were reversed in the 1990s. Hussein's intention behind the education and participation of women, however, may be seen as another attempt by him to control the core of the families. The education system and all professional occupations were tightly controlled by the Ba'th state. Only those could become teachers, for example, who were members of the Ba'th Party. Promotion at workplace was also heavily dependent on party loyalty. Women were particularly important to the Ba'thists because of their role as mothers passing on the values and norms to their children.

The above section highlights the influence of the Ba'th party in the political history of Iraq which played a clear role in failing of creating a nation state in the country.

4.4 Iraq: A failed nation-state

Iraq has had a fragile nation with neither liberal nor active constitution in the last eighty years. Stansfield (2006:4) points out that since Iraq was created by the British imperialism it has been described as an "artificial state". There are two major reasons for the lack of success in building a nation-state in Iraq. The first reason is the creation of Iraq which was incompatible with the political context of the region and the second reason is the oppressive nature of the Ba'th Party. Stansfield (2006:3) explains the first reason in the following manner:

> [I]n the aftermath of the first world war, the imposition in Iraq of a European-style centralised state clashed with local habits, as elsewhere in the former Ottoman Empire. The empire is often seen as having fostered cosmopolitan, multi-ethnic societies. This is true, in the main, although Sunni-Shia tensions certainly existed in the old Iraq and Kurds remained isolated in their mountains. But the socio-political conditions that underlay the foundation of most European nation states could not be found in Ottoman Iraq- there was no dominant nation that came together to form a state.

The Kurdish people were annexed to the state of Iraq against their wishes. While the 1920 Treaty of Sevres promised the Kurds an independent state the 1923 Treaty of Lausanne superseded this promise (Robin 2005:6). Political movements in Kurdistan in the early 1920s were struggling for an independent state. Moreover, the British Empire was unwilling to resolve this political crisis and prevented the establishment of an independent country for the Kurds. In early the 1930s the Kurdish political party Hiwa-

Hope, announced the creation of an independent Kurdistan, but it did not succeed. The British cabinet believed that establishing a Kurdish state would not be viable. The Kurdish crisis and lack of recognition of Kurdish rights in the region have caused instability in the states of Iraq, Iran, Turkey and Syria. Manafy (2005:27) argues the 'Kurds are the victims of a conservative world system that suffers from its own contradictions and the anachronous structural limitations'. Moreover, political consensus has been absent in the region. Therefore, the unsolved Kurdish issue was the major reason behind the failure of the nation-state in Iraq.

The second reason for the failure of the concept of nation-state in Iraq was the Ba'th party. The party's agenda was oppressive. Its ideology was a combination of Islamic, nationalistic and Marxist. The policies of the Ba'thists have led to the fragmentation of the Iraqi state. Nothing caused more damage to Iraq's unity than the Ba'th party. The Ba'th party was failing to represent an Arab nation as it had claimed. The party represented a tiny minority of Sunni Arabs, which accounts for about 20% of the Iraqi population. The rights of the Shia majority were violated by Ba'thists. They established a state in Iraq that was excluding the majority of Iraq's population. Moreover, the party failed to create a culture of inclusiveness and, more importantly, it miscarriages the process of democratisation. In the final decade of Saddam's governing period, the Ba'th party was not even representing the Sunni minority. Instead, a small tribe dominated the government and the party. From 1958 to 2003, the rulers of Iraq have done nothing towards creating a democratic and welfare state. Iraq is a geographic entity without much sense of nationhood. This is obviously a crisis for both the current and the future generations. In the meantime, having failed as a nation-state, Iraq has not been modernised yet. The pre-modern culture dominates Iraqi society and Iraqi politics.

The regime of Saddam Hussein, which spanned over four decades, was a source of instability for the region, as well as the international community. Despite its brutality

against various ethnic and religious groups within Iraq, it was assisted during these decades by the international community and regional powers. Saddam, like other regional powers, perceived the Kurds as the source of this instability. The Ba'th regime dealt with the Kurdish cause as a security issue rather than the rights of indigenous population of the state of Iraq.

4.5   Post-2003 invasion: The opportunity to take a new direction

After the Kurds gained control of parts of Iraqi Kurdistan in 1991, and after a period of civil war between the Kurdish factions (1994- 1998), they introduced and maintained stability in the region. The Kurdistan Region became a buffer zone preventing Islamic fundamentalism and terrorists from spilling over into Turkey. The regional powers, in particular Turkey and Iran, insist that the Kurds are creating chaos in the region and under different pretexts, they have been trying to destabilise the KRG to prove their point. The bombardments of Kurdistan's border regions by Turkey and Iran, the continuous negative media coverage to demonise the Kurds, and the extensive intimidation of ordinary Kurds travelling via regional powers are only a few examples of how far these neighbouring countries will go to destabilise Iraqi Kurdistan. However, the post-Saddam Hussein era has underlined the fact that the Kurdish controlled region is the only stable part of Iraq.

  Iraqi Kurdistan has the opportunity to bring together all the different elements of its society and to let them feed into the decision making process. This would be a good example to show the rest of Iraq that diversity is strength, not a weakness. Iraqi Kurdistan has the potential to lead the region by evolving a society that is based on equal opportunity and not by imposing the ideology of the leading political, ethnic, or religious group.

Iraqi Kurdistan has a multi-religious and multi-ethnic society and therefore it may be inappropriate to make Islam the official religion of the region. It is true that the majority of Kurdistan's population today, which is mainly three governorates, Slemani, Erbil and Duhok, are Muslims of Sunni faith, but the constitution of Kurdistan should see beyond today's borders of KRG. A high number of Kurdistan's population, who are non-Muslim and non-Kurdish, reside outside the current borders of the KRG. If KRG is planning to incorporate these communities (which are mainly Yezidis, Shia, Kakeyis, Sabis and Christians) Islam cannot be imposed as the official religion of the KRG. Why should, for example, over a million Yezids vote to join the Kurdistan administration, where their religion would become the second class religion? By making Islam the official religion of the society, the constitution faces another problem; it will contradict itself. Equality cannot be achieved, if one faith, Sunni Muslim, is imposed over the society. Any constitution for a Middle Eastern society needs to put measures in place to eliminate: political and religious groupings, the rule of tribes over socio-political life, and all forms of corruption and nepotism. This is because the region has a history of not delivering equal citizenship.

The Iraqi Kurdistan's constitution needs to prevent political groups controlling all aspects of the society. This control extends to media outlets, judicial system, education system, financial activities, civil organisations and non-governmental organisations. The draft constitution has given absolute power to the "president of the Kurdistan Region". His power undermines the role of Kurdistan parliament and the government. The constitution should put measures in place to eliminate political leaders' control over public affairs, creating transparency. The "Kurdistani" dimension of Iraqi Kurds, i.e. their being part of a greater Kurdish nation, is not addressed in the constitution. The division of Kurdistan and the Kurdish people over Iraq, Iran, Turkey, Syria and former Soviet Union has been accomplished by superpowers against the will of the Kurdish

people. The Constitution complies with the articles that are given in the Iraqi constitution. However, the constitution ignores the international aspects of the Kurdish society. The constitution needs to acknowledge and comply with the relevant international laws, conventions, treaties and norms such as those that address the human rights, the rights of ethnic and religious minorities, and the rights of women and children.

4.6 An overview of the new Iraqi constitution

To illustrate the political agenda of the Iraqi Kurdish leaders, it is worth mentioning two statements by the two major and influential Kurdish leaders in Iraq. 'We (Kurds) had a prime role in the negotiation between the Sunnis and the Shiites' Massoud Barzani, President of the Kurdistan Regional Government and leader of the KDP, 29 August 2005 'Kurds were the first force which struggled for the unity of Iraq. Without a doubt, some dreaming Kurdish youths demand an independent Kurdish state'. Jalal Talabani, The President of Iraq and the leader of PUK, 04 September 2005. Perhaps it was symbolic when the President of the Kurdistan Region, voted "Yes" for the Iraqi constitution by putting his vote into a ballet box marked in Arabic "Muhafazat Arbil", or "The governorate of Arbil." In so doing, he put the future of Kurdistan in the hands of Arabs. Fatah Zaxoyi, the former minister of culture in Sulemani, voted against the constitution and in so doing he may have become its first victim. For voting "no", Zaxoyi lost his ministerial position.

The Kurdish political leadership presented the Iraqi constitution to the Kurdish people as a "historic milestone" and a "historic achievement". This section refutes this claim and instead argues that the constitution marks a new chapter in the history of Kurdish oppression. The Constitution of 2005, ratified by four out of five voters in an UN-validated referendum, restructured British-made Iraq as a voluntary union of its constituent peoples. It proclaims, on paper, a pluralist federation, maps the path toward

different and flexible forms of decentralisation, and creates multiple incentives for power sharing within a deliberately weak federal government. It remade Iraq as a parliamentary democracy— enabling its Shia Arab majority to express itself as such, though subject to constitutional restraints, the most important of which lie in the formal strengthening of regions or provinces (governorates) at the expense of what until 2003 had been a series of despotisms in Baghdad. The Constitution was made by the leading lights of SCIRI (now ISCI, the Iraqi Supreme Council of Islam) among the Shia Arabs, together with the Kurdish leadership. These victims of Saddam agreed that a recentralised Iraq would be a threat to the liberties of Iraq's nationalities, religious communities, and citizens— and to Iraq's neighbours. They built into the Constitution the recognition of Kurdistan's autonomy, including its right to have its own army, and granted any future regions the right to opt for the same powers as Kurdistan.

The Constitution enables any existing provinces-barring Baghdad and Kirkuk-to join with other provinces to form larger regions. Baghdad may become a region in its own right. Provinces not organised in regions have extensive rights of self-government if they choose to exercise them. Special provisions (not yet implemented) enable Kirkuk and other disputed territories to unify with Kurdistan—after the expulsions, gerrymandering, and settler infusion policies of the Ba'thists is undone. The Constitution, in short, permits either a symmetrical federation, in which other regions are built with the same powers as Kurdistan, or an asymmetrical federation, in which the existing provinces of Arab-majority Iraq, by comparison with Kurdistan Regional Government (KRG), choose to grant greater authority to the Baghdad government.

The Iraqi constitution does not describe Iraq as a voluntary union between two people, Kurds and Arabs, yet, according to the President of Kurdistan, the constitution does describe "Iraq as a voluntary union is equal to self-determination rights". This is a wrong interpretation. Another example is: The "Kurdish language" is mentioned in

Article 4 and the "Kurdistan Region" in Articles 5, 114 and 137. But Kurds, as a distinct people, have not been mentioned anywhere in the Iraqi Constitution. Ironically, Turkmens, Assyrians and Chaldeans are mentioned in Article 122 as distinct people. Article 1 stipulates 'The ruling system in Iraq is a parliamentarian, democratic and united'. But it does not clearly state the parties involved in this union. Later, Article 3 that 'Iraq is a multi- ethnic, multi-religion, multi-sect country and it is part of the Islamic world'. Article 133, while placed at the end of the constitution, is the most promising. Article 113 states 'The union system in Iraq is composed of the capital, the Regions and the decentralised Governorates (Muhafazat) and the Regional authorities'. If we describe this "Union" as "federalism" - without forgetting that federalism and unions are two different concepts - Iraq is re-established on the basis of 'administrative federalism' and not geographical, ethnic or historical regional distinctions. Similarly, Article 114 part 2 supports the establishment of other administrative regions, stating 'This constitution will recognise other regions which might be formed according to the constitution'.

   This constitution's federal system or union system is vague, and the powers of the regional governments are very limited. Chapter 5, Articles 113 to 123, explain authorities of regional governments cannot be compared to the authorities of the dominant central government. Additionally, Article 118 states regional governments cannot interfere with the agendas of the central government. Regional constitutions and laws must not contradict the central constitution as described in article 13. The regional constitutions therefore must shadow the central government's constitution (Articles 13 and 118). According to the constitution, the role of the Kurdistan Parliament will be to reflect on and interpret the decrees and decisions made in Baghdad. The role of the parliament will be similar to the role of a "Council" for the region, and will not have the power of a regional parliament in a federation. The constitution grants the Prime

Minister sweeping powers (Article 78), which may be perilous in a country where democracy has no roots and has just come out of a dictatorship. The Federal Court, if it is ruled by simple majority, would be controlled by Arabs; hence the influence of Kurds and non Arabs - Assyrians, Turkmen – is almost eliminated. The Constitution establishes yet another strong central government in Iraq.

The United States and Britain have exercised considerable influence in shaping the draft constitution working to appease neighbouring governments, particularly Turkey and Arab states. As a result, Kurdish self-determination is denied. The idea of federalism has been diluted to a very simple form of federation, which is not helpful to Kurdish people. The federation does not recognise the ethnic, historic and geographical reality of a Kurdish homeland. Unlike the case in Sudan, the federation does not lead to the right of self-determination in the future. In Sudan, according to the constitution, the South can attain independence, if their people are not satisfied with the central government after four years of the accord. In a referendum which took place on 09 January 2011 to 15 January 2011 'Nearly 99% from the south voted for independence'. (Smith 2011:1). Different Sunni Arab leaders are opposed to federal arrangement for the Kurds. Other prominent Arab organisations and individuals outside Iraq have also expressed fears over the Arab identity of Iraq, including Umro Mousa, the President of the League of Arab States.

A version of Article 3 of the constitution gave the impression that there may be other people in Iraq, apart from Arabs. This article stated 'The Arab people of Iraq are part of Arab nation'. This has been replaced by 'Iraq is the founding and active member of the League of Arab States and is bound by all its decrees'. Considering that the very first Article 1 states 'The League of Arab States is composed of the independent Arab States'. It is clear that Iraq has an Arab identity at the expense of Kurds and other ethnic and religious groups, which only enhance the mosaic of Iraq. As proven by Iraqi

history, a nation denying the existence of its historical diversity cannot build a democratic civil society which justly follows the rule-of-law and delivering equal citizenship.

Since his intervention in the Iraqi constitution, Umro Mousa was welcomed to the Kurdistan Parliament. He told all 111 Kurdish MPs that Kurdistan is part of the Arab nation and overtly they all accepted his claim. The constitution also deprives Kurdish religious groups from their rights. For example, the constitution specifically gives freedom to the Arab Hussiyniye tribes, but it does not identify some half a million Kurdish Kakeyis who have their own faith and have been gravely oppressed under the former government. Article 140 of the Iraqi constitution has still not been implemented. There is supposed to be a referendum where the people of the areas can freely decide whether their areas shall belong to Kurdistan Regional Government or to the central government in Baghdad. This is the only way of overcoming the consequences of the policy of forcible Arabicisation of the Ba'th regime. Iraq can only continue to exist in its present boundaries if equal citizenship is guaranteed for the Kurds and other minorities.

In general the constitution fails to recognise crimes against humanity committed against Kurds during consecutive Arab rules of Iraq, such as the Anfal campaign, Arabisation and deportation. For example, even the term "Peshmerga", which has a historic context and is sacred to Kurds, has been changed to "Regional Guards". The process by which the constitution was produced was Arab Shia dominated. The question is why the first draft constitution was produced only by the Shia bloc, when Kurdish groups claim that they are sharing the government and parliament in Baghdad. Through the media, government and social institutions, Kurdish political groups pressured the Kurdish people to vote in favour of the constitution. Yet the options that were presented to the Kurds by such party propaganda machines were sanctioned by a Shia Arab

government. In addition to Kurds, the rights of all other ethnic and religious groups in Iraq are also at stake in the new constitution. The language used in the Constitution is very elusive and can be subject to different, even opposing, interpretations. For example, the constitution defines Iraq as "Islamic" and "democratic". There are no universal agreements on the meaning of these two totally different, even contradicting, concepts. No law can be legislated based on such concepts. This illusive language does not only disadvantage Kurds, but it restricts the civil, democratic and human rights of the entire Iraqi populations.

The constitution is a definition of an Islamic state; it clearly states that Iraq is Islamic. While the Shia has the majority and ruling Iraq, they would find it easy to legislate Islamic laws and decrees only, in particular when they will be controlling the 'Federal Court' the backbone of a political system and Ayatollah Sistani issuing daily fatwas (religious orders). The beginning of this has already been noticed.

4.7   Implications of the new constitution for the current situation in Iraq

Iraq, as it is currently ruled by a Shia majority and the Iraqi constitution clearly stipulates the Islamic identity of the state of Iraq. It also makes Islam a source of legislation. The Iraqi constitution has reinforced the Islamic identity of Iraq via a number of articles, in particular Article Two 'First: Islam is the official religion of the State and it is a fundamental source of legislation. A. No law that contradicts the established provisions of Islam may be established. B.   No law that contradicts the principles of democracy may be established. C. No law that contradicts the rights and basic freedoms stipulated in this constitution may be established. Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice such as Christians, Yazedis, and Mandi Sabeans'. This section summarises the implications of the constitution and identify the constitution's flaws: The constitution is

a mixture of contradictory concepts and terms, which makes it very difficult to legislate. There are no articles concerning the de-Arabisation of Kurdistan, a repressive policy carried out by Saddam's regime and associated with genocide. Arabs are identified as a nation, but Kurds are not. The constitution does not identify Kirkuk and Kurdistan areas outside the KRG as part of Kurdistan. The right of Kurdish self-determination is nonexistent. Minorities in general are not granted enough rights and instead are subordinated to various cultural and legal restrictions. The Prime Minister is granted sweeping powers, which may be perilous in a country where democracy has no roots. In the Federal Court, the voice of Kurds and other non Arabs is quite weak. The borders of the Kurdistan Region are inherited from Saddam Hussein and over 40% of Kurdish territory is left outside Kurdish administration. The Iraqi constitution is a manifestation of ambiguous political agenda of the Iraqi leaders and elites. The constitution challenges the US-led claims of promoting democratisation in the Middle East. Hence, shortcomings in the new constitution would be obstacles in establishing a new Iraq where the Kurds and other minorities are well treated.

4.8   Democratisation of Iraq

Iraq in post-2003 era is in the process of democratisation. Owing to that fact that, there is a strong link between delivering equal citizenship for the Iraqi Kurds and the process of democratisation; this section examines the status of democracy and democratisation in Iraq. Democracy in a wider sense means the rule of law, respect for individual liberties, representative and responsible government and the promotion of civil society. The new generations of Iraqis who love their country can prevent barbarism. Barbarism currently seems to be powerful. Democracy should be part of the process of building a new Iraq for future generations. Inglehart (2005:300) notices '[I]t is painfully evident that progress and human development are not inevitable. But they are possible, and they are worth striving for'. Defeating Nazism in World War II was a prerequisite to creating

a democratic system in Germany and sped up the process of stability and democratisation in the whole of Europe. Therefore, there is a great chance to democratise Iraq and bring prosperity to the region after overthrowing Ba'thism. The level of literacy is high in Iraq; this is a strong basis for the process of democratisation. Iraqis are under the threat of ethnic, sectarian and religious war. Nevertheless, ethnic cooperation has made huge progress since 2003.

In the past a centralised government has caused considerable political, social and economic suffering. Notably, overwhelming Iraqis support devolution of power and the establishment of a transparent central government. Economic progress, which has already begun, would lead to the transformation of recourses from the public sector to private one. Thus, dependency on the government would be lessened which prevents despotism. Potter (1997:362) argues '[T]he idea is that processes of economic development involving significant industrialisation lead to a more diverse and a more complex class structure, which becomes increasingly difficult for authoritarian regimes to control'. It is highly unlikely that another authoritarian regime would get power in the new Iraq.

One of the major difficulties is an inefficient democratic culture but overcoming this issue is not impossible. Julio Faundez (2005:618) explains '[I]n the 1960s and early 1970s, theories of political and economic modernisation raised doubts as to whether democracy could take root in countries that did not have well-established market systems, strong civil societies, efficient civil services, and legal institutions that could be effectively deployed both to regulate and defend basic civil and political rights. The current wave of democracy has exposed the shortcomings of these theories'. In terms of the difficulties in creating a federal state, Iraqis used to practice a form of federalism prior to the collapse of Ottoman Empire. Baghdad was in the centre, Mosul was in the north and Basra was in the south. Rubin (2005:5) comments that Saddam's efforts to

undermine this Arab-Kurdish federalism while at the same time consolidating the Ba'th party's control caused 'low-intensity civil war.' The author goes on to say that despite Saddam's efforts 'the willingness of the Iraqi government to embrace federalism has had a lasting impact on Iraq's collective memory'. The Iraqi people can find an acceptable form of federalism amongst themselves.

Throughout the history of Iraq, institutions have been abused. Cook (2005:96) argues the promotions of civil society, economic development and sanctions have not brought about political reform in the Arab world because the real obstacle to change is 'flawed institutions.' The future challenge for the people of Iraq would be to reform their institutions and prevent abuse by corrupt leaders, religious clerics and ethnic and sectarian divisions.

The collective mentality in the post-Saddam era can establish different forms of institutions, because the political context is completely different from Saddam's time. A significant asset that helps a democratic culture is that Iraqis are familiar with institutions. Karen Dawisha (2003:36) notices that '[D]espite Saddam's long repression, democratic institutions are not entirely alien to the country. Under the Hashemite monarchy, which ruled from 1921 until 1958, Iraq adopted a parliamentary system modelled on that of its colonial master, the United Kingdom. Political parties existed, even in the opposition, and dissent and disagreement were generally tolerated'. The important point that all Iraqis need to consider is that the consensual model of democracy is applicable to Iraq, rather than the majoritarian model. Iraq consists of many ethnic communities and does not have a mature judicial system.

Despite cultural differences amongst Iraqis, Germans and Japanese, Rubin (2005:11) argues democracy need not be a foreign concept in the Arab world 'Culturally, Arabs are as capable of democracy as were Germans, Japanese and Koreans'. In terms of the US policy there are few signals of change and acknowledgements which would help

build a democracy and encourage political reconciliation. Stephen Zunes (2006:5) mentions that '[I]n the face of growing criticism over its Iraq policies, the current administration has acknowledged mistakes such as inaccurate pre-war claims of Saddam's military capability and inadequate policies to address post-invasion stabilization'. It is thought that the international environment would help the process of democratization in the world including Iraq. Comparing the current situations in Iraq with the theory of Fukuyama which made of four levels (2004) there is a general belief in democracy. Furthermore, democracy is an essential part of agendas of political parties at least in theory. However, the people either are not committed to the details of democracy or do not implement it. In terms of second level (institutional level), Iraq has considerable institutions and has its constitutions. Nevertheless, it is uncertain whether these institutions operate democratically or not. Luttwak (2005:30) mentions that '[T]he plain fact is that there are not enough aspiring democrats in Iraq to sustain democratic institutions'. The third level, civil society has just set up and a great desire for active organizations can be noticed. The fourth level of democracy (political culture: family structure, religion and ethnic groups) is weak. It is strongly believed that there is a great opportunity for all four levels to be promoted and consolidated; nevertheless this process will take many years.

Political openness is an essential requirement for the process of democratisation. It has made huge progress and Iraqi people embraced the idea of political openness. Thus, many signs show that democracy is no longer a utopia in Iraq. In terms of cultural impediments, it is believed that democracy crosses cultural differences and is a global phenomenon. Chris (2003:40) argues '[D]emocracy is a universal aspiration that defies economic conditions or phony cultural distinctions'. The culture would not be a perpetual impediment for the process of democratisation.

Iraq would be a unique experiment of democratisation in the world. It is a complex country in a complex region. The democratic transition parallels with the process of nation building and even state building. Thus, the country faces the threat of becoming a theocratic authoritarian regime, where there will be civil war, and eventually partition. Notably, the chances of a consensus model of democracy or acceptable frameworks of federalism are feasible. This thesis argues that Iraq lacks two major pillars of democracy: trust and national identity. Fractions do not trust each other. For instance, the Sunnis are scared of Shia reprisals. The Kurds live in fear of the rule of majority. Political leaders work together with suspicion. National identity suffers from considerable fragmentation. It is highly unlikely to establish a democratic system without a strong loyalty to the state of Iraq and a developed trust among people. The important point is that there is a real chance for Iraqis to rule their country and decide on their future. It is thought that the people of Iraq have suffered enough from oppression and inhumane systems. There is a great chance to strengthen moderating elements.

The Iraqis have democratically managed and addressed considerable conflicts and ethnic tensions in the post-Saddam era. If they continue to preserve and develop the route of national reconciliation and national healing, it would be highly likely to build a democratic system. Significantly, power sharing has helped the processes of transparency and accountability and has restrained the domination of a single ethnic group or political party.

Despite several shortcomings of democracy, such as: majority of people are governed not govern in the democratic system, this study insists that there is no better system which can replace democracy in the present time, especially in a developing country such as Iraq. For democracy to take root, a democratic culture should consolidate from within the Iraqi society. Thus, 'democracy template' is not viable in the world,

especially in a religiously and ethnically mixed society. Firstly, the chances of going back to an authoritarianism regime are weak. Secondly, the highest religious institution amongst the Shi'its is Hawza, which is not in favour of establishing an Islamic state. Thirdly, it is thought that the threat of a full-scale civil war seems highly unlikely, because of the presence of occupation forces and also because each of the factions (Shia, Sunnis and Kurds) is certain that they cannot win the civil war. For instance, the Kurds realize that none of neighbours' of Iraq would support them. The Sunnis are aware that the Shias are the majority and Iran would support them if civil war occurs. The Shia understand that majority of Arab Sunnis in the Arab world would support the Sunnis. None of the political leaders are in favour of civil war. Thus, a full scale civil war, as one of the greatest threats to democracy, can be prevented.

There is an opportunity that human experiences of tragedy and suffering will lead to the establishment of a peaceful life. The Iraqis can learn from the unpleasant history of their own country and of other experiments across the world. The people of Iraq are able to build a new country which is based on modern values such as democracy, secularism, the rule of law and principles of human rights(which the equal citizenship for the Kurds could be guaranteed), rather than backing religious orders or adopting ethno-nationalism.

4.9   Concluding Remarks

Despite many challenges such as instability, lack of integration amongst Iraqi people, and a mainstream discourse against democracy in the region the democratisation of Iraq is not impossible. Anderson (2004:188) argues '[t]he complex and traumatic legacy of 80 years of Iraqi history will prove difficult to overcome'. The location of the country is not a perpetual impediment. David Potter has argued that 'the alleged exceptionalism of the Middle East may be better understood as one of degree rather than as one of kind. Perhaps the process of democratisation is just slower and more uneven in the Middle

East than elsewhere' (Potter 1997:328). In other words time is a crucial factor for change.

  Iraq made a declaration, on gaining independence and joining the League of Nations in 1932 that it would protect the rights of minorities and it was the first non-European state to declare this. With the formation of the United Nations after the Second World War, the international community recognised the particular vulnerability of minorities around the world to human rights abuses. In December 1948 the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention: 1951). The Convention was followed by others firmly establishing the rights of minorities in international law. In 1971, Iraq was one of the first countries in the world to ratify the International Covenant on Civil and Political Rights (1966). Article 26 of the Covenant prohibits discrimination on grounds of race, religion, and language, and article 27 is specifically dedicated to the rights of minorities 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language'. Iraq has assumed the obligation to take action to protect minority rights through other notable UN conventions, such as the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD: 1966) and the Convention on the Rights of the Child (CRC: 1989). The latter specifically requires the education of a child to be directed to the 'development of ... his or her own cultural identity, language and values' and gives a child of a religious minority the right 'to enjoy his or her own culture, [and] to profess and practise his or her own religion'.

The United Nations General Assembly (UNGA) has passed declarations that articulate best practices and human rights standards for the protection of minorities. According to the UNGA's Declaration on the Rights of Persons Belonging to National or Ethnic,

Religious or Linguistic Minorities (1993), states are obliged to protect minorities by taking 'measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs'. The declaration also states that states must protect the identity of minorities within their respective territories by encouraging 'conditions for the promotion of that identity' and measures allowing minority members to 'participate fully in the economic progress and development in their country'. It states that minorities have the right to establish and maintain their own associations. Minorities also have 'the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority'.

The protection of minority rights is further incorporated into international law through regional instruments, such as the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Minority Languages, and the Arab Charter on Human Rights. (Framework Convention for the Protection of National Minorities: 1998). The Arab Charter, adopted by the Council of the League of Arab States in 2004, states 'minorities shall not be deprived of their right to enjoy their culture or to follow the teachings of their religions'. (Arab Charter: Article25). Further, the Arab Charter prohibits denying an individual's rights because of his or her 'race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status and without any discrimination between men and women'. Iraq is a founding member of the League of Arab States. Therefore, ratifying the above conventions by the Iraqi state obliges it to guarantee the equal citizenship for its minorities and the Kurds in particular as the largest ethnic minority of the country. The forthcoming KRG constitution needs to guarantee the rights of other minorities in the territory of KRG and stipulate those rights of the Kurds which are not guaranteed for the Kurds in the Iraqi constitution.

5   Chapter five: Monoculturism and division of distinct ethnicity in Turkey

This chapter examines the process of handling the Kurds in Turkey, it analyses the early constitution of Turkey with emphasis on how it has treated the Kurds. The consequences of this treatment on the Kurds in Turkey at the present time will be examined extensively. The integration of Turkish minority in Bulgaria in the 1990s is touched in this chapter as an example for Turkey to take lessons in delivering equal citizenship for the Kurds. The chapter concludes with by its findings in light of the theory of equal and constitutional citizenship which has been outlined in the first chapter.

5.1   Handling the Kurds in Turkey

With the foundation of the Turkish Republic in 1923 the Millet system was abolished. Accordingly, the rights of the various ethnic groups, especially the rights of the non-Muslims were determined by the Treaty of Lausanne. In articles 37-44 of the Treaty of Lausanne, a number of rights were to be given to the non-Muslim minorities in Turkey. '[P]reventing the development of an ethnic Kurdish cultural and political movement has been a priority of the Turkish state since the Kurdish-led Sheikh Said Rebellion of 1925. Nevertheless, beginning around 1959 this effort was steadily if slowly undermined, and events of the past ten years suggest that it has indeed failed' (Watts 1999:652). As a result of the population shifts in the 1920s, Turkey had become home to a largely Turkish, yet multi-ethnic, Muslim majority. In this population, the Kurds were the largest population of non-Turkish ethnic group. Hence, as a nation-state, Kemalist Turkey was bound to deal with the country's lingering heterogeneity. Cagaptay (2006:66) argues '[a]s the Ottoman Turkish-Muslims poured into the country; Turkey needed legislation to cope with the influx. The first resettlement law was adopted on 31 May 1926. This law began with a definition of how one could qualify as an immigrant,

stating in its second article ''those people who do not share the Turkish culture …will not be admitted as immigrants'' '. A prohibition on non-Muslims immigrating to Turkey was implemented. This policy was demonstrated in the population exchange with Greece, domestic population issues and displacing Kurds and resettling them amongst the Turkish population. They used the word nomadic tribes to describe the Kurds and settled them somewhere else. In the 1920s, in addition to the Kurds, other groups such as the Armenians also were subjected to limited resettlement. Cagaptay (2006:70) states '[a] 1939 amendment to the Resettlement Law stated in reference to the Kurds "people who are not of Turkish origin and who do not share the Turkish culture were banned from resettling in Zone 1" '.

The government did resort to the resettlement of the Kurds during the 1930s. In accordance with this, in 1932, security forces stormed various areas of unrest and forcibly resettled the Kurdish inhabitants of these regions to the Turkish provinces in western Turkey. The Turkish culture isolates Jews, Russians, Georgians, Armenians, Greeks, Bulgarians and other Christians. The Nomadic culture discourages the Kurds, Roma, Arabs, Assyrians, Circassians and other Muslims of the Caucasus from coming to Turkey. Turkisation of the Ottoman Empire helped the consolidation process of Turkisation by non-Turkish Muslims. An article from the resettlement law says that '[w]hose mother tongue is not Turkish might not establish towns, villages, and worker or artisan units' (Cagaptay 2006:75). Ethnicity and Turkish culture were main elements of resettlement law of 1920s and 1930s. Non-Turkish speaking Muslims were not to receive naturalisation certificates or immigrant papers. The Republic was especially careful towards the Kurds, the second largest and the least assimilated ethnic group in Turkey. To arrest the growth of its own Kurdish community, Turkey banned Kurds from immigrating to Turkey. The state of affairs in Turkey during the 1930s was not unique to that country. Other former Ottoman states such as Greece also adhered to

ethno-religious nationalism during this time. As a result of the salience of the millet system and ethno-religious identities in the former Ottoman lands, religion became a marker of nationality in the former Ottoman states in the Balkans, as well as Turkey.

Within less than two decades, those who still hoped to retain the empire in its sixteenth-and seventeenth-century form had all hopes dashed by the advent of the Great War in 1914. The Young Turk movement, meanwhile, had given rise to the Committee for Union and Progress (CUP), which was resolutely secular and a firm believer in the idea of 'Turkish nationalism' as compared to 'Ottomanism'. Backed by modernist elements within the military, the CUP assumed power in 1912, keeping the sultan as a titular head. Until the end of its rule in 1918, the CUP governed by decree, embarking, among other things, on a rapid program of secularising schools and the judicial system, repressing Christian minorities and the Muslim ulama, and seeking to Turkify the various Arab provinces. Given the highly politicised atmosphere in Turkey in the 1970s, and the fact that it resulted in yet another military intervention in 1980, it is probably inevitable that analysts tend to offer a whole range of different explanations for the lack of firm government, the politicisation of most parts of the state administration and the growing political violence. Words with a distinct Kurdish origin were wiped out and replaced.

The Turkish constitution does not recognise Kurds in Turkey, the country deals with the Kurdish cause as a security concern rather than a matter of a minority seeking recognition and equal citizenship. Turkey uses the threat to its "national security", "territorial integrity" and "sovereignty", by "separatists/terrorists". Amnesty International (2007:22) states '[t]he death toll of Kurds killed in Turkish military operations increased to over 40,000'. According to the figures published by Turkey's own Parliament, 6,000 Kurdish villages were systematically evacuated of all inhabitants and 3,000,000 Kurds have been displaced. (Amnesty International 2007:22) This may

be seen as aiming to eliminate a culture and a homeland. The methods by which Turkey has sought to oppress the Kurdish people are similar to those used by Saddam Hussein's polices of the 1980s including the destruction of Kurdish land, mass evacuation and deportation. In some other areas, Turkey has used more harsh methods to achieve its aims in dealing with the Kurdish issue. The mistreatment and denying equal citizenship of Kurdish people within Turkey can be defined as discrimination in various ways; cultural, linguistic and physical all play a part in assimilation of Kurdish ethnicity from Turkey itself, and are still embraced by the Turkish constitution. The creation of a Turkish nation denied the existence of Kurds, and forced them to assimilate into Turkishness. This has caused a continuous struggle between the official state ideology, Kemalism, and Kurds who form 20% of Turkey's whole population. Because of this reason the issue of Kurdish identity and the war against Kurdish people in Turkey are key challenges to hegemonic constructions of Turkish national identity as well as the functioning of the Turkish state, both an internal and foreign policy issues for Turkey. In 1985, as the war between the Kurdistan Workers Party (PKK) and the Turkish government became more severe, and the Turkish state made a decision to burn and destroys Kurdish towns and villages for "security reasons". Cohen and Deng (199:200) argue '3,500 Kurdish villages and towns have been burned, destroyed by the Turkish state between 1984 and 1999 and as a result displaced around four million Kurds which is (according to NGOs) one of the world's largest IDP populations. Hundreds of thousands have crowded into shanty towns outside major cities without access to proper sanitation, health care or educational facilities, and without stable employment prospects'. Discrimination and police harassment is a part of everyday life of Internal Displacement Persons (IDPs) Kurdish people in Turkey. 'The only local humanitarian NGO allowed to operate in the southeast has been shut down. No international NGO has been permitted entry. Even ICRC has been unable to operate in Turkey. The request of

the Representative of the UN Secretary-General on Internally Displaced Persons, Francis Deng, to visit the country has received no response' (Cohen and Deng 1998:22). This section has shown that the policies of the Turkish authorities towards its Kurdish population have not delivered equal citizenship and the Kurds are mishandled in the country.

5.2   Turkey's official policy towards the Kurds

Turkish official policy on minorities is based on the Lausanne Treaty. The Lausanne Treaty provides protection only for non-Muslim minorities. Turkey has always recognised the Armenian Orthodox Christians, the Greek Orthodox Christians, and the Jews as minorities, although there are other non-Muslim groups in Turkey such as Protestants, Catholic Christians and Syriac Orthodox Christians etc that are not recognised. Other religious (Muslim), linguistic and ethnic groups have also been excluded from formal recognition. The Republic of Turkey's minority policy has always been one of denying the existence of minorities, including the Kurds, and depriving them of their rights since its foundation in 1923.

At the initial stage of the founding of the Republic state the policy towards minorities was different. For example, Mustafa Kemal promised the Kurds their national rights in order to gain their support during this initial period. Sedat (1995:50) points out '[t]he 1921 Constitution was drafted in such a way as to represent the mosaic of peoples living in Turkey. It did not contain the word "Turkish" or the phrase "Turkish nation" '. After Kemalists had gained power they changed their policy and developed an assimilation policy towards ethnic, religious and linguistic minority groups. 'This policy was started after the Treaty of Lausanne and was based on a "Turkification" policy that failed to recognise individuals' rights to ethnic, national, and religious self-identification and that aims at forced assimilation with a Turkish identity' (IHF 2006). The official policy of the state has become one of glorifying the Turkish nation, and ethnic, ideological,

religious and economic differentiations were considered an obstacle to the unity of the State. Multiculturalism was rejected and Turkish nationalism was imposed on a multi-ethnic society in the sense that all Muslim ethnic groups were expected to identify themselves as Turkish. Natalie (2005:78) notices 'Mustafa Kemal (Ataturk), the founder of Turkey, attempted to bring the country's diverse populations together by creating a unified "secular and modern official state nationalism"'. In 1924, Ataturk banned all other identities except Turkish, saying '[e]veryone living within the borders of the Turkish Republic who considers themselves Turkish is Turkish. His republicanism had one brand: assimilation of all minorities into the homogeneity of the republic. Minorities' rights ceased to exist' (Bruinessen 1995:32). The Kurds in particular were targeted by this assimilation policy. It was claimed by the Turkish Governments for a long time that Kurds do not exist and they were called "Mountain Turks". Their culture, music, language, place names and even the use of Kurdish names for children were banned under the policy of "Turkification". Some of these bans are still in force.

The same policy was followed by other subsequent rulers of Turkey. In 1925, when he was expressing his opinion on the Kurds, Ismet Inonu (the second president of Turkey) publicly states '[w]e are openly nationalist. Nationalism is the only cause that keeps us together. Besides the Turkish majority, no other (ethnic) element shall have any impact. We shall at any price, Turkicise those who live in our country, and destroy those who rise up against the Turks and Turkishness' (Mizell 27:2005). Although the Prime Minister in 1991, Suleyman Demirel, made few steps in recognising the Kurdish issue (Mizell 2005:27). Several other leaders of Turkey have made similar points; this has never turned into real recognition.

The desire to join the EU has forced Turkey to change its traditional policy towards the Kurds. During the accession process Turkey has made dramatic and unexpected changes in cultural and linguistic rights as well as democratic, constitutional, legislative reforms

to bolster human rights in general. Accepting other identities apart from Turkish is still seen as a threat to the unitary, secular state and Turkey has refused to recognise the existence of minorities including the Kurds or to identify them as minorities, and has failed to provide them with minority rights as required by international norms. In this way Turkey has failed to uphold the principle of equal citizenship for the Kurds and other minorities.

5.3   Denial of the Kurds by the Turkish constitution: Turkey's legislative approach to the recognition of the Kurds

Turkey created some political concepts which are repackaging its past mistreatment towards other ethnic groups, in particular Kurds, under modern phrases to appeal to the democratic world such as "national security", "territorial integrity", "sovereignty", "separatist" and links all these concepts to "terrorism". These are translated in the Turkish legal system in reality as this: Anything that is not "Turkish" is a "separatist" and every "separatist" by Turkish definition, can be associated with terrorism. The constitution also emphasises the "integrity and sovereignty" of Turkey. If any actions are proved to have undermined the integrity and sovereignty of Turkey, heavy penalties are imposed. For example the constitution states "integrity" 20 times and states "sovereignty" 10 times. This reminds Kurds that there is no such thing as Kurdish homeland or Kurdistan.

  The Turkish constitution does not recognise Kurds in Turkey, and so often the constitution provides a convenient scapegoat for military uprisings and other political issues. It is believed that 20 percent of the Turkey's population is Kurdish and yet there is no mention of anything Kurdish in the Turkish Constitution. According to the Article 66 of the Turkish Constitution '[e]veryone bound to the Turkish state through the bond of citizenship is a Turk' (The Constitution of the Republic of Turkey 2007). Kurds have a claim on southeast Turkey and they call it Kurdistan, as it is apparent from the name

of the PKK (Kurdistan Workers' Party). This can also explain why in Turkey "terrorists" and "separatists" are synonyms.

Mentioning Kurds may be a Constitutional breach. For example Article 301 of the constitution (2001) stipulates: 1. A person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey, shall be punishable by imprisonment of between six months and three years. 2. A person who publicly denigrates the Government of the Republic of Turkey, the judicial institutions of the State, the military or security organizations shall be punishable by imprisonment of between six months and two years. 3. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third. 4. Expressions of thought intended to criticize shall not constitute a crime. Article 301, on the denigration of Turkishness, the Republic, and the foundation and institutions of the State, was introduced with the legislative reforms of 1 June 2005 and replaced Article 159 of the old penal code. Article 301 has used in a number of cases where Kurds have been the subject. Article 301 has been used to bring charges against writer Orhan Pamuk for stating, in an interview with a Swiss magazine, that 'Thirty thousand Kurds and a million Armenians were killed in these lands and nobody but me dares to talk about it' (Rainsford 2005). Stating that Turkey oppresses its Kurdish people is a crime in Turkey. Amnesty International (2006) states:

> Fatih Tas is a 26-year-old student of Communications and Journalism at Istanbul University and the owner of Aram publishing house. He is currently being tried under Article 301 because he published a Turkish translation of a book by the American academic John Tirman, entitled Savas Ganimetleri: Amerikan Silah Ticaretinin Insan Bedeli (Istanbul: Aram, 2005) (The Spoils of War: the Human Cost of America's Arms Trade), that reportedly includes a map depicting a large section of Turkey as traditionally Kurdish and alleges that the Turkish military perpetrated a number of human rights abuses in Kurdistan during the 1980s and 1990s. The prosecutor reportedly demanded that each "insult" in the book should be tried as a separate charge and called for Fatih Tas to be given a prison sentence of ten and a half years. Fatih Tas also faces charges under Articles 1/1 and 2 of Law 5816, which prohibits publicly insulting the memory of Ataturk.

The president of the Bingöl branch of the Human Rights Association, Rıdvan Kızgın, faces charges under Article 301 for "denigrating the state" following a letter he sent to the Turkish authorities which had on its letterhead the word "Cewlik" (the Kurdish name for Bingöl). Since Rıdvan Kızgın has had over 47 cases opened against him since 2001, it has been considered that this case is another form of judicial harassment against him, intended to hinder him in his work defending the human rights of others. Article 88 of the Turkish Constitution (2001) stipulates '[t]he People of Turkey, regardless of religion and race, are Turks as regards Turkish citizenship'. Ataturk declares '[t]he people of Turkey, who have established the Turkish state, are called the Turkish nation' (Cagaptay 2006:62). The policies to assimilate all the non-Turkish speakers to Turkish nation have been justified by the constitution. The Turkish constitution does not mention the Kurdish language at all. Article 3 of the Turkish constitution states '[t]he Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish'. Article 42 elaborates on this further: No other language than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved.

   The education system, devoid of all hints of Kurds, forces children to learn and adapt to Turkish language and culture. The Turkish constitution prevents Kurds from having, pursuing or gaining any civil or ethnic rights. As it is evidence in the case of Orhan Pamuk and others, one cannot state that Kurds are oppressed or mention the Armenian Genocide in Turkey. One cannot even say that the Turkish army should withdraw from Cyprus. Articles 1/1 and 2 of the law numbered 5816 prohibit publicly insulting the memory of Mustafa Kemal Ataturk and prescribe imprisonment from 1 year to 3 years.

If the crime is committed by means of the media, then the punishment is increased by a ratio of a half.

Kurds do not have to be violent to be persecuted by the Turkish state; they are being prevented from expressing their culture and using their language. The constitution diffused to all aspects of the Penal Code. For example, a Kurd is not only persecuted for speaking Kurdish, but using a Kurdish sound, such as "W" (a sound that does not exist in the Turkish language). This law is not applied for every language. One can use English, French or Japanese sounds and their representations in writings without being persecuted. In this sense, the Turkish state is constitutionally ethinicised. This is a slow form of denying equal citizenship, which slowly makes Kurds assimilate or disappear as a people, language, culture and homeland. Kurds have been persecuted for using Kurdish "letters". Reuters (2005) states:

> A Turkish court has fined 20 people for using the letters Q and W on placards at a Kurdish New Year celebration [Newroz], under a law that bans use of characters not in the Turkish alphabet, rights campaigners said. The court in the south-eastern city of Siirt fined each of the 20 people 100 new lira ($75.53) for holding up the placards, written in Kurdish, at the event last year. The letters Q and W do not exist in the Turkish alphabet

One may even accept the fear of Turkey from Kurdish national movement, but one may find it difficult to accept changing the names of Kurdish and Armenian environment and natural life from Kurdish and Armenian to Turkish. BBC news item entitled "Turkey renames 'divisive' animals" (BBC 2005:3) states:

> Turkey has said it is changing the names of three animals found on its territory to remove references to Kurdistan or Armenia. The environment ministry says the Latin names of the red fox, the wild sheep and the roe deer will be altered. The red fox for instance, known as Vulpes Vulpes Kurdistanica, will now be known as Vulpes Vulpes. Turkey has uneasy relations with neighbouring Armenia and opposes Kurdish separatists in Turkey. The ministry said the old names were contrary to Turkish unity. "Unfortunately there are many other species in Turkey which were named this way with ill intentions. This ill intent is so obvious that even species only found in our country were given names against Turkey's unity," a ministry statement quoted by Reuter's news agency said. Some Turkish officials say the names are being used to argue that Armenians or Kurds had lived in the areas where the animals were found

This background explains why in '2005, there were 2302 applications lodged against the Republic of Turkey before the European Court of Human Rights and consequently 290 judgments on the merits have been issued affirming 270 violations and 9 non-violations' (www.coe.int 2005). Turkey recognises the Kurdish language but experts decry this recognition of the Kurdish language by Turkish authorities as a cosmetic operation. Kurdish education is provided through only a few private local courses. Kurds in Turkey are not equal to Turks and they are discriminated against in all aspects of life. Despite the fact that from the very beginning, citizenship had a deep underlying significance for the construction of the new Turkish society and state, social science literature seldom explicitly discussed the concept of citizenship in Turkey beyond its ideological implications regarding nationalist heritage. İçduygu (1999: 2002) states '[a]t the present time, Turkey finds itself reacting to the naturalization policies and practices of migrant-receiving states, in which thousands of its emigrant citizens are in search of access to citizenship and citizenship rights in those states, and consequently 'dual citizenship' has become an issue of increasing concern. On the other hand, it has to deal with the question of how the free expression of ethnic (Kurdish), religious (Islamic) and sectarian (Alevi) revivalism is possible under the unitary principles of the Turkish state and citizenship, and accordingly 'constitutional citizenship' is repeatedly pronounced'.

The Constitution of Turkey and other related Turkish Laws are designed to conform to the official policy of the state with respect to the recognition of minorities. The Constitution of the Republic of Turkey does not have any provisions referring to minorities. Similarly, the Turkish Constitution guarantees the rights of all individuals with a general provision. Article 10 provides that '[a]ll individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations'

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(Constitution of the Republic of Turkey :2007). The Turkish Constitution does not provide any protection for the cultural rights of minorities and does not refer to minority languages including the Kurds. In direct contradiction, it is devoted to the sole protection of Turkish culture, language and values, thus the possibility of promoting any other cultures, languages and other characteristics of minority groups is ruled out. This is clearly explained in the preamble of the Constitution as it stipulates:

> The recognition that no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Ataturk and that, as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics…(Constitution of the Republic of Turkey: 2007).

As will be explained in the next section in detail referring to the existence of minorities has also been interpreted as "creating minorities" and this has been used as a reason for the dissolution and criminalisation of political parties. As regards international law, article 90 of the Constitution regulates the ratification of international treaties and states '…[i]n the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail'. Turkey's entering reservations on the international treaties minorities are deprived of protection from international law and this provision remains almost completely ineffective concerning minority rights.

When signing and ratifying international treaties, Turkey generally puts reservations to the provisions of international treaties that specifically concern minorities. In this way minority groups including the Kurds are also deprived of the protection of international law regarding their interests. For example, Turkey has entered a reservation on article 27 of International Covenant on Civil and Political Rights (ICCPR) and paragraphs 3 and 4 of article 13 of the ICESCR which are major sources

of international law concerning minorities. Turkey has also signed and ratified the Convention on the Rights of the Child and placed a reservation on articles 17, 29 and 30, which concern the rights of children who belong to an ethnic, religious or linguistic minority or indigenous population. Furthermore, Turkey has not signed the Council of Europe Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages. Turkey has signed and ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, but has put a reservation to Article 2 of Protocol no 1, which is related to the right of education.

This section shows that the Turkish constitution and the country's approach (reservations on articles) in ratifying the international conventions are the main obstacle of guarantying equal citizenship for the Kurds. It is suggested that at the present time, the best approach to Kurdish identity and all other minority groups in Turkey is to make fundamental amendments to the Turkish constitution which would guarantee equal citizenship for non-Turkish speakers including the Kurds.

5.4   The right to establish political parties

Articles 68 and 69 of the Turkish Constitution deal with the formation of political parties and impose restrictions and sanctions regarding their activities. They are important for the establishing and maintaining of the political parties of the Kurds. Paragraph 4 of Article 68 shows how activities of political parties must conform to the principles of the constitution which are based on the non-acceptance of multi-ethnicity. It is stipulated 'statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any

kind, nor shall they incite citizens to crime' (Article 68, paragraph 4 of the Constitution of the Republic of Turkey: 2007).

Paragraph 5 of article 69 provides sanctions when political parties act against these principles. It states 'The permanent dissolution of a political party shall be decided when it is established that the statute and programme of the political party violate the provisions of the fourth paragraph of Article 68' (Article 69, paragraph 5 of the Constitution of the Republic of Turkey: 2007). The Law on Political Parties (LPP) (No.2820, 22.04.1983) ensures the implementation of these principles. Article 78 of LPP imposes prohibitions on Political parties that have aims or are involved in any activity to change the democratic state order. Article 78 states:

> Political parties (a) shall not aim, strive or incite third parties to change: the republican form of Turkish state; the…provisions concerning the absolute integrity of the Turkish State's territory, the absolute unity of its nation, its official language, its flag or its national anthem;….the principle that sovereignty resides unconditionally and unreservedly in the Turkish nation; …the provision that sovereign power cannot be transferred to an individual, a group or a social class…jeopardize the existence of the Turkish State and Republic, abolish fundamental rights and freedoms, introduce discrimination on grounds of language, race, colour, religion or membership of a religious sect, or establish, by any means, a system of government based on any such notion or concept… (Olgun 2005:380).

Articles 80 and 81 of LPP impose other restrictions on political parties which derive from articles 68 and 69 of the Constitution. Article 80 states '[p]olitical parties shall not aim to change the principle of the unitary State on which the Turkish Republic is founded, nor carry on activities in pursuit of such an aim'. Article 81(a) prevents political parties from claiming the existence of minorities as follows '[p]olitical parties shall not a) assert that there exist within the territory of the Turkish Republic any national minorities based on differences relating to national or religious culture, membership of a religious sect, race or language or (b) aim to destroy national unity by proposing, on the pretext of protecting, promoting or disseminating a non-Turkish

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language or culture, to create minorities on the territory of the Turkish Republic or to engage in similar activities...'.

These provisions have been used as justification for the repression and dissolution of political parties which addressed minority issues (particularly the Kurdish issue) in their programmes. 'The activities of parties which are seen to be against the principle of secularism have also faced dissolution. Since 1992, 12 political parties have been dissolved by the Constitutional Court on the grounds of these provisions' (Olgun 2005:380). The Constitutional Court has operated as a guardian for nationalism and secularism and to serve the official ideology rather than creating a way for the consolidation of democracy in Turkey. For example, in its judgment regarding the dissolution of the United Communist Party of Turkey, the Court states:

> The State was unitary, the country indivisible and that there was only one nation. It considered that national unity was achieved through the integration of communities and individuals who, irrespective of their ethnic origin and on an equal footing, formed the nation and founded the State. In Turkey there were no "minorities" or "national minorities", other than those referred to in the Treaty of Lausanne and the friendship treaty between Turkey and Bulgaria, and there were no constitutional or legislative provisions allowing distinctions to be made between citizens. Like all nationals of foreign descent, nationals of Kurdish origin could express their identity, but the Constitution and the law precluded them from forming a nation or a minority distinct from the Turkish nation. Consequently, objectives which, like those of the *TBKP*, encouraged separatism and the division of the Turkish nation were unacceptable and justified dissolving the party concerned (ECHR 2007: para.11).

In its judgment on the Freedom and Democracy Party (FDP) the Constitutional Court decided dissolution of the party due to contraventions of articles 78 and 81 of LPP in its programme. (Olgun 2005:380). As can be seen from the judgments of the Constitutional Court one can freely express her/his identity, but cannot claim to be a member of a minority group that is seen as a danger to the unitary state and nation. Despite the European Court of Human Rights finding it was a violation of Article 11 of the Convention that these parties be dissolved; the Constitutional Court has not changed its approach. The use of minority languages during election campaigns and in the activities

of political parties is prohibited by article 81(c) of the Political Parties Law and article 58 of the Election Law. Article 81(c) of the Political Parties Law states:

> Political parties ... (c) cannot use a language other than Turkish in writing and printing party statutes or programs, at congresses, indoors or outside; at demonstrations, and in propaganda; cannot use or distribute placards, pictures, phonograph records, voice and visual tapes, brochures and statements written in a language other than Turkish; cannot remain indifferent to these actions and acts committed by others. However, it is possible to translate party statutes and programs into foreign languages other than those forbidden by law (The Law of Political Parties: 2007).

Article 58 of the Election Law states '... It is forbidden to use any other language or script than Turkish in propaganda disseminated in radio or television as well as in other election propaganda' (Election Law: No. 2839). These provisions have been used particularly against pro-Kurdish parties, for instance '[t]he president of DEHAP (Democratic People's Party), Tuncer Bakirhan was investigated under article 81(c) of the LPP for saying goodbye and thank you in Kurdish after a speech during the election in July 2004. Handan Caglayan was sentenced to seven months in prison and fined 513 new Turkish lira (380 USD) for saying "My Dear Sisters" in Kurdish in the south-eastern province of Sanliurfa during the March 23, 2004 local elections (Bianet 2007:22). Institute for Human Development (2007) states '[e]xecutives of HAK-PAR (Rights and Freedoms Party) were sentenced to terms of imprisonment for speaking in the Kurdish language at the first Ordinary Congress of the Party and sending invitations to the President of Turkey in Kurdish and Turkish'.

The above examples show how the provisions of establishing political parties deliberately target pro-Kurdish parties and individuals. It is obvious that prohibition of free expression in a minority language in political activities and election campaigns are pervasive in Turkey. It is also noticed that, these provisions inhibit those representing, or seeking to represent, minority and particularly Kurdish interests predominantly in the southeast of the country, from effective campaigning. It is clear that equality for all

political parties, regardless of their ethnicity of their leaders and members, does not exist in Turkey. This policy contributes to violate basic principles of equal citizenship for the Kurds.

5.5   10 % cent threshold in the electoral system

Turkey's electoral system is a proportional representation system with a 10 percent national threshold. In this system political parties must gain at least 10 percent of the total vote cast and must be registered in more than half of the provinces and present lists of candidates in all those provinces. Article 33 of the Election Law states '[i]n a general election parties may not win seats unless they obtain, nationally, more than 10 percent of the votes validly cast... An independent candidate standing for election on the list of a political party may be elected only if the list of the party concerned obtains sufficient votes to take it over the 10 percent national threshold' (The Election Law:2007). It is indisputable that a 10 percent threshold is high enough to prevent minority parties and small parties from entering parliament. It also raises the question that the high threshold is maintained by the Turkish government specifically to keep pro-Kurdish parties out of the parliament. For instance, DEHAP (Democratic People's Party) obtained more than 45 percent of the vote in a number of Kurdish provinces and 6.2 percent of the total national vote in the November 2003 elections, but did not obtain any seats in parliament. Instead these votes went to AKP (Justice and Development Party) or to other independent candidates who gained less than 15 percent of votes in these provinces.

The OSCE (The Organization for Security and Co-operation in Europe) states in several reports that the 10 percent threshold for political party representation is unusually high and remains the highest in the OSCE region. According to OSCE this leads to distortions, and concerns were expressed to the OSCE/ODIHR that it unfairly prejudices Turkish citizens of Kurdish origin. In its judgment of Yumak and Sadak v.

Turkey the European Court of Human Rights (2007:3) notices '[t]he 10 percent threshold in Turkey is the highest in any Council of Europe member state and it must be lowered'. Pro-Kurdish Democratic Society Party (DTP) and other small parties registered their candidates as independent candidates in the 22 July 2007 elections in order to overcome this hurdle and there were in total 604 candidates who stood in the elections as an independent. Independent candidates do not need to exceed the 10 percent national threshold and they can join a political party or form a political party after being elected.

   The Turkish government attempted to create new barriers against Kurdish candidates to prevent them entering parliament. The ruling party AKP submitted a new proposal to parliament to amend the electoral law and to abolish independent candidates' right to have separate ballot papers, instead proposing their names be listed on the same ballot paper as the candidates of parties. All parties voted for this proposal unanimously and parliament passed this law with the highest number of votes (468 votes) in the history of the Turkish parliament. Taking into account the fact that the rate of illiteracy is high among the potential voters of pro-Kurdish independent candidates; the government hoped that this practice would create confusion among illiterate voters and that, consequently, the number of Kurdish deputies would be fewer than expected in the new parliament. The OSCE in its 2002 report, highlights this point '[a]s a means to avoid compromising the secrecy of the vote, the change may have the effect of making independent candidates less visible due to the issue of illiteracy, complexity and the length of a joint ballot paper' (OSCE 2002). Despite government efforts to limit the success of pro-Kurdish independent candidates the DTP launched a campaign to educate people in how to find the name of the candidate on the ballot paper in order to overcome this obstacle. Finally, after the elections on 22 July 2007, 21 pro-Kurdish candidates were elected and took their seats in the new Turkish Parliament. This is the

first time pro-Kurdish deputies have gained seats in parliament since they were ousted from parliament in 1994. Turkey's strong resistance to the acknowledgement of differences and its creation of obstacles for them in order to repress their voices gives rise to the question that perhaps only the presence of minority representatives in parliament can lead to effective political participation.

Kurds or members of other minority groups have been in the parliament since the establishment of the Republic of Turkey, through denying their identity, there are no limitations to the political participation of those Kurds or members of other minority groups who decide to discard their own identity and enter the political arena as Turks. The highest ranks of Turkish politics, bureaucracy and military are open to Turkish citizens of minority descent, but on the condition of calling themselves a Turk.

The problem is not that Turkey refuses to accept Kurds as Turkish citizens. The problem is precisely its attempt to force Kurds to see themselves as Turks. There are today ethnic Kurds among the leading politicians in Turkey who have accepted this role. Turgut Ozal, the 8th President of Turkey, Erdal Inönü, the son of the second president of Turkey and deputy prime minister between 1991 and 1993 and Hikmet Cetin, the speaker of parliament between 1997 and 1999, were all of Kurdish descent. In 1994 roughly sixty Turkish parliamentarians were of Kurdish origin. Furthermore, some ministers in the current parliament and most of the mentors of the Prime Minister are of Kurdish origin. However, they have never described themselves as Kurdish and have not attempted to defend the rights of Kurds, instead welcoming Turkish identity and serving the official policy. Since pro-Kurdish candidates gained seats in parliament and formed a group under the pro-Kurdish party DTP, this situation has changed. The DTP group express themselves with their own identity and claim that they will seek peaceful solutions for the Kurdish issue through democratic means. The effect of refusing the Kurd's identity in politics has been continuing in different forms. There have been

efforts to reduce the number of DTP MPs in parliament and to counteract them. They have been ignored or threatened with judicial investigations in case of any remarks they make. For instance, Aysel Tuğluk and Ayla Akat, deputies of DTP, have been accused of "spreading propaganda for an illegal organization" and "aiding and abetting". Despite the fact that as MPs they have immunity, the Istanbul 9th Heavy Penal Court has decided to continue their trials instead of suspending their cases.

Another court continues to hear the case that has been brought against another DTP deputy, Sebahat Tuncel. These two Court decisions are based on interpretation of article 14 of the Constitution which prohibits activities against the unity and indivisibility of the country, human rights and democracy. These decisions are unprecedented in Turkey's history and the laws have never interpreted in this way against other politicians. If the Courts decide to convict these three MPs, they will be deprived of their status as parliamentarians and ousted from parliament.

These examples illustrate how institutionalised discrimination against minorities has taken root in Turkey within its political, judicial and military institutions. The situation in Turkey explicitly proves that the acquisition of rights does not only involve voting in local, regional and national elections. The right to participation in political life is above and beyond voting rights or being elected. It also involves freedoms pertaining to, for instance, the practice of religious rituals that are not embraced by the majority of citizens; it involves the freedom to use one's native language in addition to the language used by the majority of citizens. In short, these are rights about being different. Rights pertaining to difference first and most importantly require the acknowledgement of difference. One important element of this acknowledgment is turning back the process of "forgetting" that has long accompanied the formation of Turkish national identity and embracing all different religious, ethnic identities. Equality in political participation is significant towards implementing equal citizenship for the Kurds in Turkey.

5.6   The legal and human rights status of Kurds in Turkey

Two of the most important factors affecting the human rights standards in Turkey were '[t]he European Union accession process and the resumption of the conflict between the Turkish military and the armed oppositionist Kurdistan Workers party after 1 June 2004'. (BBC 2004:2). The Centre of Social and Investigation of Rights (Tuhav) states '[t]orture is conducted in Turkish prisons and 60 percent of torturees are Kurdish. A member of the centre Salim Oxlo states '70 to 80 thousand prisoners are in Turkey and they are ill-treated' (Sbeiy website 2008:1).

   According to the observers within and outside the country, the pace of reform in the harmonisation process has long been slowed down despite the EU agreeing to open a new stage of membership talks with Turkey. In March 2007, the EU states '[t]he European Union do not find that there has been significant progress in promoting the respect for fundamental rights in the country, especially with regards to the rights of minorities that includes the Kurdish population'. (BBC 2007:2). The latest European Commission (2007) progress report on Turkish accession published on 06 November 2007 states '[A]s regards fundamental rights, there has been limited progress in legislation and in practice. No major issue has been addressed and significant problems persist. Finally, the atmosphere in the country in particular as regards issues related to minorities and religion has not been conducive to the full respect of fundamental rights and might de facto restrict their exercise'.

   On the other hand, Turkey's domestic politics has become more polarised in 2007, first on the occasion of the presidential election and then more severely on the issue of Kurdish question and conflict between Turkey and the PKK. This polarization was also an element of the growing pressures over incursions into the Kurdistan region of Iraq, which was a move represented as an effective way to fight the PKK. During this period, a nationalist sentiment, already very strong in the country, further bolstered and

exerted its influence on the public debate. Numerous attempts of lynching by ultra-nationalist groups, followed by the targeting of intellectuals through the courts utilizing restrictive articles of the new supposedly-EU friendly penal code, paved the way for assaults on intellectuals and journalists. The assassination of Armenian-Turkish journalist Hrant Dink was an important landmark in the rise of this tension created by increasing ultra-nationalist sentiment.

Kurdish political parties, civil society organisations, and the Kurdish population itself was also one of the primary targets of ultra-nationalist attacks and suppression by the state in Turkey. The pressure against the pro-Kurdish DTP which is represented in the parliament comes along with criticism of the party by government members and military officials. In December, referring to the DTP, Military Chief of Staff Yasser Buyukanit, told press that '[t]he PKK has entered the National Assembly and became a political organization' (NTV 2007). The Daily Radikal (2008) states

> The offices of the pro-Kurdish, Democratic Society Party (DTP), successor to the consecutively banned People's Labour Party (HEP), Democracy Party (DP), People's Democracy Party (HADEP) and Democratic People's Party (DEHAP) were attacked by mobs in several cities, including Istanbul, İzmir, Balıkesir, Eskişehir, Manisa, Osmaniye, Elazığ. Some of the attacks against the offices of the DTP which currently has 20 of its members in parliament, are carried out by armed persons, and fires were shot against the DTP headquarter in Ankara, offices in Istanbul among attacks in other places. What is more important than the attacks is the State's failure to prosecute the perpetrators of the attacks, including those who used firearms in their attack. In many cases, the perpetrators who are captured are released without further prosecution or the courts decided to try them without detention.

DTP is not the only pro-Kurdish party that there have been legal moves to ban, '[c]hief Public Prosecutor of Ankara brought legal action against 13 members of the executive committee of HAK-PAR (Rights and Freedoms Party) on a charge of sending General Assembly Meeting invitations written in Kurdish and speaking at the meeting in Kurdish under Articles 81/C and 117 of the Law on Political Parties' (Daily Radikal 2005). Concerns regarding the independence and the impartiality of the judiciary were also raised by outside observers. The case that is known as the Shemdinli case is a

primary example of the independence of judiciary with regards to the issue of when law enforcement officials participated in human rights violations. The influence of the military, on domestic and foreign policy issues and consequently on the judiciary is also observed by the European Commission in its latest Progress Report on Turkey's EU accession process. The source states:

> The armed forces continued to exercise significant political influence. Senior members of the armed forces have stepped up their public comments on domestic and foreign policy questions including Cyprus, secularism and Kurdish issues. On a number of occasions, the General Staff reacted publicly to government statements or decisions. The General Staff directly interfered with the April 2007 presidential election by publishing a memorandum on its website expressing concern at the alleged weakening of secularism in the country (European Commission: 2007).

Human rights groups often refer to the resumption of the armed conflict between the Turkish military and the PKK in the mainly Kurdish-populated eastern and south-eastern provinces of Turkey as an important factor causing human rights to deteriorate for Kurdish people living in these regions. As the level of armed conflict increased in Turkey, local and international human rights organizations claimed to observe more instances of killings of civilians by security forces, which often demonstrated a disproportionate use of force and in some cases amounted to extrajudicial executions. There are many other incidents of killings due to apparent disproportionate use of force that took place in the last couple of years, especially in the eastern and south eastern Anatolia, that has a Kurdish majority. There are instances of summary killings that took place in Istanbul, Ankara and Izmir. Reporters Without Borders, in its 2006 report, believes that Kurdish journalists are held arbitrarily:

> The country's Kurdish and Armenian minorities remain under great pressure. Editor Hrant Dink, of the bilingual Turkish-Armenian weekly Agos, was given a six-month suspended prison sentence for "insulting Turkishness" (article 301-1 of the criminal code). Five journalists from pro-Kurdish media outlets were arrested in 2005 and four of them arbitrarily held for questioning in Gülec (eastern Anatolia), where they had gone to report on the release of a Turkish soldier by activists of the Kurdistan Workers Party (PKK) (RWB Annual report 2006).

A substantial number of detainees are not charged. Those who are charged are likely to be charged with support of PKK. It seems to be common practice for such people to have been tortured sufficiently severely that they have signed a confession to membership of the PKK in order to avoid further mistreatment. By supporting PKK one declares oneself to be Kurdish, or supportive of recognition of Kurdish identity and rights. At the most basic level, therefore, PKK supporters are consequently more at risk of torture than those who do not claim to be Kurds. The Turkish Constitution does not allow any Kurdish parties to be established. Even mentioning the word "Kurd" is a good reason for a party to be banned by the Turkish authorities.

The official state ideology of the state of Turkey is anyone lives within the borders of the Turkish Republic should consider him/herself as Turkish. The mention of anything in the name or a programme of any organisations that contradicts this ideology is regarded as separatist. For this specific reason Turkey has became the graveyard of pro-Kurdish political groups. It has closed down the HEP, DEP, OZDEP, DKO, DBP, HADEP and DEHAP. The gap between Kurds and Turks in Turkey is expanding and reaching a critical point. It is coming to a point that radical Turkish organisations started "taking revenge" on Kurds. The revival of the Kurdish issue is claimed to bring back the military control in Turkey. According to the *Turkish Daily News* on 22 October 2006:

> The military has resumed its former leading role in Ankara's decision-making process. This is due to the pressure from the PKK and the EU over Cyprus dispute. With Gen. Yaşar Büyükanıt in office as chief of the Turkish general staff for less than two months, the military has resumed its former leading role in Ankara's decision-making process on key security and foreign policy matters. The Turkish military's traditionally dominant role on a number of key foreign policy matters had diminished during the four years under Gen. Hilmi Özkök, Büyükanıt's predecessor, as part of a political reform program aimed at harmonization with European Union standards. In recent weeks Büyükanıt has made it clear that he would not follow in the footsteps of his predecessor.

It is shown that the Kurds are being discriminated against by the legal and political structures of Turkey. Equal citizenship for the Kurds and other minorities is being blocked by the legal and judicial system of Turkey. The Kurds in general can be persecuted by the Turkish authorities for a number of reasons, which may be related to their ethnicity, political beliefs and promoting their cultural rights and Kurdish language. Kurds in Turkey are being discriminated against and the Kurdish regions are economically kept backward. The Kurds lack the right to establish political parties and organisations in Turkey. Without intermediate organisations and groups, democracy is restricted to the relatively small circle of professional politics, leaving the population few opportunities for political participation. Such independent organisations and groups provide people with the opportunities to be active in society and political life, to become citizens, and to engage actively in public life.

5.7   The impact of Kurdish entity in Iraq on the status of the Kurds in Turkey

Current developments on the issue have widened the gap between Kurdish and Turkish ethnicity in Turkey and even in Europe. The recent development of Iraq where Kurds have established an autonomous region should be taken into account. The Iraqi Kurds have forced a federal solution on the Iraqi state and ignored continuous pressure by Turkey to eliminate the PKK who are stationed in Qandil Mount on the Iraqi Kurdistan soil. Turks also accuse Kurds of influencing the EU, which in turn pressurises Turkey to reform and accelerate reforms. A Kurdish political entity is established in Iraqi Kurdistan (northern Iraq), which is not de facto anymore. It is recognised in the Iraqi constitution which is voted upon by the Iraqi people with all its diverse social structures. On the international level Kurds have achieved a great deal. The president of Iraq, the foreign minister, and the deputy Prime Minister of Iraq are all Kurds. Turkey makes a considerable noise about this Kurdish political entity, but it cannot destroy it as it is recognised by the Iraqi state and Iraq is a sovereign state. Although this Kurdish

political entity is not in Turkey, it has a great impact on legitimising the Kurdish issue, when Turkey up until recently refused to recognise that it has Kurds let alone a Kurdish issue. A great number of Kurds and Kurdish intellectuals are now pursuing a "great Kurdistan", which, as they claim, is their divided homeland between Iraq, Iran Syria and Turkey, and they dream of uniting it as one country. Maps of this country are all over Internet, and the proposed country contains part of what is now Turkey.

Turkey regards itself as part of the problem or the solution of Iraq. Land Forces Commander Ilker Basbug (The New Anatolian 2007:3) states '[t]he U.S. must understand that a solution reached without Turkey's support in Iraq will not be a lasting one'. These developments impact on the situation of Kurds in Turkey and the Kurdish-Turkish relationship. As the result Turkey has increased pressure on its own Kurds. Turkey is doing its best to undermine the Kurdistan Regional Government that has established in Iraq. For example, on 27 April 2006, rferl.org states:

> Iraq's Kurdish leaders have been critical of Turkish behaviour in recent months, and have raised speculation that Turkey aims to destabilize Iraqi Kurdistan. Relations between Ankara and Kurdistan had been tense since the overthrow of the Hussein regime, particularly because of Turkish support for Iraq's Turkmen population and its claims over the oil-rich city of Kirkuk.

Turkey believes that the area which is run by the autonomous administration of the Kurdistan Regional Government seems to be regarded as a main threat to Turkish unity. Basbug (The New Anatolian 2007:4) states '[i]t is a fact that the developments in north of Iraq has given political, legal, military and psychological strength to the Kurds living in the region as they have never had or experienced before in the past. We must be careful about the developments in north of Iraq as these may give some of our citizens a feeling of belonging to this region'. This new development did not help the Kurds in Turkey. The pressure on Kurds in Turkey is increased and this thesis argues the Turkish socio-political system needs radical reform not a cosmetic one, treating Kurds as second class citizens inside Turkey and denying Kurds of Iraq is flawed policy. Kurds

in Turkey today have more awareness of their rights and, in return they experience discrimination and persecution.

The officials in Turkey have consistently argued that the minorities' policy of the Turkish government is strictly based on the provisions of the Treaty of Lausanne. Religious minorities therefore do exist in Turkey, but there are no ethnic or national minorities. The paramount concern of the Turkish authorities is to protect the integrity and indivisibility of the state and 'nation'. It appears that there is a prevalent feeling among official circles in Turkey that the granting of certain rights to an acknowledged ethnic or national minority would inevitably lead to further demands, including ultimately calls for secession in the name of self-determination. Turkish officials fear that the granting of certain rights to one ethnic group such as the Kurds could reawaken the consciousness of other ethnic groups such as the Laz and the Circassians. These fears would seem to account for the inclusion of certain key phrases in important Turkish laws. Article 3 of the Turkish constitution notes that the Turkish state, its territory and nation is an indivisible entity whose language is Turkish. Article 14 prohibits activities which 'violate the indivisible integrity of the state with its territory and nation'. With reference to political parties, Article 68 declares that their states and programmes should 'not be in conflict with the indivisible integrity of the state with its territory and nation…' Political party based solely on Kurdish ethnicity could thus be banned. Article 125 of the Turkish Penal Code states 'any person who carries out any action intended to destroy the unity of the Turkish state or to separate any part of the territory from the control of the Turkish state shall be punished by death'. And Article 8 of the Anti-terror Law of April 1991 forbids propaganda, whether written or verbal, and all meetings, demonstrations or 'other acts' which adversely affects the indivisible integrity of the territory and the nation of the Turkish Republic.

5.8   Democratic transformation in Bulgaria and its effects on the right to political participation: The example of the Turkish minority

The Turks are the minority in Bulgaria; the ethnic minorities in Turkey including the Kurds are being discriminated by the majority Turks. In Bulgaria, the case is different. The process of compare and contrast between these two countries would be beneficial to improve the legal status of the Kurds in Turkey. The successful experiment of the Turkish minority in Bulgaria would assist the policy and law makers in Turkey to improve the poor legal status of the Kurds. Bulgaria and Turkey have similar state formations in their constitutions which are based on the principle of a unitary state and homogenous nation. Unlike Turkey, Bulgaria recognises people whose mother tongue is different and gives them constitutional rights to protect and maintain their cultural, linguistic and religious practices. Despite the fact there is no explicit reference to minority groups in its Constitution; Bulgaria provides de facto recognition and protection to its minorities and a Turkish minority is one of Bulgaria's minorities. This protection is also secured by international law. Both countries (Turkey and Bulgaria) have followed assimilation policies towards their minorities, but this policy has been more systematic and long-term in Turkey.

Since 1989, Bulgaria has succeeded in maintaining peaceful ethnic relations and has witnessed a democratic transformation within its territory. Providing opportunities to the Turkish minority to be represented in parliament is one of the most important factors in this process of democratic transformation in Bulgaria. The Turkish Party Movement for Rights and Freedoms (MRF) in Bulgaria has taken advantage of this opportunity to improve ethnic relations and reduce tension among multi-ethnic populations in addition to ensuring the rights of the Turkish ethnic group, which has also affected other minorities. Turkey can follow Bulgaria's experiment in dealing with its Kurdish minority instead of continuing the policy of monoculturism and division of distinct ethnicity in Turkey. The EU membership negotiations and the adoption of European

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norms have had a significant influence on changing this recognition process. It is worth noting that Bulgaria had started the policy of recognition before the EU membership process. In other words, their transition from communist rule to democracy was initiated of their own volition rather than with external pressure. It can be said that the EU process has accelerated this evaluation of democracy in Bulgaria. Moreover, democratization has also taken place within the institutions of the State, with the Constitutional Court of Bulgaria playing a particularly significant role as an initiator in establishing this culture with its decision on the legality of the MRF. Unlike Bulgaria, the democratization process in Turkey started with the desire to join the EU. The realisation of democratic transformation has never been initiated by domestic dynamics as in Bulgaria.

The democratisation process and the emergence of a political system on the pluralist model in Bulgaria began in the early 1990s after the collapse of the totalitarian communist system. At the beginning of this new process, political pluralism was restored as well as basic rights and freedoms resulting in the revival of civil society. Adoption of a new constitution was an important element for the establishment of democracy. The Constitution of 1991 laid the foundations of a parliamentary and rule-of-law-based state, asserted the division of power and established a parliamentary form of government. A proportional electoral system was adopted with a 4-per cent threshold for parliamentary representation. Bulgaria is also a party to most international treaties related to minority rights, including the Framework Convention for the Protection of National Minorities. Minority rights are given protection through international law in the Constitution.

The democratic transformation in Bulgaria has had a considerable effect on the right of effective participation for minorities in the country. In particular, the Turks of Bulgaria have been playing a significant role in the Bulgarian political structure since

the new era started after 1989. The Movement for Rights and Freedoms Party (Hak ve Özgürlükler Hareketi Partisi) (MRF) was established by Turks in 1990 and defends the interests of the Turkish minority in Bulgaria. Since the Constitution, the Law on Political Parties and the Election Law passed in 1990 had provisions banning the establishment of political parties on ethnic and religious grounds, the MRF was registered as an organisation for 'rights'. Since the 1990 Electoral Law allowed organisations and movements which were not political parties to participate in elections, the MRF entered parliament with 23 seats in the 1990 elections and 24 after the 1991 elections (Vihrg 2009:5)

The process of inclusion of the Turkish minority in the political sphere was not easy. There were several attempts by nationalists to exclude the MRF from the elections and to prevent them taking seats in the parliament. The arguments used by the nationalists or other opponents were mainly based on Article 11(4) of the constitution, which bans the formation of political parties on ethnic and religious grounds. The opponents argued that the MRF was founded on ethnic and religious grounds, used the Turkish language and favoured a policy of ethnic assimilation of Bulgarian Muslims to the Turkish minority, thus promoting ethnic and religious confrontation within the population. They therefore requested that the Constitutional Court declare the MRF unconstitutional and its deputies in parliament illegitimate. The Constitutional Court rejected these claims on 22 April 1992, in a historic decision for the parliamentary representation of minorities in Bulgaria. Since this decision, the MRF has continued to be one of the major components of the political structure in Bulgaria. In the 2005 elections, the MRF was the third party, with 13% of total votes, and acquired 34 seats in parliament, taking an important role in the government with four ministries (Vihrg 2009:5).

Despite the successful inclusion of Turks in its political life, Bulgaria has failed to provide equal opportunities for other minority groups. For instance, Bulgaria is still

refusing to register OMO Ilinden PIRIN (the Macedonian party) as a political party, thus preventing the party from participating in elections and gaining seats in parliament. Moreover, the 4-per cent threshold in the Election Law prevents the representation of small minority groups in parliament. The MRF is a very good example to demonstrate the mutual interaction between recognition and political participation. It is also important to see the consequences of this mutual interaction. As explained above, after a painful assimilation policy, the Turks of Bulgaria were finally recognised as having a distinct identity and this has led them to play a crucial role in decision-making as well as to enjoy their rights extensively. The MRF has also played an important role in achieving the recognition of a Turkish entity in Bulgarian politics. The MRF case also shows how the effective inclusion of minority groups in political life can help them to integrate with the society in which they live. This reduces tension and creates peaceful ethnic relations in a multi-ethnic society. The Turks of Bulgaria are very well integrated in the political, social and economic life of Bulgaria and they never consider any form of separation from their country. The representation of the Turkish minority is one of the most significant factors in Bulgaria's success in maintaining peaceful ethnic relations and this has provided the Bulgarian Turks with a chance to participate in decision making, and facilitated confidence building between ethnic Turks and ethnic Bulgarians in that the former have never called for territorial autonomy. Moreover, as a result of full integration and representation in political life, the MRF plays the role of political and social stabiliser through the influence it exercises over the Turkish minority and also minorities that have not been able to produce viable political organisations and gain representation, such as the Gypsies.

The decision of the Constitutional Court of Bulgaria declaring that the MRF was a legitimate party was of vital importance in establishing constitutional democracy in Bulgaria. Unlike the Constitutional Court and other judicial mechanisms in Turkey, as

will be examined below, the Constitutional Court of Bulgaria used its judicial independence and broad vision in favour of the creation of democratic culture rather than in support of official or majority opinion. Venelin Ganev explains the importance of the Court's approach and its impact on institutionalising democracy in post-communist Bulgaria:

> The Court explored the implications of the fact that the future does not begin today and that future-oriented visions must therefore incorporate the tangible historical lessons still troubling collective memory. It was the Court that showed how ethno politics may be structured, not on the basis of simple interpretations of majority will, but in accordance with 'justificational considerations': the constitutionality of states of affairs was assessed, not through an analysis of nationalist 'original intent', but in light of their compatibility with the general principles undergirding the constitutional text of an aspiring liberal democracy. And it was the court that made clear to other political actors that contentious democratic politics may be a rule structured process unfolding in an accessible public sphere. In short, the institutionalised dynamic of judicial review, and not someone's 'good will' ensured the constitutional affirmation of the momentous entry of ethnic minorities on the political scene in post communist Bulgaria. (Ganev 2004:77)

The accession process of Bulgaria to the European Union also played a major role in the democratic consolidation of Bulgaria. EU membership was recognised as a national goal by all political parties and society and this aim triggered the democratic transformation. Bulgaria succeeded in achieving the Copenhagen criteria and became a member of the EU on 1 January 2007 (Vihrg 2009:5).

In this process Turkey might start to take Bulgaria as a role model and implement the same measures it wanted Bulgaria to grant to Turkish minorities. Claiming minority rights for Turks but depriving its own minorities of the same rights demonstrates starkly the paradoxical and ironic situation of Turkey. It is also ironic because minorities or indigenous people who do not have a homeland have always been left the mercy of the state they live in, to recognise or grant their rights. Article 8 of the Anti-terror Law will have to be replaced rather than merely revised before genuine freedom of expression can exist in Turkey.

The democratic experiment involving the Turkish minority in Bulgaria shows how the status of the Turkish minority was improved. This could be an ideal and practical inspiration and model the four countries studied here, especially Turkey, could follow in guaranteeing equal citizenship for their minorities, including the Kurds.

5.9   Neo-Ottoman policy of the AKP

Recep Tayyip Erdogan's Adalet ve Kalkinma Partisi (AKP, or Justice and Development Party), a party with roots in Islamic politics, swept to power in Turkey, a state renowned as secular by virtue of its founder, Kemal Ataturk, and his institutionalized Kemalist ideology. This great AKP victory was then solidified over determined military and Kemalist opposition in an even greater electoral victory in July 2007. The AKP's Middle Eastern policies are focused on two factors, the Kurdish problem and Neo-Ottomanism. Michael Gunter (2009:4) argues:

> In the Kemalist vision the Kurds are an existential threat to the Turkish existence. This is in contrast with Neo-ottomanism that does not have a problem with Kurdish identity and is focused on economic growth and comfortable with Islamic/multiple identities without seeking imperialism. Since military means by Kemalism to repress Kurds, will not solve the problem by itself.

Hakan Yavuz (2009:262) notes 'a slow institutional and behavioural Islamisation process has been going on in Turkey since the mid-1980s and the AKP is an outcome of the transformation of liberal Islam, directed by four socio-political factors: the new Anatolian bourgeoisie, the expansion of the public sphere and the new Muslim intellectuals, the [EU's] Copenhagen criteria, and the February 28 soft coup'. Yavuz imputes major importance to the unintended results of the military's silent coup of February 28, 1997 against Erbakan's Islamic-led coalition. The February 28 process fragmented Erbakan's Islamic movement into two competing groups, one of which emerged as today's moderate AKP. One of the chapter's of Yavuz's book (2009:280) deals with the Kurdish issue '[t]he most difficult challenge the country is facing today'.

Yavuz offers another major insight by detailing the 'Islamisation of the Kurdish question' and how this has complicated it, a situation hitherto little appreciated, at least among most Western observers. Given his Islamic mindset, however, 'Erdogan does not grasp the origins and demands of the Kurdish problem because he has little sense of ethnic or civic nationalism. His dominant identity is Muslim and he thinks that Islamic identity will magically solve the Kurdish problem'. (Yavuz 2009:190). Yavuz's analyse of the AKP policy towards the Kurds is not critical enough, because Yavuz's proposal for the Kurdish issue is going back the Ottoman empire model of dealing with the ethnic and religious minorities. Adapting the Ottoman empire approach to deal with the Kurdish issue is flawed and to end the poor legal status of the Kurds in Turkey, recognition of the Kurdish identity as a separate one and guarantying equal citizenship for the Kurds rather than Islamisation of the issue. The AKP government has failed to develop any coherent policy, the government's only solution has been to sweep the issue under the rug of complacency.

There have been persistent Turkish efforts to criminalise members of the pro-Kurdish party, the Democratic Society Party (DTP), and ongoing proceedings against it with the aim of banning it. It has recently threatened a 10 years prison term for the Kurdish politician and Sakharov prize winner Leyla Zana. Other relevant factors include, Turkey's continuing failure to meet the EU's Copenhagen accession criteria that serve to ensure '[s]tability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (Europe 2007); the refusal to respond to the "peace process" and unilateral ceasefire of the PKK; continuing military operations into northern Iraq; the continuing pursuit of Turkey's dam 'development policy' that threatens to forcibly displace tens of thousands of Kurds; and Turkey's failure to meet her obligations under international customary law and her bilateral agreements with Iraq. There is an urgent need to address key concerns regarding the

Kurdish population of Turkey. Ending the gross violations of the democratic, linguistic and cultural rights of Kurds and other minorities would be a step in the right direction, both for the victims of Turkey's discriminatory policies, as well as Turkey's ambitions as a member of the European community. Turkey has signed many international treaties and made commitments to the entire world. But, Turkey does not fulfil its commitments.

The recent arrest of the DTP members following 29 March 2009 election shows that the AKP and the Turkish state policy has not changed. In a statement Fayik Yagizay, DTP representative in Europe (Yagizay 2009) states 'Police started a large scaled operation against our party DTP in 13 provinces on 14th of April 2009. More than 300 members, executives and activists including three vice presidents of our party were detained. A TV station and the centre of The Union of South-East Municipalities were also targeted by the police. The operation is still going on, and we do not know when it will stop'. The current Turkish authority's responses to the peaceful approach of the DTP are non-democratic and oppose fundamental rights of political participation of the Kurds. The twenty-first century problems require recognition of the Kurdish identity and guaranteeing equal citizenship according to the international law rather than the AKP's approach which seems to be to revive the Ottoman Empire. On 12 September 2010, Turks voted yes on a set of constitutional amendments proposed by the ruling Justice and Development Party (AKP), which has been in power for eight years. Recep Tayyip Erdoğan, the prime minister, portraying the referendum as an opportunity to reject the military regime's legacy. Nevertheless, the constitutional amendments proposed by the ruling party did not touch the equal citizenship issue or improving legal status of the Kurds. Despite that the AKP's policy towards the Kurds is more open compare to the previous regimes of Turkey; nevertheless, the AKP has not been willing to solve the poor legal status of the Kurds in its constitutional amendments proposals.

This thesis argues that the roots of the poor legal status of the Kurds in Turkey are: discriminatory articles in the constitution and penal codes of the country, without making amendments of these articles, the discriminations and ill-treatment towards the Kurds continue.

5.10 Concluding Remarks

In Turkey, due to the positive effects of the EU accession process the existence of different groups has been accepted, but there is still resistance to recognising them as minorities either formally or de facto. It is difficult to describe Turkey's democratic transition as successful so far. It is a reality that Turkey has made significant changes in terms of democracy, human rights and minority rights during the EU negotiation process. Turkey is still reluctant to take the same steps in recognising the Kurds and providing them with the opportunity to be represented in parliament with their identity. Kurds or other members of minority groups do not face any discrimination as long as they happily accept Turkish identity and they can be businessmen, governors or even the president of the country with a Turkish identity. Both the legislation and political, judicial and other institutional practices of Turkey conform to this reality.

As explained above the pro-Kurdish party DTP managed to enter parliament on 22 July 2007, despite all the legal and practical obstacles placed in its path. The government and other institutions have not changed their traditional approach and have started to prevent their voices being heard by ignoring them or by threatening them with criminal investigations.

The judicial mechanisms in Turkey have been acting as a follower of official policy, instead of having a significant role in transforming the country towards an actual consolidated democracy. The presence of the DTP in parliament would help this process if they are allowed to be heard. Turkey is a country that is still paying the economic, social and political price for the not delivering equal citizenship for the Kurds which has

resulted in a long-term and continuing domestic conflict. If Turkey really wants to be a peaceful, democratic and prosperous country, it should not miss the opportunity that the presence of the largest minority group's representatives (DTP) in parliament offers, and start to talk to them and listen to them.

In order to improve the efficiency of political participation, after recognition of its minorities, Turkey should grant their rights under domestic law. Within domestic law the 10 percent threshold for parliamentary representation should be lifted or lowered. Abolishing restrictions on the use of minority languages in election campaigns and political activities is necessary. Article 81 of the Political Parties Law which states "the prevention of the creation of minorities" needs to be abolished. Article 8 of the Anti-terror Law will have to be replaced rather than merely revised before genuine freedom of expression can exist in Turkey.

Improving the legal status of the Kurds in Turkey will require not only further changes in legislation, but a change in the ideology and mentality at all levels of Turkish society. From a state seeing the expression of Kurdish culture and language as a threat to its own existence, Turkey needs to become a state that recognises differences and sees cultural diversity and freedom as positive and necessary elements of a true democracy. The Kurdish issue should not be treated as a state security concern, but rather than as a matter of indigenous people whose rights and existence is denied. The "Village Guards" System is very common in Tur Abdin region. Even though the Village Guards are administered by the state, however they constantly harass and threaten the Kurds and they occupy their houses and lands by force.

The current constitution needs to be changed to solve the Kurdish issue. Without a fair constitution there is not a way for a peaceful solution. But only if there is the broadest understanding of equal citizenship in this constitution and removal of all the prohibitions Kurds currently face. There is also a need for a constitution that prohibits

all anti-democratic acts. '[i]n Greece military coups are a crime. All officers have to disobey superiors; in a case they order a military coup' (EUTCC 2009). This Greek solution to military coups will solve the threat of a military take over in Turkey. It is worth mentioning, recent positive developments towards the Kurdish cause in Turkey which can be summarised as: The Ergenekon case, the apology to Armenians, TRT 6 TV, Turkey is giving back the former Kurdish names of places and the most recent amendments of the constitution which aims to undermine the authority of the military. Turkey as a State has historically been reluctant to embrace its Kurdish population. However a recent report from Radio Free Europe Radio Liberty on 12 August 2009 shows a progression:

> The government of Turkish Prime Minister Recep Tayyip Erdogan has launched what it calls a comprehensive approach to ending Turkey's "Kurdish problem." The proposal is believed to include greater cultural rights for Kurds, some form of local autonomy, and incentives to PKK fighters to lay down arms.

The 2007 European Commission progress report on Turkish accession finds '[n]o major issue has been addressed and significant problems persist' (EUTCC 2009), and joined with the Commission in urging Turkey to confront these problems; the 2008 European Commission progress report on Turkish accession takes a note of '[t]he process underway to prepare a new, civilian constitution; regards it as a key opportunity to place the protection of human rights and freedoms at the core of the constitution; reiterates that a system of checks and balances needs to be established, guaranteeing democracy, the rule of law, social cohesion and the separation between religion and state; underlines the need for a broad involvement of civil society in this process…' (EUTCC 2009). The report also expresses concern about '[t]he hostility shown to minorities and about politically and religiously motivated violence; calls on the Turkish Government to make sustained efforts to create an environment conducive to full respect of fundamental human rights and freedoms' (EUTCC 2009).

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Articles of the criminal code prosecute writers, journalists, intellectuals, lawyers and many other defenders of free speech, including articles 215 (praising an offence and offender), 216 (incitement to hatred), 217 (provocation to disobey the law), 220, Para. 8 (making propaganda for a criminal organization), 288 (attempt to influence a fair trial) and 301 (insulting the Turkish nation, the State of the Republic of Turkey, Institutions and Bodies of the State) of the Turkish Penal Code; without removing restrictions on freedom of expression from their legal framework entirely, guaranteeing equal citizenship would not be achieved and subsequently the suffering of the Kurdish will continue. The EU pressure and Copenhagen criteria have led to few reforms in Turkey, Yavuz (2009:270) states '[s]ince 1999, Turkish parliament has enacted seven major reform packages and a number of harmonization laws to fulfil the Copenhagen political criteria for EU membership'. Hence, the continuation of the EU pressure should improve the legal status of the Kurds of Turkey. Amendments have been made to the constitution of Turkey in 1982 1995, twice in 1999, 2002, 2004 and 2010. No amendments have been made relevant to the legal status of the Kurds to date in neither the constitution nor the penal code of Turkey.

Turkey has faced the great problems and challenges in the 1980s and 1990s. These problems have occurred as previously excluded peripheral identities began to question the fabricated and imposed monolithic citizenship identity which was the product of the early Republican project of social engineering.

To sum up, the conventional framework of citizenship today can neither accommodate the past 75 years of socio-political change nor articulate the new model of pluralism. There have been difficulties in coping with the diversity of already established policies and the practice and outlook with regard to citizenship issues in various nation-states, the concept of constitutional citizenship seems to be a practical solution. Constitutional citizenship can be defined as a '[f]ormal legal status of the membership of a state, and if

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this definition implies loyalty to state rather than nation' (İçduygu 1999: 182). It will be possible, if not easy, to see that in a country like Turkey where identity-based conflicts endanger the sense of unity, that citizenship rights based on constitutional arrangements are important.

It is concluded that the past policies of coping with the Kurdish reality in Turkey are ultimately unsustainable, and that it may be difficult, if not impossible, to return to the climate of earlier years, when discussions of ethnic difference were suppressed, limited to the private realm, or confined to the fringes of radical politics.

6   Chapter six: Assimilation of the Kurds in Iran

This chapter examines the current legal status of the Kurds in Iran. It will be argued that ill-treatment of the Kurds and minorities by the Iranian authorities shows Iran does not handle its citizens equally. Examining equal citizenship (equal access to political, educational, social and economic institutions of the country) for the Iranian Kurds is the major focus of this chapter. This chapter raises three inter-related issues; the dominance of the Shia sect in political and judicial systems of Iran, the consequences of the Persian-Shia concept on the Kurds and the constitutional attempts in Iran to assimilate the Kurds into the framework of the Iranian nation. Articles of the Iranian constitution, legal structure of the country and the policies of the government will be addressed.

The challenge of equality in Iran is plainly illustrate in the experiences of religious minorities such as Baha'is and ethnic minorities such as the Kurds. These groups face routine discrimination and persecution based on their identity. This chapter looks at the religious, legal and social obstacles faced by the Iranian Kurds. It evaluates the Iranian government's compliance with its own constitution and looks at how Iran's treatment of the Kurdish minority measures up to the international agreements it has signed. Iran's constitution declares 'The abolition of all forms of unjust discrimination and the provision of equitable opportunities for all' (Constitution of the Islamic Republic of Iran 1989). The law is not applied equally. This chapter investigates how the Iranian Kurds face discrimination and intensifying persecution in the Islamic Republic of Iran, and addresses their legal status. Other studies have looked only at women or at the treatment of religious or ethnic minorities or have analysed the status of Kurdish nationalism in Iran. This chapter emphasises the need for equal citizenship for the Kurds in the current policies of the Iranian authorities and for their legal status to be improved.

The Kurds deserve attention because they face chronic persecution and discrimination by the current legal system in Iran. By investigating the status of the Kurds and their experiences, this chapter identifies systemic obstacles to equality that affect other groups and minorities in Iran. The sources of persecution relate to the people, institutions, and ideas that have governed Iran before and since the revolution. Iran's 1979 constitution set up a highly centralised government. Cameron and Danesh (2008:14) state '[W]hile there is technically a separation of the legislature, judiciary and executive, the system is dominated by the figure of the Supreme Leader. Iran's government is defined by the doctrine of Velayat-e Faqih, or rule by the supreme jurist (a highly trained cleric)'. Mavani (2001:34) also argues '[t]his doctrine, developed by Ayatollah Ruhollah Khomeini, and is based on the relatively flexible structure of religious leadership in Twelve Jafari Shiasm'. It has been a long practice among Twelve Shia Muslims for every believer to choose a high-ranking cleric – called a marja-e taqlid, or 'source of emulation' and follows his teachings and judgments.

There are a limited number of marjas to follow, and when one passes away another is gradually recognised as occupying its place. From time to time, the marjas will recognise one of their own as a 'source of emulation' and his sayings and writings. Ayatollah Khomeini, the father of the Islamic Republic, incorporated the principle of universal leadership on religious matters into a structure of government for a modern state. Velayat-e Faqih gives the office of the Supreme Leader extensive powers over all arms of government. The Supreme Leader appoints six members of the Guardian Council, four of whom may veto any legislation passed by the parliament (called the majlis). Because this arrangement led to legislative impasses, Khomeini created a new Expediency Council – whose members he appointed – which would resolve all disputes between the Guardian Council and the majlis. This Council is the highest legislative authority in Iran and it is '[o]ne of the most powerful centres of decision making'.

(Cameron and Danesh 2008:14). By securing central control over the state, the doctrine of Velayat-e Faqih ensures the continued domination of the government and legislature by a small cadre of typically hard-line clerics led by the Supreme Leader. Kurds often face discrimination because the lack of clarity in policy allows widely held prejudices to be translated into state-sponsored actions with the tacit approval of senior members of government. The legal status of Kurds in Iran is in serious need of reform. Regarding the state of Iran, a source states:

> Iran's remarkable history shows that it is a country unafraid of progressive change. It is the birthplace of arguably the oldest and newest monotheistic world religions: Zoroastrianism (ca. 1000 BCE)' and the Baha'i Faith (1844 CE). Cyrus the Great, the Persian emperor from 559-529 BCE, is widely credited with producing the first known human rights charter and defending the rights of minorities. Between 1905 and 1911, Iran underwent a constitutional revolution that produced the first parliament in the Middle East. (Lincoln 1991:71).

The above quote shows that Iran in the past proved to be a country of modern institutions and defending the rights of minorities. The following sections address that the ethnic and religious minorities of Iran who currently suffer a discriminatory system where there is not equal citizenship for all Iranian citizens, particularly the Kurds.

6.1   Policy framework in Iran

In order to understand the policy framework of Iran, it is necessary to highlight the constitution of the country. Principle 26, of the Iranian constitution (1989) asserts 'The formation of parties, groups, and political and professional associations…is free, provided they do not harm the principles of freedom, sovereignty, national unity, Islamic standards and the foundation of Islamic republic'. Just as importantly, the constitution created new supervisory bodies, like the twelve-men Council of Guardians that was charged with ensuring that all legislation was in conformity with-Islamic decrees (Principle 96). Other than the ruling religious group, namely Jaafari (Twelve)

Shiaism, religious and ethnic groups are under pressure from the authorities and have poor legal status.

The Iranian constitution is very clear about the recognised religions in Iran and there is no room for non believers or conversion. Article 13 of the constitution of Islamic republic of Iran (1989) stipulates 'Zoroastrian, Jewish, and Christian Iranians are the only recognised religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education'. Information on faiths, other than that of the Shia faith, is very restricted by the Iranian authorities. A substantial number of institutions study Quran Sciences (Uloom-ul-Quran), deems and deeds of the Prophet (Hadith), Islamic Jurisprudence (Uloom-ul-Fiqhi Islami), life and acts of the Prophet (Seerat-un-Nabi), Islamic History (Uloom-e-Tarikh-ul-Islami), but there is not much study about other religions. The government restricts freedom of religion. The Constitution (1989) declares that the 'Official religion of Iran is Islam and the doctrine followed is that of Jaafari (Twelve) Shiaism'. By declaring one faith or sect as the religion of the state others such as the Iranian Kurds are marginalised. It also states 'other Islamic denominations are to be accorded full respect' and designates Zoroastrians, Jews, and Christians as the only 'recognised religious minorities'. Although the Constitution states 'the investigation of individuals' beliefs is forbidden' and that 'no one may be taken to task simply for holding a certain belief' the adherents of religions not specifically protected under the Constitution do not enjoy freedom of activity. Zadeh (2005:23) states '[t]he belief apartheid works in a similar manner. The Islamic Republic is in effect a Shia republic, as even non-Shia Moslems are denied certain political and religious rights. Then next in the hierarchy are "people of the book", namely Christians, Jews and Zoroastrians who are given certain rights but are

regarded as second-class citizens'. Discriminatory laws and practices continued to be the source of social and political unrest and failing of delivering equal citizenship.

The gozinesh, or "selection" provisions serve to prohibit individuals from working for state bodies. In January 2005, *gozinesh* criteria were deployed by the Guardians' Council, which reviews laws and policies to ensure that they uphold Islamic tenets and the Constitution, in order to disqualify around 3,500 prospective candidates from standing in the February parliamentary elections. (Amnesty International 2007:10). The exclusion of around 80 incumbent parliamentarians attracted domestic and international condemnation. The gozinesh provided the legal basis for discriminatory laws and practice. Religious and ethnic groups which were not officially recognised – such as the Bahai's, Ahl-e Haq, Mandaeans (Sabaeans) and Evangelical Christians – were automatically subject to gozinesh provisions and faced discrimination in a range of areas, including access to education. The central feature of the country's Islamic republican system is rule by a 'religious jurisconsult'. The Supreme Leader of the Islamic Republic controls the most important levers of power; he is chosen by a group of 83 religious scholars. All acts of the *Majles* (legislative body) must be reviewed for conformity with Islamic law and principles by the Council of Guardians, which is composed of six clerics appointed by the Supreme Leader and six Muslim jurists (legal scholars) nominated by the Head of the Judiciary and elected by parliament.

Flexibility of the law gives the authorities more power to persecute. Both the Penal Code and Press Code do not specifically define what activities constitute an insult to religion and this has allowed the authorities to punish people for the expressing their own opinions. One of the characteristics that enable people to refer plausibly to the post-revolutionary Iranian state as Islamic is the fact that it is ruled by the clergy. In the name of Islam the new masters have annulled the sovereignty of the people, and in the name of the Islamic state they have annulled the Islamic ordinances.

The process of adapting the application of the constitution to the concept of absolute *velayat-e faqih* was accompanied by the progressive allocation of almost all leading government posts to the clergy and many other less important posts to their supporters or those related to them by family ties. This process began with the Revolutionary Council, the majority of whose members belonged to this 'caste' and then extended to the three branches of government, the Assembly of Leadership Experts, the Guardian Council, the National Security Council, and the Assembly for Revising the Constitution. Discrimination against the ethnic minorities has primarily taken the form of preventing them from preserving their cultural particularities. Turks, Kurds, Baluchis, Arabs, Armenians, Assyrians and other groups were not allowed to use their own languages as a means of instruction in schools. The constitution does not grant them this right. According to Article 15 of the constitution (1989) 'local languages' may be used 'in the press and in the mass media'. Schools are only allowed to engage in teaching the literature of these languages. This official attitude stems from the tendency towards authoritarianism inherent in the hierocracy and strives to establish itself whenever it can. This same tendency lies behind the policy of not allowing the ethnic minorities the right to administer the territorial areas they inhabit. The government's preference, at least in the regions inhabited by Sunnis, is to assign the highest demonstrative posts to functions from outside the area and not to local people. In the case of religious minorities the violations take numerous forms. Firstly, the only religions that are recognised are the so-called religious of the Book (Zoroastrianism, Judaism and Christianity). Members of other faiths are subjected to fully-fledged discrimination or, as in the case of the Baha'is, active persecution.

The Islamicisation of the state implies, by definition, discrimination against non-Muslim citizens. Non-Muslims are not only excluded from leading government posts, but are also deprived of the right to take an active part in decisions which determine the

form of the prevailing order. Although the Constitution of the Islamic Republic accords members of the recognised religious minorities the right to send their own representatives to parliament (Article 64), and although those representatives enjoy the same right as their Muslim colleagues to vote in parliament, none of this has any influence on the character of the state.

In many case the violation of human rights is written into the laws of the regime and justified by reference to the Shari'a (Islamic law). The clearest example of this is the Islamicised penal code which, in certain conditions, imposes penalties such as stoning for adulterers, or execution for apostasy. The attempt to make the constitution conform in practice to the absolute velayat-e faqih and to suppress the sovereignty of the people entails a further extension of the restrictions its text already places upon democratic rights in the name of 'Islamic principles'. The requirements of the hierocracy were what defined 'Islamic principles' both in passing laws and putting them into effect, and what determined the level of tolerance of fundamental rights.

The only function Khomeini attributes to parliament is planning. There is no question of parliament undertaking legislation which he believes is a matter for God and for jurists who guard over the Shari'a. In a speech delivered in 1985 to MPs, Khomeini described parliament as '[a] consultative Islamic assembly'. (Martin 2007:33). But even in this capacity parliament's real role in the Islamic Republic is a subordinate one. Consultation over the most important issues takes place on other levels of state-in the Assembly Council, the Guardian Council, the Security Council, or on the level of councils which represent the most influential jurists. Schirazi (1997:110) argues:

> The contradiction between the constitution's Islamic legalist and non-Islamic secular elements which flows largely from the claim that a state set up on the basis of Shia law and ruled by Islamic jurists (foqaha). Is capable of offering solutions to all problems, not only in Iran, but throughout the world even though the constitution itself incorporates many non-Islamic and non-legalist elements. The second is the contradiction between its democratic and anti-democratic elements, arising chiefly from the conflict between the notions of sovereignty embodied in the document: the sovereignty of the people on the

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one hand and of the Islamic jurists on the other, a sovereignty the jurists exercise as God's deputies.

The secularist and legalist components of the Constitution of the Islamic Republic have not been adapted to one another in a harmonious way, but appear in one and the same text as elements that contradict and exclude one another. The sovereignty of the Islamic jurists negates the sovereignty of the people, the Islamic community is set against the Iranian nation, Islamic regulations and principles limit the rights of the people, the Guardian Council deprives parliament of power, the leader suppresses the president, and the concept of velayat-e faqih reduces the idea of a republic to an absurdity.

The Constitution has contradictory provisions regarding the functions and prerogatives of the Majlis. On the one hand, the Constitution clearly stipulates that the Majlis is to be an independent legislature. On the other hand, however, the Majlis's freedom to enact laws is subject to the will of another body, the Guardian Council. The members of this Council—six jurists and six high-ranking clerics—are appointed, either directly or indirectly, by the highest official in the executive branch, the Supreme Leader (currently Ali Khamenei). Kar (2003:37) argues

> Bills passed by the Majlis are not legally binding until the Guardian Council attests, first, that the presumptive law does not contradict the basic tenets and provisions of Islamic law and, second, that it does not contradict the basic principles of the Constitution. Strikingly, every single reform law that the Majlis has passed over the last two years has been stopped in its tracks by the Guardian Council. Once the Guardian Council rejects a particular law, it sends that law back to the Majlis with specific objections. The Majlis must then, on the basis of the directives given by the Council, revise and amend the law and send it back.

The tension between the Majlis and the Guardian Council is, in other words, paralysing Iran's legislative process. Thus, the Iranian Majlis is not a genuine parliament, given that it must by law accept the views of two other superior organs. Since the Supreme Leader has remained unwilling to change the composition of these two bodies by appointing to them individuals more amenable to the reformist movement that animates

the Majlis. The emergence of a reformist legislature would naturally lead toward democratic progress if it has actual power. But this has not happened in Iran, and improving the legal status of the Kurds will not happen simply by a continuation of the current process. To guaranty equal citizenship for the Kurds, the obstacles in the constitution and legal framework of Iran are simply too profound. Through a radical reform in the constitution and penal code of Iran, equal citizenship for the Kurds would be delivered.

6.2   The Kurds of Iran and the obstacles in delivering equal citizenship

This section addresses the legal status of the Kurds of Iran. In terms of the treatment of the Kurds in Iran, McDowall (2000:47) argues '[t]he Kurds are particularly vulnerable as a minority population in Iran for two main reasons: some Kurds have a long history of struggle for national autonomy in Iran and they are mostly Sunni Muslims (a minority in Shia Iran)'. The border areas the Kurdish inhabits are relatively under developed and they have suffered from violent repression before and since the revolution. The Islamic Republic of Iran has continued a pattern established by previous regimes of creating a strong centralised state that is intolerant of ethnic dissidents. 'Kurdish human rights groups trace the suppression of Kurdish autonomy back to the Safavid Persian Empire, which began to promote state centralisation in the 1500s'. (Yildiz & Taysi 2007:47). A Treaty between the Ottoman Empire and the Safavids in 1639 divided the Kurdish-inhabited regions between the two empires. Hassan (2007:27) argues '[t]he division has been maintained to the present day; about 12 million Kurds live in Turkey and around 6 million live in Iraq'. The Kurds in Iran enjoyed a period of autonomy during the 1800s, when the Qajar state permitted the Kurdish regions to function as semi-autonomous principalities.

Kurdistan is a geographically homogenous land; politically it was first divided in the 16th century amongst the two powers of the time, the Safavi and the Ottomans Empires.

After the First World War, 400 years after its first division, Kurdistan was further divided by the Powers of the day (France and Britain) amongst the three newly established states of Turkey, Iraq and Syria. This was contrary to the agreement of Sever which recognised the formation of an independent state in Kurdistan. The division of Kurdistan into four parts was formalised in 1923 in the treaty of Luzon. 'Iran's Kurdish population of about 4.5 million, out of a total of nearly 69 million, is concentrated in the country's northwest regions particularly, in the provinces of Elam, Kermanshah, and Kurdistan as well as some areas in Western Azerbaijan'.(Bayat 2008:29).

During the Second World War, the Soviet Red Army occupied parts of Iran, under the protection of the Soviet Union, the Kurdish Republic of Mahabad was formed in 1946. The Republic of Mahabad lasted only 11 brief months. Following the withdrawal of Soviet troops later in the year, Iran restored its control of the region and continued to co-opt various Kurdish tribal leaders with political and financial rewards. Although Kurds' traditional leadership was undermined, the formation of the Republic led to the creation of a modern political party that remains influential today. The Kurdish Democratic Party of Iran (KDPI) continues to promote its motto 'Democracy for Iran, autonomy for Kurdistan'. The KDPI supported the overthrow of the Shah and many Kurds participated in the 1979 revolution, but they were quickly marginalised by the new regime. When a popular referendum was held to vote on the creation of an Islamic Republic, most Kurds boycotted the vote. They objected to the draft constitution, which did not mention the Kurds or make provisions for regional autonomy. Shortly thereafter, the KDPI helped to organise a rebellion in the region. The uprising was met with brutal violence. Human Rights Watch (1997) reports '[m]ore than 271 Iranian Kurdish villages were destroyed and depopulated between 1980 and 1992'. The Kurdish are

usually convicted of 'enmity with God', a vague charge that is often used by the regime to silence its critics.

The current Iran's government bases itself on the Shia doctrine of the velayat-e faqih (Rule of the Supreme Jurist), which places ultimate temporal and spiritual power in the hands of the most qualified religious scholar as the Supreme Leader of the country (which has been Ali Khomeini since 1989). Articles 5 and 107 through to 112 of Iran's constitution set out the qualifications and duties of the supreme leader and the various bodies of religious experts that make up the leadership of the government. Since the 1979 revolution, Sunni Iranians, about nine percent of Iran's population and the majority of Kurds, have rarely been included in powerful governmental positions. After the establishment of the constitutional monarchy in 1906, some of the demands of the nationalities of Iran, such as formation of regional assemblies were included in the constitution but have never been implemented, in this way Iran continues to repress Kurds and ethnic minorities and diminish their legal status.

Kurdish people along with other nationalities of Iran fully participated in the revolution of 1979, which resulted in the overthrow of the monarchy and establishment of a republic. They thought that this was an ideal opportunity to resolve all the problems with the new government and to put an end to decades of injustice. Now 30 years later, the Kurdish people in Iran are in crisis because of their poor legal status and Iran's minorities including the Kurds do not have equal access to political, economic and education resources. While government restrictions on freedom of association, assembly, and speech were a problem during President Khatami's two administrations (1997-2005), the Ahmadinejad government has intensified these restrictions in the name of security. The source states:

> The security crackdowns in Iran's Kurdish regions can be traced to July 9, 2005, when students in the city of Mahabad held demonstrations in Esteghlal Square to mark the sixth anniversary of student protests in Tehran, which the

government had violently suppressed. In response to the July 2005 gathering in Mahabad, security forces arrived at Esteghlal Square to arrest Shawaneh Ghaderi, a prominent Kurdish activist. After Ghaderi resisted arrest by running away, security forces pursued and shot him, tied him to a car and dragged him through the streets until he died (BBC 2005:10).

The event and photos of Ghaderi's body that circulated afterwards, sparked eight days of sometimes violent protests in Mahabad and other Kurdish cities. Protestors expressed their anger at the killing and the lack of response by the government to calls for an investigation. '[A]ccording to local reporters who spoke with eyewitnesses, the demonstrations on July 9 2008 were peaceful until security forces violently disrupted the gatherings'. (Kurdish News Agency 2008:3). The clashes led to rioting and the destruction of property such as banks and shops. In response, the authorities arrested at least 50 protestors, according to local activists. The following sections analyse the major obstacles to deliver equal citizenship for the Kurds of Iran which embody in the religious, legal and social obstacles.

6.2.1   Religious obstacles
Most Kurds are Sunni Muslims in a country that is 80–90% Shia, and in which 'Twelve/Jafari Shia' Islam is the official state religion as Article 12 of the Iranian Constitution states. As a result many Kurds, as both an ethnic and religious minority, find themselves marginalised and excluded, existing on the periphery of mainstream Iranian society. The treatment of Sunni Kurds mirrors that of many other Sunni Muslims in Iran. While Article 12 of the Iranian constitution explicitly defends the rights of non-Shia Muslims, in practice Kurds face religious discrimination in their community affairs and in access to public office. Very few Sunnis have positions in embassies, universities and other important public institutions. They are unable to achieve the highest-ranking positions in government or the judiciary. In Kurdish areas where the majority are Sunnis there is a notable lack of Sunni representation in local authorities. The government appointed governor of the Kurdish region has usually been

a Shia and non-Kurdish. '[I]n September 2002, all six Kurdish members of parliament resigned in protest at not being consulted over the appointment of the new governor'. (freedomhouse.org 2008:4). As a report for the United Nations Commission on Human Rights (2008:23) notes '[t]heir joint letter to the Interior Minister claimed that the legitimate rights of the Kurds, especially the Sunnis amongst them, was denied and their calls for justice on the political, economic, cultural and social levels had been neglected'. Although the constitution protects the rights of Sunnis to administer their own religious affairs, religious leadership in Kurdish areas has usually been non-Sunni and non-Kurdish. The state appoints Shia clerics to run Friday prayers in Sunni mosques in Kurdish towns. Human Rights Watch (2008:12) reports an incident in which '[a] Friday prayer leader in Sanandaj announced he would issue the call to prayer and carry out other religious rituals according to Shia traditions, despite the fact that he was serving a Sunni congregation'. Such cases clearly violate the constitution and Iran's international obligations to ensure freedom of religion.

The dominance of Shiaism in Iran is reflected in Article 12 of the constitution (1989), which states the Sunnis may have religious rights, provided they do not infringe upon '[t]he rights of the followers of other schools'. This exception is used to deny Kurdish (and other) Sunnis basic religious rights that have a profound effect on community life. '[a] Kurdish community that raised over a million rials (about seventy thousand pounds in 2008) to enlarge the Dar al-Ehsan mosque in Sanandaj was blocked from completing the project. Despite the fact that all the necessary building permits were obtained from local authorities, the Ministry of Islamic Guidance stepped in to block the new extension and confiscated the funds collected to carry out the project'. (HRW 2008:23). As Sunnis; Kurds face intimidation and arbitrary detention for religious reasons. According to the United States Commission on International Religious Freedom (2008:12) 'Iranian Sunni leaders have reported widespread abuses and restrictions on

their religious practice, including detentions and torture of Sunni clerics . . . Sunni Muslim leaders are regularly intimidated and harassed by intelligence and security services and report widespread official discrimination'.

In his report to the United Nation General Assembly, Secretary-General Ban Ki-Moon (UNGA 2008:2) notes '[m]embers of the Kurdish community and Sunni community have reportedly been subjected to arbitrary arrests and torture, allegedly in connection with peaceful demonstrations for their rights, such as the right to speak their own language and to hold religious ceremonies'. Anti-Sunni propaganda by the state adds to the social marginalisation of the Kurds. According to a State Department report (2004:20) 'Sunnis claim the state broadcasting company Voice and Vision airs programmes that are insulting to Sunnis. In April 2004 it was reported that Sunni members of Parliament had petitioned the Supreme Leader to issue an order bringing an end to 'anti-Sunni propaganda in the mass media, books, and publications; the measure would include the state-run media'. The monopoly and the complication of Shiaism were noticed following few years of the Iranian revolution. For instance, Afshar (1985: 238) states:

> After four years of Islamic government in Iran the deep contradictions of Shia ideology have remained unresolved. The revolution was to help the poor and yet remain within a theoretical framework that does not favour egalitarian measures nor provide any means for their implementation. Shiasm is frequently seen as the religion of the oppressed, yet it does not oppose inequalities and does not provide for radical distribution of wealth. In fact the very influence and authority of the *ulama* is in part based in their ability to extract *khoms* and *zakat* payment from the rich and give part of these to the poor. This process permits the religious establishment to maintain its patronage of the poor and retain their allegiance. Any radical measures which would result in the elimination of this process, either by eradicating poverty or by the state taking over taxation and welfare provisions, would in fact erode the most vital links between the religious establishment and its support base.

The above section shows that the majority of Kurds are Sunnis and that the constitution and legal system of Iran are dominated by Shiasm and that non-Shias have been excluded and disadvantaged because of their religion. Consequently, the Kurds have

been discriminated on a religious basis and this has led to a deterioration of the legal status of the Kurds. Discrimination on the basis of religion has become an obstacle to non-Shias, including the Kurds, obtaining equal citizenship.

6.2.2 Legal obstacles

Although there are no specific anti-Kurdish laws in the constitution, the authorities find pretexts for persecuting Kurds who openly and non-violently profess their group identity. Once arrested, many have experienced violations of due process that contravene Iranian law and fall far below international standards. Kurds are also denied rights to teach their language, and they face discrimination with respect to housing, public education and employment. The Iranian constitution does not grant autonomy to ethnic minorities, but it does allow the use of minority languages in education. Kurds have found, however, that this aspect of the constitution is often violated. Amnesty International (2008:2) reports '[a]n NGO running two nursery schools in Sandaj and Mahabad had been closed down because they taught in the Kurdish language'. In a report to the United Nations, one scholar notes '[t]he authorities have refused the teaching of Kurdish at any level of schools in Kurdistan, and have limited the use of Kurdish in the print and electronic media and drastically reduced the air-time for Kurdish programming since 1979'. (Ghanea 2003:27).

Kurds face state-sponsored discrimination in housing, public education and employment. A 2005 report by U.N. Special Rapporteur on Adequate Housing, Miloon Kothari (2005:21) finds 'Kurds were being disproportionately affected by confiscation and ''confiscation style'' purchase of property by the government'. Kurds complain that state universities grant few places to students from Kurdistan, compromising the future development of the region. Unemployment in Kurdish areas is notably higher than in other regions of the country. Evidence suggests that material advancement of the Kurds is also stunted by unofficial policies carried out by the authorities, including the denial

of business licences in primary and secondary industries such as mining and manufacturing. Human rights campaigners and journalists in Iran who speak out on behalf of the Kurds face severe consequences, which can also affect their families. '[i]n October 2008, Negin Sheikholeslami was arbitrarily arrested – she is the founder of the Azar Mehr Women's Social and Cultural Society of Kurdistan which organises training and sports activities for Kurdish women. Sheikholeslami also works for the Human Rights Organization of Kurdistan (HROK), which reports incidences of human rights abuses, and her arrest is the latest in a string of arbitrary arrests of HROK members'. (Amnesty International 2008:39). The Kurdish Human Rights Project (2008:28) reports that '[t]here are more than 200 Kurdish prisoners of conscience in Iran, who have been imprisoned for expressing their opinions non-violently'.

One of the commonly used security laws in the Penal Code is Article 186, which carries the possible sentences of death and banishment for being a member of, or supporting, an organisation that has waged armed struggle against the Islamic Republic. Another is Article 500, which punishes anyone found guilty of 'advertising against the order of the Islamic Republic of Iran'. (Iranian Penal Code: Article 500). Kurdish activists such as Farzad Kamangar, teacher and reporter for the Human Rights Organization of Iran, have been sentenced to death for "acting against state security" and "enmity with God". (KIP 2009:2). The charges made against Kurdish activists often include allegations of unspecified breaches of national security or violating morality, which create a legal exemption from honouring human rights protections outlined in the constitution. For example, freedom of expression is allowed, 'Except when it is detrimental to the fundamental principles of Islam or the rights of the public'. (Constitution of the Islamic Republic of Iran 1989:Article24). Activities that count as being 'against' Islam or the Islamic Republic can be very broadly defined to suit the purposes of the local or national government.

Arbitrary detention, disappearances, unfair trials and indefinite solitary confinement are routine treatment for Kurdish prisoners. In an interview with Radio Farda, Roya Toloui described how she had been kicked, slapped, and beaten. Only when those who had physically abused her asked for her children to be brought into the prison and threatened to burn them to death, did she give them the false confessions they desired (Cameron and Danesh 2008:22). Aside from violating international law, the widespread use of torture also contravenes Iran's own constitutional ban on the use of torture under Article 8. 'Due process has also been violated in the trials of Kurdish prisoners, even though Article 8 of the constitution upholds the right to an open jury trial'. (KHRP 2008:8). Human Rights Watch (2008:3) reports 'In the case of Mr. Kamangar, only one judge reviewed the case, the defendant was not allowed to speak, and the trial lasted less than ten minutes'.

Such violations of the right to a fair trial and judicial review are widespread demonstrating the low legal status of the Kurds and other ethnic minorities. Often those in custody are held in solitary confinement for long periods of time and they are prevented from any communication with their families. For the first month and a half that Mohammad Sadigh Kabodwand, founder and chairman of the Kurdish Human Rights Organisation was in custody, his family did not know where he was being detained. This is not unusual for political prisoners of any ethnicity. (HRW 2008:4). Due to many legal obstacles which have been examined in the above, Kurds of Iran are ill-treated and discriminated against, demonstrating their minimal legal status. Hence, equal citizenship is not guaranteed by the legal system of Iran.

6.2.3   Social obstacles

From the very establishment of the Islamic Republic there was fear of territorial disintegration, and as a result, Kurdish nationalism has been undermined and depicted

as dangerous and anti-Iranian. Ayatollah Khomeini himself made a statement in December 1979 in which he declared (Cameron and Danesh 2008:47):

> Sometimes the word minorities are used to refer to people such as Kurds, Lurs, Turks, Persians, Baluchis, and such. These people should not be called minorities, because this term assumes that there is a difference between these brothers. In Islam, such a difference has no place at all. There is no difference between Muslims who speak different languages. It is very probable that such problems have been created by those who do not wish Muslim countries to be united. They create the issues of nationalism and such-isms which are contrary to Islamic doctrines. Their plan is to destroy Islam and Islamic philosophy.

There were such claims at the beginning of the revolution as there was no such thing as minorities and no difference between Muslims. These were aimed at creating unity under the new regime. In practice, unity meant domination by Persian Shia elements of society. The result has been exclusion, rather than inclusion and assimilation. The denial of Kurdish identity has provoked the alienation of the Kurds from mainstream Iranian society. Although the majority of Kurds supported the revolution, when the draft constitution omitted any mention of the Kurds, most Kurds boycotted the referendum on the constitution. In the above statement from Khomeini in 1979, not only did he refuse to acknowledge the existence of Kurdish identity rights, he also suggested that those who made such claims were agents of foreign powers.

This is indicative of the state's view that has existed from the outset of the revolution, that foreign powers might exploit Kurdish nationalism to destabilise the regime. Khomeini's words give an excuse for labelling Kurds as 'anti-Iranian' and 'anti-Islamic,' which stigmatises Kurds and opens them up to accusations, such as threatening national security or being an enemy of God, for which they can be tried in court. '[t]he geography of Kurdish communities, many of them near borders, contributes to the perception that they are both an internal and external threat to the integrity of the state'. (Yildiz & Taysi 2004:37). Popular and state-level suspicion of Iranian Kurds is not new to Iran, particularly given Kurdish history of nationalism and campaigns for greater autonomy. The question is whether the Iranian government is

doing anything to help stop discrimination against Kurds, or whether it actually encourages the stereotyping of Kurds as hostile dissenters.

Kurds suffer not only from state-level discrimination and harassment, but also from neglect. For example, Koohi-Kamali (2003:38) explains '[a]though there is difficulty with obtaining access to water in the eastern areas of Iranian Kurdistan, these water shortages could be eliminated if adequate assistance and guidance were given to the peasants by the government'. According to Yildiz and Taysi (2004:79) '[m]any Kurds feel that their region suffers from intentional underdevelopment at the hands of the government'. Whether this neglect is intentional or not, it contravenes Article 48 of the constitution (1989) which stipulates 'There must be no discrimination among the various provinces with regard to the distribution of public revenues to ensure that each region has the necessary resources to meet its needs and capacity for growth'. As Yildiz and Taysi (2004:87) point out '[t]his economic marginalisation severely inhibits the Kurds from actively participating in Iranian public life'. Widespread prejudice against the Kurds has affected their livelihoods in direct ways. '[i]n May 2001, the non-Kurdish president of the Piranshehr Sugar Company was allowed to dismiss eighty percent of the Kurdish employees and instead hire workers of other ethnicities and those who collaborated with the Revolutionary Guards'. (UN 2002:13). Despite complaints to the government, the Sugar Company was not penalised. The authorities also turn a blind eye to incidents of crime within Kurdish communities. (UN 2002:14). The educational system in Iran also disadvantages Kurds. A UN report (2003:18) finds '[l]iteracy rates for the age group 15-24 in Kurdistan were notably below the national average'. The degree of discrimination and harassment faced by Kurdish teachers is also high. The Human Rights Organization of Kurdistan (2007:3) reports in February 2007 'More than 1,500 teachers and professors in Kurdistan had been fired by the authorities on religious

grounds. They wrote an open letter to the government decrying their lack of freedom and calling on human rights organisations to protest against their dismissal'.

The Kurds suffer socially due to the social obstacles of the Iranian authorities. The social policy of Iran is not based on equal access for minorities, including the Kurds, supporting their low legal status. The following sections analyse the components of equal citizenship in more detail.

6.3   Discussions

In order to investigate the legal status of the Kurds, Iranian legal system and judicial system of the country need to be discussed. Comparison and contrast of the Iranian example with the international standards is necessary. Hence, this section discusses freedom of expression and association and minority rights in international laws.

6.3.1   Freedom of expression in Iranian law and in the international legal standards

Iranian law claims to protect freedom of expression and thought, albeit with broad exceptions. Article 23 (1989) of the constitution states 'The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief '. Article 24 (1989) ensures the freedom of the press, with the broad exception of cases the authorities consider 'detrimental to the fundamental principles of Islam or the rights of the public'. Article 15 of the Iran's constitution (1989) designates Persian as the 'official and shared language of Iran" but allows for the '"use of local and ethnic languages" in groups, press and media and teaching of their literature in schools alongside Persian'. The above articles show that non-Persian people in Iran are not treated equally and do not have equal opportunities for publications and expressions. Article 19 of the Constitution (1989) stipulates 'the people of Iran, no matter what ethnicity or tribe, have equal rights, and attributes such as colour or race or language will not be a reason for privilege'.

Despite these provisions, the cases covered in this chapter show that the editors and writers of Kurdish publications face violations of rights guaranteed by Iran's constitution and Press Law. Article 9 of the constitution (1989) contains two seemingly contradictory provisions. On the one hand, it violates international human rights law and allows no option for balancing individual rights of freedom of expression or association with legitimate security considerations when it states 'No individual, group, or authority, has the right to infringe in the slightest way upon the political, cultural, economic, and military independence or the territorial integrity of Iran under the pretext of exercising freedom'. The article goes on to state that 'no authority has the right to abrogate legitimate freedoms, not even by enacting laws and regulations for that purpose, under the pretext of preserving the independence and territorial integrity of the country'. The authorities often rely on the first part of Article 9 to justify restricting freedom of speech in the Kurdish regions, while disregarding the same article's prohibition on undue restrictions. Iran's Press Law and security laws arbitrarily limit speech protected under international human rights law. Article 6 of the Press Law, ratified in 1986, echoes the constitution's ban on publications that 'violate Islamic principles and codes and public rights'. (Iran Press Law 1989). In 2000, the Majles (parliament) amended Article 6 to include 'private rights', thereby expanding the scope of material the government may suppress. (Private rights govern individuals' business and family relationships.) In 2000, the parliament passed legislation that made all electronic publications subject to Iran's Press Law, thus allowing the government to expand its restrictions to include online content.

The scope of Article 6 gives the Iranian authorities broad legal cover to suppress freedom of expression. Section 1 prohibits publication of material that is 'atheistic or contrary to Islamic codes, or promote subjects which might damage the foundation of the Islamic Republic'. (Iran Press Law: 1989). Section 4 outlaws material that 'creates

discord between and among social walks of life, especially by raising racial issues'. (Iran Press Law: 1989). Section 9 outlaws 'quoting articles from the deviant press, parties, and groups which oppose Islam (inside and outside the country) in such a manner as to propagate such ideas'. (Iran Press Law 1989: Article 6). Section 12 prohibits publishing anything critical of the constitution. Article 2 of the Press Law (1989) 'endeavours to prevent pitting different groups of the community against each other by dividing people by race, language, customs and local traditions'. Publications in local languages such as Kurdish or Azeri should be permissible, provided that the publication does not aim to "divide people based on their language" and the publisher obtains permission to publish from the Ministry of Culture and Islamic Guidance. 'Authorities increasingly, particularly since the beginning of the Ahmadinejad administration, present violations of Article 2 as national security issues, including "endangering national security" or "disrupting public order" in the charges it brings against journalists in Kurdish areas'. (Human Rights Watch 2008:4). Authorities may try press related offences in general courts '[t]he general courts include, among others, all penal and civil courts), Revolutionary Courts, clerical courts, or military courts'. (Iran Press Law: 1989).

According to Article 34 of the Press Law (1989), all press-related offences must be tried in 'public courts in the presence of a jury'. Article 118 of the Code of Criminal Procedures also affirms that trials must be held in public with the exception of cases that pertain to "chastity," "family issues or private disputes per the request of both sides," or cases where a "public prosecution would disrupt security or religious feelings'. (Code of the Criminal Procedure for the Courts of General Jurisdiction and Revolutionary Courts 1999:118). The government prosecuted most press-related cases in Kurdish areas in closed sessions, often in Revolutionary Courts, without the presence of a jury. Revolutionary Courts were established in 1979 with the mandate to try crimes against

national security, slandering the founder of the Islamic Republic and the Supreme Leader, and smuggling narcotics. To restrict publishing activities in Kurdish areas through prosecutions and convictions in the Revolutionary Courts, the government relies especially on Article 9 of the Press Law (1989). This is used to control any publishing activities of members and supporters of anti-revolutionary or illegal groups or those convicted in the Revolutionary Courts on charges of anti-revolutionary activities. It also bans acting against national or international security and also those who act or spread propaganda against the system of the Islamic Republic of Iran.

Freedom of expression is an essential element of equal citizenship. It is clear from the above section that articles of the Iranian constitution and Press Law are the major obstacles in guaranteeing equal rights for the Kurds of Iran. These constitutional and legal obstacles have led to the poor legal status of minorities and the Kurds. As set out in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) (1976:37) 'Iran was one of the first countries in the world to ratify the ICCPR, in 1975 (it entered into force in 1976)'. Article 19 guarantees all individuals the 'Freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media'. (ICCPR 1976:Article14). The UN Human Rights Committee, which monitors state compliance with the ICCPR states '[t]he legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights'. (Mukong v. Cameroon 1994:37). Iran consistently fails to meet the international commitments that it signed up to, such as the International Covenant on Civil and Political Rights, to which Iran is a state party. Iran ignores its own laws and international obligations with regard to the protection of human rights. The right to equality (non-discrimination) is enshrined in both the Universal Declaration

of Human Rights and the Islamic Declaration of Human Rights, which bans 'any discrimination on the grounds of race, colour, language, gender, or religious beliefs or political affiliation'. (Cameron and Danesh 2008:30).

Freedom of thought is protected by the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Declaration of Principles on Tolerance, of UNESCO. In the Universal Declaration of Human Rights (1948), Article 19 says: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference'.

In order to guarantee equal citizenship for all minorities of Iran including the Kurds, radical legal reform is necessary. Kurds are ill-treated and discriminated against on a legal basis. Hence, improving the legal status of the Kurds would not be achieved without amending the law. . It is necessary to amend Article 9 of the constitution by removing "in the slightest way" from the prohibition against infringing on the country's independence or territorial integrity "under the pretext of exercising freedom" amend provisions of the Press Law that are excessively broad and used to curtail freedom of speech beyond the limits allowed by international law, specifically: Article 2, which "endeavours to negate the drawing up of false and divisive lines or, pitting different groups of the community against each other…" Section 4 of Article 6, which prohibits publishing material that "creates discord between and among social walks of life especially by raising ethnic and racial issues." Any restrictions on expression need to be strictly limited to speech likely to incite directly and imminently violence, discrimination, or harassment and intimidation against an individual or clearly defined group. The broadly-worded provisions in the Islamic Penal Code entitled 'Offenses against the National and International Security of the Country'. (Islamic Penal Code of Iran: 1991), permits the government to punish individuals arbitrarily for peaceful

political expression, including the following provisions: Article 498, which criminalises the establishment of any group that the government charges with 'disrupting national security' which the government has used to prosecute peaceful dissent. Article 500, which sets a prison sentence of three months to one year for anyone convicted of "propaganda against the state of the Islamic Republic of Iran or propaganda for the benefit of group or institutions against the state." The above articles are the major obstacles for the legal status of the Kurds. It is necessary to amend them and adopt international standards in order to guarantee equal citizenship.

Articles of the Iranian constitution, Iran press law and Penal code have hindered minorities including Kurds from achieving equal citizenship. The international legal standards referred to above, which Iran ratified, should be reflected in the Iranian constitution, penal code and political system. This reform is necessary for Iran to comply with the ICCPR and the Universal Declaration of Human Rights

6.3.2   Freedom of association in International Human Rights Law and in Iranian law

In order to improve the legal status of the Kurds generally and in Iran particularly, it is important to adopt International Human Rights Law. This section addresses freedom of association in International Human Rights Law and comparing this with the Iranian laws and legal system. The right to freedom of association is well established in international law. The right to freedom of association may be restricted, but only on certain prescribed grounds and only when particular circumstances apply. According to Article 22 of the International Covenant on Civil and Political Rights -ICCPR (1976) which Iran ratified it: (1) Everyone shall have the right to freedom of association with others, including forming and joining trade unions for the protection of his interest. (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of

national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

The restrictions specified in Article 22(2) should be interpreted narrowly. For example, terms such as "national security" and "public safety" refer to situations involving an immediate and violent threat to the nation. "Necessary" restrictions must be proportionate, that is, carefully balanced against the specific reason for the restriction being put in place. ICCPR explicitly has guaranteed the exercise of the rights of association unless it affects national security or public order and interests. This chapter shows that national security is defined obscurely in the Iranian law and biased towards the Shia sect and those of Persian ethnicity.

Freedom of Association is a significant element of equal citizenship. Hence, this section examines freedom of association in Iranian law. Iran's constitution allows for the freedom of association, albeit with broadly stated exceptions. Article 26 of the constitution (1989) states freedom of association is granted except for those who 'violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic'. Iranian authorities primarily rely on the set of "security laws" in Iran's Islamic Penal Code to suppress freedom of association. Article 498 of the same constitution outlaws the establishment of a group for the purpose of 'disrupting national security'. Article 499 sets prison terms of 'three to five months for anyone who participates in such groups, unless the person can prove that he or she had no knowledge of its goals'. Article 500 sets prison terms of three months to one year for anyone who 'in any way undertakes propaganda against the state of the Islamic Republic of Iran or undertakes propaganda for the benefit of group or institutions against the state'. Iran's Security Laws arbitrarily limit freedom of association protected by Article 22 of the International Covenant on Civil and Political Rights. Article 22

states 'everyone shall have the right to freedom of association with others' (ICCPR 1976: Article 22).

Human Rights Watch has previously documented how the authorities construe these broadly-worded security laws to suppress the activities of a broad range of civil society activists in Tehran. The government uses essentially the same mechanisms to suppress activities by critics in the country's Kurdish areas and persecute those activists who promote or engage in those activities. The legal status of the Kurds has been problematic for the Kurds of Iran because they are not guaranteed freedom of association as a fundamental human right in Iran.

6.3.3 Minority rights in International Human Rights Law and in Iranian law

Kurds in Iran are a minority. The following section analyses minority rights under International Human Rights Law in order to make a comparison between the rights of minorities in International law and under Iranian law. Article 27 of the ICCPR(1976) states '[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language'. The 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the UN General Assembly(1992) states in Article 2 'Persons belonging to minorities have the right to establish and maintain their own associations'. This means that a state not only cannot prevent a minority from using its language; it is under a positive duty to ensure that a minority can set up associations and be able to publish in their language and practice their religion without discrimination. In order to improve the legal status of the Kurds of Iran, articles of the International law would need to be adopted by the Iranian authorities. International bodies such as UN would then assist in fulfilling

equality for minorities of Iran including the Kurds because Iran is a member of the UN and needs to abide to the codes and articles of it.

The following section examines the rights of minorities in Iran and shows that the legal system of Iran lacks a monitoring system for the rights of minorities in the country. The Iranian constitution includes provisions to protect the rights of linguistic, ethnic, and religious minorities. Article 12 of the constitution (1989) establishes Islam, specifically the Twelve School of Shiaism as the official religion of the country, but grants other Islamic schools 'full respect and their followers are free to act in accordance with their own jurisprudence in performing their religious rituals'. Article 13 grants religious freedom only to specifically "recognised religious minorities," stating that 'Zoroastrian, Jewish, and Christian Iranians are the only recognised religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education'. Article 19 states 'all people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; colour, race, language, and the like, do not bestow any privilege'.

There is no monitoring system of the human rights record of the Iranian Republic. The media is controlled, or closely under scrutiny of the state and the security forces. The Human Rights Watch report (2007:13) states '[t]here is no mechanism for monitoring and investigating human rights violations perpetrated by agents of the government. The closure of independent media in Iran has helped to perpetuate an atmosphere of impunity'. The Kurds are victim of deliberate discrimination. It is also clear that minorities are marginalised in the constitution and legal system of Iran.

6.3.4   Judicial system of Iran and politicising judiciary
The current judicial system of Iran was implemented and established by Ali Akbar Davar and some of his contemporaries. The system went through changes during the

second Pahlavi era, and was drastically changed after the 1979 revolution court Iran. Ever since then, the judicial system has been firmly based on Shia Islamic Law. Iranian political leaders believe that the EU human rights laws are the "opium of the masses". Ayatollah Khomeini stated this in his key speech in commemoration of the first martyrs of the Revolution on 19 February 1988 'The Declaration of Human Rights exists only to deceive nations; it is the opium of the masses'. (ghadeer.org 2009:3). The head of the Judiciary is appointed by the Supreme Leader, who in turn appoints the head of the Supreme Court and the chief public prosecutor.

In an Iranian court the judge acts as prosecutor, jury, and arbiter. The judge holds absolute power. In practice, judges may be overwhelmed by cases, and not have the time to properly think about each case. All judges are certified in Islamic law, and most, but not all, are members of the ruling clergy. The lack of time and total control of the judge results in overcrowding in Iranian prisons. In addition, there are several different court systems, as has been reported by European human rights organisations and the US State Department Report of 2005. The two most active are the traditional courts, which adjudicate civil and criminal offences, and the Islamic Revolutionary Courts. The latter try offences viewed as potentially threatening to the Islamic Republic, including threats to internal or external security, narcotics and economic crimes, and official corruption. This may be the reason why deaths in custody are very common. The US State Department report (2005:23) states '[d]eaths in custody were common both for suspected militants and criminals. The Home Ministry reported that, nationwide, deaths in custody had increased from 1,340 in 2002 to 1,462 by the end of 2003. According to the NHRC, state governments had not investigated at least 3,575 previous deaths in custody cases'. The rulings of the Special Clerical Court, which functions independently of the regular judicial framework and is accountable only to the Supreme Leader, are also final and cannot be appealed. The Special Clerical Court handles

crimes allegedly committed by clerics, although it has also taken on cases involving lay people. Regarding the discriminatory law and practices, Amnesty International (2005:36) states:

> Discriminatory laws and practices continued to be the source of social and political unrest and of human rights violations. People continued to be denied state employment because of their religious affiliation and political opinions under gozinesh, or "selection" provisions which serve to prohibit individuals from working for state bodies. Analogous laws applied to professional bodies such as the Bar Association or trades unions. In January, gozinesh criteria were deployed by the Guardians' Council, which reviews laws and policies to ensure that they uphold Islamic tenets and the Constitution, in order to disqualify around 3,500 prospective candidates from standing in the February parliamentary elections.

Discrimination against other ethnic and religious groups exists in Iran. This Ahl-I Haqq scenario is useful to understand the lack of clarity in many important issues and also shows how individuals, e.g. Mullahs or Ayatollahs are influential within the judiciary system. One case is where a Shia Muslim kills an Ahl-i Haqq devotee. The judge Hikmati Sadiqqi of the province of Alam Abadi Gharb does not know how to charge the accused. He consults the Grand Ayatollah Fazil Lingarani, on 12 December 2000, to seek an article in the Penal Code, by which justices can be achieved, as the Iranian judiciary system does not address cases where a Shia and an Ahl-i Haqq devotee were involved. Ahl-i Haqq are localised in the Kurdistan part of Iran. The Grand Ayatollah Fazil Lingarani writes a note under the letter of Judge Hikmati Sadiqqi, on 19 January 2001, saying that Ahl-i Haqq are Kafir (non-believers) or infidels and the accused Shia "murder" can be discharged. This is equivalent to Fatwa against Ahl-i Haqq. (Amnesty International 2001:12).

The judiciary accommodates and defends the political system. The following diagram shows the complex and undemocratic system of Iran.
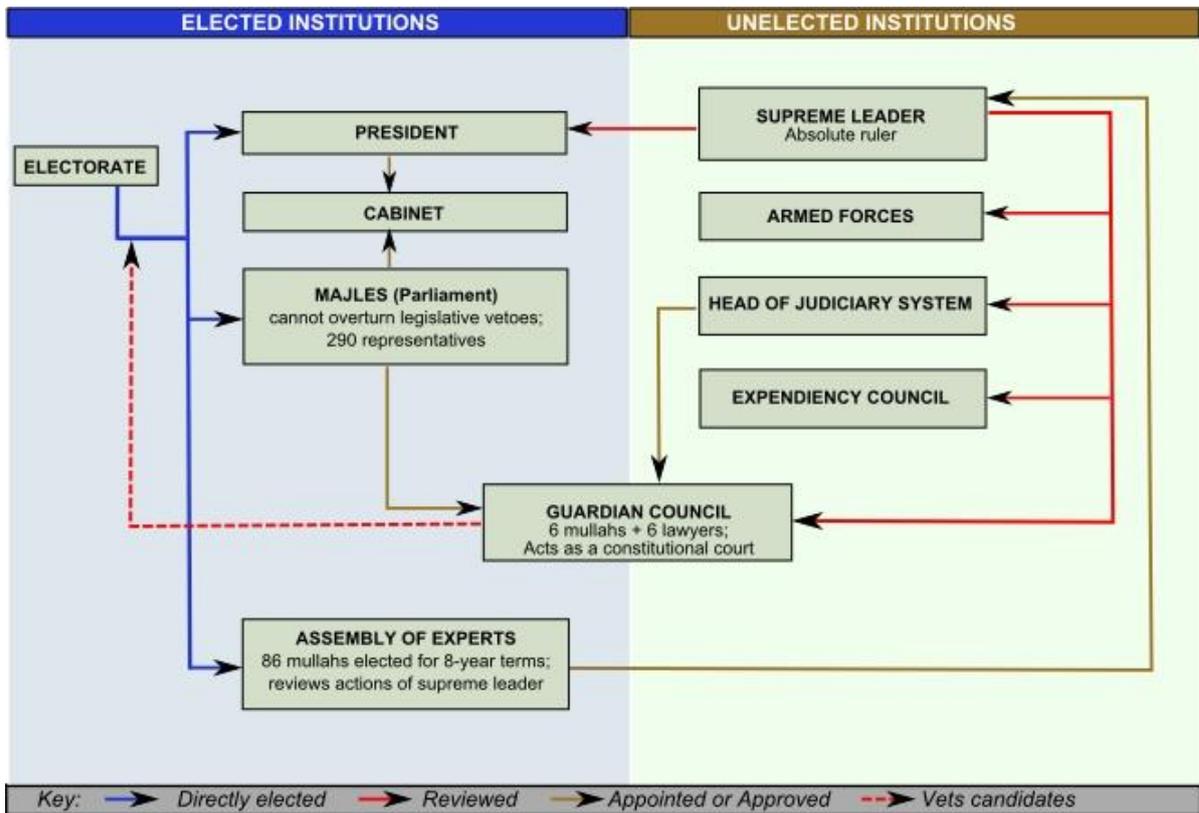
The political and Legal system of Iran is Cleary is controlled by unelected bodies (Hakki 2008:24).

The party that runs Iran is not elected democratically. The electoral candidates can only stand up at the next elections provided they are approved electoral candidates by an unelected body in Iran called the Council of Guardians. '[T]he Council of Guardians approves the candidate and the actions of the candidates to the whether they are in accord with the Islamic Law (Sharia)'. (Hakki 2008:24). A recent report published by the Human Rights Watch (2009:22) believes '[t]here is violation of freedom of torture and ill-human treatment to such an extent that it recommends the Iranian government make immediate investigations into the complaints of torture and degrading treatment. The body also recommends that justice is brought by a prosecution or disciplinary action is taken against the officials who are responsible for the torture or ill treatment'. The judicial system is an important tool of the Iranian authorities, is not democratic and its structure does not assist guaranteeing equal citizenship for the Kurds.

6.4 Concluding Remarks

The majority of the Iranian Kurds are Sunni. They were ill-treated in the era of the Shah's regime on the basis of ethnic and linguistic differences. Since the revolution of 1979, the Kurds have been ill-treated on the basis of ethnicity, language and religion, because the current regime is pro-Persian and a Shia sect of Islam. Iranian minorities, including the Kurds have no cultural and civil forums, no political party is allowed to be built on their own, literary and academic curricula in their languages are banned. Improving the poor legal status of the Kurds and achieving equal citizenship would be genuine if the Iranian constitution was amended to recognise all the diverse ethnic and religious elements of Iran.

Minorities, including the Kurds need to be given education and training in their own languages to enable them to claim their rightful place in their own society. International human rights organisations and the UN need to take steps on behalf of minorities in the world for advancing the protection of them under international law. There are no state TV stations and Radio in minority languages, no education in regional languages, neither in schools nor in universities and institutions of higher education. Tehran's ultra centralised development strategy has resulted in a wide socioeconomic gap between the centre and the peripheries, where there is also an uneven distribution of power, socioeconomic resources, and socio-cultural status. The violence in remote regions such as Kurdistan, Khuzistan, Azerbaijan and Baluchistan clearly has ethnic components. The policies like restrictions on the opposition political parties (minorities are not allowed to have any political parties and cultural forums), strict procedures on minorities' civil society, suppression of none-state media, subordination of the judicial system, and abolition of the direct election of regional minorities are routine actions in Iran which undermine the principle of equal access for minorities and worsens the legal status of the Kurds. International community and policy makers need to insist that the

rights of minorities and indigenous people are respected. The participation of minorities in the state affairs and electoral representation is essential if conflict is to be prevented and citizens are treated equally. The inclusion of minorities leads to stronger and more cohesive societies. Exclusion results in instability, conflict, and in the most extreme cases leads to genocide such as; gassing Kurds in Sardasht, mass grave in Khavaran. The international community should apply the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN resolution 47/135 of 18 December 1992) and also the Declaration on the Rights of Indigenous peoples to Iran and apply pressure on the Islamic republic's rulers to respect these obligations.

The International community should call on the Iranian Government to respond with policies that address effectively the widespread, entrenched and institutionalised discrimination, and the organised assimilation of languages and cultures in the society of Iranian minorities. United Nations independent experts need to inspect the minorities' situation, and also supervise the unfair elections where minorities have no real representatives. The Army of the Guardians of the Islamic Revolution-IRGC (ideological armed forces which is separated from regular state armed forces) and the Mullah's performances as decision makers have been a dilemma and has failed (Abrahamian 2008:178). Their term as state rulers demonstrates key characteristics of social injustice, discrimination and state intervention in businesses. In order to improve the legal status of the Kurds and achieving equal citizenship for the Iranian Kurds, constitution of Iran, penal code of the country and political system need drastic reform as shown in the above sections of this chapter.

7 Chapter seven: Denationalisation and the repression of Syrian Kurds' civil and cultural rights

The Syrian Kurds are rarely featured in the media, or in academic research dedicated to Syria. Even in research on the Kurdish question, most works concentrate on the Kurdish regions of Turkey, Iraq, and to a lesser degree, Iran. This is not just the case today. The Kurdish factor in Syria has always been a marginalised issue in classic works about the French Mandate and the period of independence in the Levant. The only exceptions are the works of Ismet Sharif Vanly, which are generally biased in favour of the Kurds.

The treatment of the Kurds according to the Syrian Constitution and the judicial system need to be examined. This chapter analyses the current legal status of the Kurds in Syria. Examining the denial of equal citizenship (equal access to political, educational, social and economic institutions of the country) for the Syrian Kurds is the major aim of this chapter. In order to achieve this aim, this chapter addresses three issues and how they interact with one another; the judicial system, internal oppression and denial the rights of the Kurds in Syria. The Syrian Constitution, the legal structure of the country and the policies of the government are addressed.

The arsenal the apparatus that is built for internal oppression can lead to a threat to the stability of the country. The judiciary needs to be independent so that everyone is treated equally before the law. Equal citizenship would be achieved by implementing the principle of a legal and political system that is not biased towards one ethnicity or religion. The politicians should not interfere in the judicial system. The law should remain transparent to the population and not change continuously with the needs and interests of the ruling political elite. Civil organisations have a substantial input in the making of legislation and in implementing the law. By contrast, one-party rule goes against the nature of civil society. It leaves the institutions of the state as nothing more than a political instrument in the hands of the ruling elite – the Ba'th Party carries out this policy in Syria. The law continuously changes with the needs of the political

system, ensuring that one-party rule is maintained. The product of this is that individuals and communities that are defined by the political system as enemies, or not existing (of which Kurds are such in Syria), are oppressed and discriminated against.

In fact, order is broken down and there is no rule of law. The political, social, economic and judicial areas of life are all mixed up; no one knows which law applies to whom. The Constitution is a political tool of the Ba'th Party (representing the Arab Socialist Resurrection movement). Syria is a republic under the authoritarian regime of President Bashar al-Assad. The president makes key decisions with counsel from a small circle of security advisors, ministers, and senior members of the ruling Ba'th Party. The Constitution mandates the primacy of the Ba'th Party leaders in state institutions and the parliament. President al-Asad and the Party leaders, supported by various security services, dominate all three branches of government. This chapter begins by examining the ethnic structure of Syria. Regarding the establishment of the country of Syria, Davis (1997:38) states:

> The Syrian republic was founded in 1943, two years after the occupation of Syria by Allied forces (British, Commonwealth and Free French forces) in 1941. Elections held in 1943 resulted in the victory of the National Bloc and the appointment of Shukri Quwwatli as first elected President. The last French soldiers left Syrian territory in April 1946, which is regarded as the independence year of the Syrian Republic. A constitutional amendment allowed Quwwatli to be re-elected to office following the victory of the National Bloc in the 1947 elections.

Syria was under the mandate of France and obtained Independence in 1920. 'On 07 March 1920, the parliament declared Syrian independence (including Palestine and Lebanon) and rejected all foreign tutelage' (Tejel 2009:20). The Syrian state's repression of its Kurdish population, which so far has not sought a separate state, may contribute to Kurdish claims for self-determination in Turkey, Iran and Iraq. It would be a mistake to see the Kurdish problem in Syria solely as an ethnic problem with regional dimensions; the Syrian Kurds also should be seen within the context of the lack of

democratic governance in Syria, which affects all Syrians. That the Kurds are denied basic human rights – especially civil, political and cultural rights – is particularly damaging. The situation also offers a direction for policy work, however: the development of democratic governance in Syria could mitigate the Kurdish problem in Syria and, in turn, diminish calls for separatism by other Kurds in the region.

The following sections present the legal status of the Kurds by highlighting the relevant articles of the Constitution and the penal code and policies of the Syrian authorities towards the Syrian Kurds.

7.1   The legal status of Kurds in Syria

In order to investigate the legal status of the Kurds in Syria and whether they enjoy equal citizenship, it is necessary to analyse the powerful legal document of the country which is its constitution. 'The current Syrian constitution (150 Articles) was ratified in 1973. Previous constitutions were Constitutions of 1930, 1950, 1953, 1958 provisional constitution and 1964 provisional constitution' (Davis 1997:137). The status of Syrian Jazeera and the disagreement between France and Turkey in regard to the establishment of the Turko-Syrian border favoured the utilisation of the 'Kurdish Card' by the French. As the result, thousands of Kurdish refugees, including the instigators of the Kurdish movement in Turkey, moved to Syria. The Syrian political space became more Arabised, and pan-Arab aspirations constituted elements of consensus between the principal political and military forces in the country, excluding all other visions of the construction of the state and Syrian society. This in turn contributed to the progressive ethnicisation of individuals and groups.

The establishment of a state of emergency since 1963 has caused deterioration in the legal status of the Kurds by dealing with the demands of the Syrian Kurds through emergency laws rather than an open laws and fair trials. Tejel (2009:232) argues 'Aside from the emergence of a regime with an authoritative stance toward individual liberties,

there were other actions promoted by the Ba'thist regime which did affect the Kurds, such as the Arabisation of toponyms in Christian villages. Rural exodus has been another socioeconomic transformation touching all peripheral regions'.

The Kurds have been living in their ancient historical homeland and have actively contributed to liberating and building up the modern republic of Syria. Successive Syrian governments since independence in 1946 have denied the legitimate national rights of the Kurdish people and their contributions to achieving independence.

An accurate number cannot be stated, as the Syrian authorities do not recognise Kurdish people, hence there are no official figures. Most Syrian Kurds live in three areas; Cizîr, Kurdax and Kobanê in the north and east, close to the Turkish and Iraqi borders, and adjoining those other parts of Kurdistan. The most important Kurdish towns are Qamishli, Efrîn, Amûdê, Kobanê, Hisîça, Serêkaniyê, Çelaxe, Girkoçer, Derbasî, Tirbespî, Çaxir, Tilberek, Dêrik and Tiltemir. According to Abas (2005:21) '[h]uman rights violations still occur on a daily basis to the Kurdish population. These violations threaten the very livelihood of the Kurdish population. The Kurds living in Syria are not recognized as a minority, some not even as Syrian citizens. Their cultural and civil rights are withheld from them. The political parties and organizations of the Syrian Kurds are forbidden in Syria'.

Areas in Syria inhabited by Kurds (KHRP 2008).

In 1963 the Syrian Ba'th Party published a 12-point plan aimed at wiping out the cultural identity of the Kurds. The plan provided for the establishment of the Arabisation policy under which the Kurdish population was to be replaced with Arabs loyal to and armed by the regime, who was forcibly resettled on Kurdish land. Since 1967, the campaign of Arabisation has replaced the Kurdish names of cities, streets, and buildings with Arab names, Kurdish publications are forbidden, Kurdish language media are not allowed, the teaching of Kurdish in schools banned, and new-borns may not be registered with Kurdish names. Whoever professes himself a Kurd in Syria, or demands cultural and political rights for Kurds is persecuted, imprisoned and mistreated, including women and children who are jailed for speaking their minds. According to Abas (2005:23): '[t]oday 225,000 Kurds in Syria are designated as "foreigners" and 25,000 are categorised as "unregistered"'.

In recent years, with the attention that the Kurdish issue has received in the international arena, the majority of young educated Kurds have discovered their Kurdish identity, in particular those who live in the Kurdish areas. Hence the intensive Kurdish activities in Syria, but the human costs have been high. According to Amnesty International (2005:13), concerns over discrimination against the Kurds have been expressed by UN

bodies, including the UN Committee on Economic, Social and Cultural Rights, which has strongly recommended that the Syrian authorities '[t]ake effective measures to combat discrimination in practice against minority groups, in particular the Kurds'. Such measures should be aimed especially at improving birth registration and school attendance and allowing for the use of their languages and other expressions of their culture.

The decree of the Ministry of the Interior No. 122 of 30 September 1992 ordered that, in the Kurdish-populated provinces such as Hasaka, when registering newborn babies with the civil affairs administration, prior permission of the security organs must be obtained regarding the name of the baby. In Syria, the Kurdish language is not recognised as an official language and it is not taught in schools. It has been forbidden to publish materials in Kurdish since 1958. In 1987 the Syrian authorities extended the ban to the playing and circulation of Kurdish music cassettes and videos. According to some sources, the ban on Kurdish being taught in schools and universities was re-stated by a Secret Decree issued in 1989, which also banned the use of the language in all official establishments.

There are unconfirmed reports that by the summer of 2002 the authorities raised the maximum sentence for printing in Kurdish, as well as for the teaching of Kurdish, to five years imprisonment. According to Amnesty International (2005:14) 'Secret decree no. 1856 – S25 was issued in November 1989 and signed by former governor of Hasakah province and the Prime Minister Mustafa Miro, who is of Kurdish origin. The names of Kurdish villages and shops were changed into Arabic. Parents were pressured to give their children Arabic rather than Kurdish names'. The oppression of Kurds is institutionalised in Syria; the Syrian Constitution recognises neither Kurds nor their language and culture. Naming the country the 'Syrian Arab Republic' can be seen as a denial of the identity of the Kurds and also shows the sensitivity of the Syrian

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authorities towards Syrian Kurds. This practice can be seen as directly against the equal citizenship of all in Syria.

In order to investigate the current legal status of the Kurds in Syria, it is vital to analyse the Constitution and the structure of the government of the country. This section emphasises the articles of the Constitution and the government institutions which are relevant to the legal rights of the Kurds. According to the Syrian Constitution, neither Kurds nor their language or culture exists. The Syrian Constitution does not recognise Kurds as a people living in Syria. Article 1 of the Constitution, entitled 'Arab Nation, Socialist Republic' (Syrian Constitution 1973:2) stipulates (1) The Syrian Arab Republic is a democratic, popular, socialist, and sovereign state. No part of its territory can be ceded. Syria is a member of the Union of the Arab Republics. (2) The Syrian Arab region is a part of the Arab homeland. (3) The people in the Syrian Arab region are a part of the Arab nation. They work and struggle to achieve the Arab nation's comprehensive unity.

Article 8 of the Syrian Constitution (1973) states: 'The leading party in the society and the state is the Socialist Arab Ba'th Party. It leads a patriotic and progressive front seeking to unify the resources of the mass of the people and place them at the service of the Arab nation's goals'. This article uses the term 'Arab nation' without mentioning the non-Arab inhabitants of the country. The Kurds are clearly excluded and the article does not mention the Kurds. Article 11 addresses the status of the armed forces 'The armed forces and other defence organisations are responsible for the defence of the homeland's territory and for the protection of the revolution's objectives of unity, freedom, and socialism'. On the constitution of Syria, BBC (2008:2) states 'Syria's constitution was adopted on 13 March 1971. It vests the Ba'th Party with leadership functions in the state and society. The president is approved by referendum for a seven-

year term. The president also serves as Secretary General of the Ba'th Party and leader of the National Progressive Front'.

The Constitution requires the president to be a Muslim, but does not make Islam the state religion. 'The constitution gives the president the right to appoint ministers, to declare war and state of emergency, to issue laws (which, except in the case of emergency, require ratification by the People's Council), to declare amnesty, to amend the constitution, and to appoint civil servants and military personnel' (BBC 2008:3). Since 1963 emergency law has been in effect, effectively suspending most constitutional protections for Syrians. The Syrian government has justified the state of emergency in the light of the continuing war with Israel and the threats posed by terrorists. The constitutional oath is stated in Article 7 of the constitution (1973) 'I swear by God, the Almighty, to sincerely preserve the republican, democratic, and popular system, respect the constitution and the laws, watch over the interests of the people and the security of the homeland, and work and struggle for the realisation of the Arab nation's aims of unity, freedom, and socialism'. The term 'Arab nation' is emphasised in this article, which is an attempt to assimilate other minorities and the Kurds. Article 43 of the Syrian Constitution defines citizenship and the word 'Arab' is used three times. The article stipulates '[t]he law regulates Syrian Arab citizenship and guarantees special facilities for the Syrian Arab expatriates and their sons and for the citizens of the Arab countries' (Syrian Constitution 1973:7).

The discriminatory Constitution is also diffused into all aspects of life. The Kurdish language is banned from use at private celebrations and in the workplace. This discrimination by law, which is translated into oppression in society by the security forces, drives deprived communities and individuals underground. These otherwise could have made a substantial contribution to the wealth of the people, and the stability and prosperity of the country. These communities, however, do not abandon their socio-

political activities; rather, they continue underground. The security laws and the security services do not stop their discrimination and oppression either. This vicious circle continues, which leads to the widening of the gap between the authority and the population. This may be seen as an issue internal to Syria, but history shows that this internal instability can be translated into regional and then international instability.

Ill-treatment and violation of the principles of equal citizenship which are embodied in equal access to political and educational institutions and economic resources have escalated since the Ba'th party took power in 1963. The following section addresses the policies of the Ba'th party towards the Kurds.

7.2   The Ba'th policy and the Kurds

The policy of the Ba'th Party towards the Kurds has followed the trajectory of the regime, with its internal disputes, its changing orientation, and its paradoxes. However, the principles of the Ba'thists are of interest because, in spite of the contradictions and the ideological treachery that have occurred along the way, they have determine the official nationalism of modern day Syria, and, as a result, they determine the state's relationship with Kurdish nationalism, the only nationalist doctrine to challenge it. A rift separates the two concepts of the nation: the first would be the result of a free association of citizens, of a national and wilful construction, represented by the westernised elites; the second would be the consolidation of a historic community and the expression of a sense of identity, the organic and inherited cultural nation represented by the popularised committees. In terms of the early years of the governance of the Ba'th party Tejel (2009:58) states:

> On March 8, 1963, a coalition of officers put an end to the conservative regime in the name of pan-Arabism via a coup; one month after the Iraqi Ba'thists had done the same in Baghdad. The new government, directed by Salah Bitar, reunited the unionist forces, including the Ba'thists, representative of the Arab National Movement, members of the Unionist Movement, and other Nasserist organizations, which were opposed to the separatist regime. The Ba'thists dominated all state institutions and started to implement their pan-Arabism policies. The Syrian constitution of 1973,

which is still in effect, proclaimed that Syria was a popular democracy directed by the Ba'thist Party with the help of other member organizations.

Ba'thism is a variant of pan-Arab nationalism, with which it shares the central notion of the existence of the Arab nation as an historic fact. Despite some constitutional articles dedicated to the economic sector, most of the constitution of the Ba'th Party puts the emphasis on Arab nationalism. Its main slogan is 'an Arab nation with an eternal mission' this was also a matter of exclusive nationalism. Articles 10, 11, 15 and 20 of the constitution of the party are explicit in this sense – all political and social groups established in the Arab fatherland which did not actively share the Arab national idea are illegal. As for the policy regarding language, general principles determine that the Arab language should be the official language of the future unified state. The recognition of Kurdishness was conditional on the Kurdish acceptance of the Arab nationalist idea. In the end, the struggle was contained within the Alawite community, between rival clans, as symbolised by the generals Salah al-Jadid and Hafiz al-Assad, until the victory of the latter in November 1970.

There have been two phases of Ba'thist policy towards the Kurds. In the period between 1963 and 1970, which can be described as the years of 'ideological purity', this was marked by a preponderance of coercion as a method of managing the Kurdish problem. A second period, from 1970 to 2000, was much more pragmatic, combining coercion and the redistribution of goods as methods of managing the Kurdish problem. The leaders of the Ba'th Party have enjoyed long-term benefits as a result of the success in overcoming the core dilemmas associated with the consolidation of a populist authoritarian system. Heydemann (1999:217) argues:

> Since, 1970, populist authoritarianism has continued to define and animate Syrian politics, society, and economy. The networks of popular organizations that were created in the 1960s as mechanisms of mobilization and control remain highly visible elements of the regime's apparatus of domination. This process required transforming the identity of state institutions, bringing the state apparatus under the control of the party, and making the state bureaucracy a reliable instrument of the Ba'thist rule. Controlling unions and

other social networks, state institutions and society elements have made the
Ba'th party system as populist authoritarian.

Since 1962, the Syrian state has divided Kurds in Syria into three major demographic categories: Syrian Kurds, foreign Kurds, and 'concealed' Kurds. Syrian Kurds have retained their Syrian citizenship. Foreign Kurds were stripped of citizenship and registered in official archives as foreigners; in 2008, there were about 200,000 of them. Concealed Kurds are denationalized Kurds who have not been registered in official records at all and whom Syrian authorities characterize as concealed. Nearly 80,000 people belong to this category. Among the concealed Kurds are persons whose fathers are classified as foreigners and whose mothers are citizens, persons whose fathers are aliens and whose mothers are classified as concealed, and persons whose parents are both concealed. In addition, there are about 280,000 undocumented Kurds who reside in Syria but have no citizenship, according to Kurdish sources. No government statistics are available on this group. (Human Rights Watch 2004:23).

According to the United States Institute of Peace (2009:17): 'The rise of nationalism, stemming regionally from Nasserism and locally from the Ba'th Party's ascendancy in 1963, increased official discrimination against Syrian Kurds in all the above categories, as the Ba'thist government's Kurdish policy was intended to eradicate the Kurdish presence from Syrian public life'. Since the Ba'th Party seized power after the coup of March 1963 and declared its autocratic regime over the country, it has been systematically applying all political, military and psychological means to eradicate the Kurdish existence and forcibly assimilate Kurdish national identity and annihilate its culture. These discriminatory policies have deprived the Kurds of the constitutional recognition of their cultural and national existence, further marking the Syrian authorities' resistance to promoting equal citizenship.

7.3 Exceptional census and stateless Kurds in Syria

The Syrian regime, in flagrant breach of human rights and international law, the discriminatory Article 93 of the Census Law, issued on 23 August 1962 and implemented on 5 October 1962. It was limited to al-Hasakah and the Kurdish regions, which initially resulted in more around 250,000 Kurds, who had been living in their own homeland, being stripped of their Syrian nationality certificate. The Christian Science Monitor (2002:3) states 'The repression of the Kurds began in 1962, with a controversial census undertaken by Syria's ruling Ba'th party in which some 120,000 Kurdish Syrian nationals were stripped of their citizenship overnight. Their offspring were also classified as foreigners or *maktoumeen*, swelling the population of dispossessed to around 250,000 today'. This has therefore deprived them of their basic human right of surviving and prospering in their own country. Those whose nationality was withdrawn, and who were henceforth considered as foreigners in their own land, have no right to work the public sector, or to own property, nor can they have access to education and health facilities. They cannot register their marriages and are additionally not allowed to register their children in the state civil records. They cannot travel abroad as they cannot obtain a passport. They have no rights to practise certain professions such as medicine, law and teaching, which require a nationality certificate. In conclusion, they have no birth right to live in their own homeland. This racial and cultural discrimination still continues today, after more than four decades, despite many promises to resolve this human rights issue which has proved so disastrous for the Kurds and is a direct violation of the principle of equal citizenship.

There are about about 250,000 of the Syrian Kurds are stateless. According to the Syrian Human Rights Committee, some stateless Kurds subsequently were refused ID cards after they had completed their obligatory military service, because they were considered foreigners. Some young women and men who applied for and passed

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national examinations (equivalent to A-levels) were denied any official documentation and were considered as non-Syrian nationals. On the stateless Kurds in Syria, the UNHCR (2006:5) states:

> The Committee remains concerned about the situation of a large number of persons of Kurdish origin who have entered Syria from neighbouring countries. It is also concerned about the fate of Kurds born in Syria who the Syrian authorities treat either as aliens or unregistered persons and who encounter administrative and practical difficulties in acquiring Syrian nationality. The Committee considers this discriminatory situation to be incompatible with articles 24, 26 and 27 of the Covenant. The State party should take urgent steps to find a solution to the statelessness of numerous Kurds in Syria and to allow Kurdish children born in Syria to acquire Syrian nationality.

Education in schools and universities is closed to these stateless Kurds, who are not entitled to be admitted to public hospitals. They have no right to food aid during a state of emergency. Marriage contracts with Syrian partners are invalid. In addition, they do not possess rights to vote. Because they do not receive travel documents, they are unable to leave the country legally. The Syrian authorities have a strong control over the society, and Kurds in particular are under close surveillance. The issue of stateless Kurds should not be seen as a genuine immigration issue; rather it is a political issue, which is associated with the denial of Kurdish ethnicity in Syria. The stateless Kurds are very well documented and very well controlled by the authorities, but they cannot exercise their rights like other citizens. The law regarding statelessness is specifically designed to criminalise Kurds in Syria.

7.4   The Arab Belt and Arabisation Policy

Syria has been under emergency law since 1963 and is governed by the Ba'th Party. The head of state since 1970 has been a member of the Assad family. Syria's current president is Bashar al-Assad, son of Hafez al-Assad, who held office from 1970 until his death in 2000. Bashar al-Assad has held power from 2000 until now. To authorise this succession, the Syrian parliament amended Article 83 [Eligibility] of the

Constitution, reducing the mandatory minimum age of the President from 40 to 34. A candidate for the presidency must also be an Arab Syrian.

Since the Ba'th Party seized power in the 1963, the Kurds have been subjected to racial and cultural discrimination aiming to eradicate the whole Kurdish national and cultural existence by isolating and separating the northern and southern parts of Kurdistan. On 24 June 1974 the government issued Article 521, creating what is known as 'The Arab Belt' from the seizure of an area of Kurdish-held agricultural lands 365 km' (350 km long and 15 km wide). Thousands of Kurdish land owners and farmers were forcibly driven from their own property, which was confiscated and given to Arab settlers and farmers coming from Arab regions. This widespread annexation of Kurdish agricultural lands and the settlement of immigrant Arabs resulted in splitting families and the destruction of social relationships, and in Arabising the names of villages and towns. This has altered the character of the whole region. This inhuman deprivation of natural ownership rights and livelihood has terrorised the Kurdish population, who were deported from their cultural homelands and property and forced to live in isolation and destitution in large metropolitan cities. The Ba'th regime launched a campaign to eradicate all Kurdish national identity including Kurdish cultural and social activities. Kurdish political leaders, academics and intellectuals were executed, imprisoned or exiled. Heydemann (1999:217) argues:

> The Arab Belt is a long band of arable, well-cultivated land that would extend 280 km along the Turkish border, from Ras al-'Ayn in the west, to the Iraq border on the east, which was roughly between 10 and 15 km wide. The plan anticipated the massive deportation of 140,000 Kurds, most of whom had been deprived of their Syrian citizenship in 1962 and who were living in 332 villages situated inside this band. They would be replaced by Arabs.

The objective, according to the Arab press, was to 'save Arabism in Jazira', a location perceived by the Syrian Kurds as chosen to disrupt their physical links with the Turkish Kurds. The plan was not put into place until 1973. The Arabisation campaign of Jazeera

was halted by Hafiz al-Assad in 1976, but the status quo remained unchanged. '[The s]tate of emergency in place since 1963 with legal devices, was used to put into practice waves of repression or more intense repression to remind Kurds of their boundaries' (Tejel, 2009:137). The policy of Arabisation through the Arab Belt is an attempt by the Syrian authorities to deny the equal citizenship for the Kurds and deteriorating their legal status.

7.5   Education in Kurdish and Kurdish cultural freedom

The Syrian authorities assert an Arab identity for Syria, which dismisses the Kurds and all other ethnic and religious groups, notably Armenians, Circassians, Assyrians, Turkmens and Jews. Article 4 of the Constitution (1973), entitled 'Language and Capital', stipulates 'The Arabic language is the official language'. There is a prohibition on any Kurdish publications or books. During the French mandate era in Syria there were two Kurdish newspapers, and Kurdish programmes were broadcast regularly from radio stations in Damascus and Beirut. These violations of rights occurred at a later date, after the promulgation of the Ba'th Party's constitution. All of its provisions stress the human essence of Arab nationalism. Article 21, entitled 'Objectives of the Constitution', clearly states the education system shall be in the Arabic language, which can be seen as a denial of the Kurdish language 'The educational and cultural system aims at creating a socialist nationalist Arab generation which is scientifically minded and attached to its history and land, proud of its heritage, and filled with the spirit of struggle to achieve its nation's objectives of unity, freedom, and socialism, and to serve humanity and its progress' (Syrian Constitution 1973:4). Article 23, 'Socialist Education, Arts, Sports,' provides: (1) The nationalist socialist education is the basis for building the unified socialist Arab society. It seeks to strengthen moral values, to achieve the higher ideals of the Arab nation, to develop the society, and to serve the causes of humanity. The state undertakes to encourage and to protect this education. (2)

The encouragement of artistic talents and abilities is one of the bases of the progress and development of society, artistic creation is based on close contact with the people's life. The state fosters the artistic talents and abilities of all citizens. (3) Physical education is a foundation for the building of society. The state encourages physical education to form a physically, mentally, and morally strong generation'. Article 24 'Science, Intellectual Property' provides: (1) Science, scientific research, and all scientific achievements are basic elements for the progress of the socialist Arab society. Comprehensive support is extended by the state. (2) The state protects the rights of authors and inventors who serve the people's interests.

Article 3 provides for 'Faith and Religious Freedom': (1) The religion of the President of the Republic has to be Islam. (2) Islamic jurisprudence is a main source of legislation. The other religions that exist in the country are not mentioned. The Kurdish national day, which is also the Kurdish New Year, known as Newroz (New Day) on the 21 March, is celebrated by Kurds throughout Kurdistan and all over the world. For years, celebrating Newroz was banned by Turkey and Syria. In Iraq and Iran, it is celebrated and is an official holiday. The Iranians do not recognise it as the Kurdish national day, however, and they regard it as an Iranian holiday. The former Iraqi regime deprived Newroz of its Kurdish origins and renamed it in Arabic, *Ead Al-Rabii*, i.e. Spring Day (Newroz is also the first day of spring and the end of the cold Kurdish winter). Newroz Day disturbances are witnessed all over Kurdistan, in Iran, Iraq, Syria and Turkey. The occasion is described as follows 'Newroz is a typical date to arrest potential Kurdish opponents to the regime, a day which is historically marked by protests against the authorities' (CNN 1999:3). For example CNN reported that '8000 were arrested during the Newroz celebrations' in Turkey in 1999 (CNN 1999:3). Human Rights Watch (2007:7) observes 'Syrian authorities also suppress expressions of Kurdish identity. On March 20, 2006, security services arrested dozens of Kurds for

participating in a candle-lit night procession in celebration of the Kurdish New Year, Nowruz, and used tear gas and batons to break up the march'. In its 2006 Annual Report, the Syrian Human Rights Committee (2006:8) reports '[t]he state of human rights became extremely poor in mid March 2006, after authorities arrested scores of Kurds who had been peacefully celebrating Eid Nawrouz, in Aleppo and the North Eastern regions of Syria'. The Kurdish language is also reportedly banned from use at private celebrations and in the workplace. The Syrian authorities impose heavy restrictions on the production and circulation of Kurdish literature, including books and music. In the past the Syrian authorities have arrested and arbitrarily detained Syrian Kurds for their involvement in the organisation of Kurdish cultural activities including the Kurdish Nawroz (New Year) celebrations, as discussed above.

Kurds are not allowed to celebrate their cultural occasions and enjoy their culture in Syria. The Kurdish celebrations and gatherings mentioned in the above examples were not violent, and yet they attract the attention of the security services. McDowall (1998:47) states '[I]n the 1970 Armenians and Assyrians had private schools, clubs, and cultural associations, the Kurds were dealt with as spies. Two decrees from the 1980s forbade the use of Kurdish in the workplace, as well as during marriage ceremonies and festivals. Faced with the difficulty of enforcing this decree, a new circular targeting the work place was issued in 1996'. The Kurds of Syria, as McDowall states, have been facing challenges in their daily lives. Perceiving the Kurds as spies and the Kurdish issue as a security threat is characteristic of the Syrian authorities. Even Kurdish folklore has been a victim of the ill-treatment and the absence of equal citizenship in Syria. In this regard an observer notes 'In May 2000, another decree no. 122, [ordered] closing of all stores selling cassettes, videos, and disks in the Kurdish language and re-emphasised the prohibition of using this language during meetings and festivals' (Tejel, 2009:122). The above section shows that banning education in Kurdish and restricting

the Kurdish culture have been legalised in Syria. Despite promises by the Syrian authorities to change the status of Syrian Kurds since 2000, the unequal legal status of the Kurds has been exacerbated as the consequence of issuing new decrees (the two presidential decrees of 2008) the Kurds by the Syrian authorities.

7.6   Kurdish political organisations and ill-treatment due to political activities

Kurdish organisations are illegal in Syria and none of them is legally recognised by the government. Advocating Kurdish political parties is dealt with harshly by the Syrian authorities: 'Kurdishness continues to be considered, in spite of some perceptible changes, a sign of *fitna* (dividing of society) by the regime' (Tejel, 2009:2). One of the most active Kurdish political parties in Syria, the Kurdish Democratic Party of Unity in Syria (the Yekiti Party, for short) operates under the motto, 'Struggle for the national rights of the Kurdish people'. Their activities have led to persecution of their members by the Syrian authorities. Yekiti has been active in recent years; a Kurdish conference in Washington took place on 12 March 2006, where the Yekiti Party had a prominent role. If members of the Yekiti Party come to the attention of the Syrian authorities, however, they are subject to ill treatment.

According to the Syrian Human Rights Organisation, many members and supporters of the Yekiti Party in Aleppo were arrested and taken from their homes. On 24 July 2005, a Syrian state security court sentenced four Kurds to two and a half years in prison for separatist activities. The four men, all members of the Yekiti Party, were accused of 'belonging to a secret organisation seeking to annex part of Syria to a foreign country'. They were also charged with 'damaging relations with a friendly country', referring to neighbouring Turkey where Kurdish militants are seeking self-rule. A Syrian security court sentenced Farhat Abdul Rahman Ali from the Yekiti Party and Ibrahim Nasaan of the Democratic Kurdish Unity Party to three years imprisonment with hard labour, noting that the two men were arrested by the Syrian authorities in the autumn of 2002

and beginning of 2003. Two prominent figures within the Yeketi Party, Marwan Uthman and Hasan Saleh, were arrested after they led a peaceful demonstration in front of the Parliament building demanding more freedoms for Kurds in Syria. Reports indicate that they have been severely mistreated, tortured and their relatives have been prevented from visiting them. They continue to await a ruling to be passed by the Supreme State Security Court after being charged by the prosecutor with conspiring to separate a part of Syria. Another Kurd, Ibraheem Na'san continues to be imprisoned after a year and a half after promoting material which pertains to Kurdish culture. The Human Rights Watch (2007:11) reports:

> On May 13, 2007, the same Damascus court sentenced in absentia both Khalil Hussain, a member of the Kurdish Future movement, and Sulaiman Shummar, a member of the political bureau of the unauthorized Worker's Revolutionary Party and a leader of the National Democratic Gathering (a coalition of five Syrian opposition political parties), to five years in prison for 'weakening national sentiment' and 'undertaking acts and writings unauthorized by the Syrian government that may expose Syria to aggressive acts or spoil its relations with another state.' Lawyers attending the hearing were unclear whether the five-year sentences handed down against Hussain and Shummar for each of the offenses were meant to be served simultaneously or consecutively.

This evidence shows that Kurdish political parties, including the Yeketi Party, are illegal and when their members come to the authorities' attention, they are subject to persecution. The Syrian authorities exercise guilt by association, i.e., punishing the entire family or community for what is perceived as a crime of one of their members. It is obvious that the Syrian authorities and the Constitution do not allow the Kurds to establish political or non-political bodies in the country. Hence, the freedom of speech and equal citizenship of the Kurds are not guaranteed by Syria's political and legal structures.

7.7   General violations of the rights of Kurdish people

Before addressing the position of Kurds in the Syrian political system, three points need to be made. Firstly, it has to be mentioned from the outset that the majority of the

international human rights organisations mix specific Kurdish cases with violations of human rights in general, without mentioning the identity of the victims, apart from the fact that they are from Syria. Thus it is difficult to gain a specific picture about the treatment of Kurds at the hands of the Syrian authorities. An exception to this is the well-known case of the mass withdrawing of the right to citizenship from thousands of Kurds. Secondly, the Syrian government tightly controls the flow of news from the remote Kurdish areas. Puder (2006:34) puts it this way:

> While the world's attention is focused on the war in Iraq, the internal Palestinian strife, the Israeli-Hamas confrontation in Gaza and the clashes between the Lebanese army and Syrian supported Fatah al-Islam, scant attention has been paid to developments inside Syria. The regime of Bashar Assad has used this opportunity to re-launch the campaign of ethnic cleansing in the Kurdish region of Hasakah. The Syrian press, controlled by the regime, prevents access to the foreign press, and the abuses of the Kurds have gone practically unreported. News of the ethnic cleansing is arriving almost exclusively through letters and faxes from persecuted Kurds.

Thirdly, the laws are drafted in vague terms and are intended to make it convenient for the security services to prosecute Kurdish activists without revealing their ethnic identity in any manner that suits them. For example, Kurds are charged with offences that do not acknowledge the Kurdish identity of the accused and yet criminalise them for their ethnicity: working for a secret organisation aiming to annex part of Syrian territory to a foreign country; membership of an unauthorised organisation; attempting to annex part of Syrian territory to another state; or opposing national unity. The government of Syria has been implementing the policies of Arabisation towards the Kurds.

Syria is still controlled by undemocratic apparatuses and by the secret services. The Supreme State Security Court imposes harsh sentences while random arrests continue to target members of the Damascus Declaration, the Muslim Brotherhood, Islamists, and those who call for democracy and human rights. The state of emergency that has been imposed on Syria since 1963 permits arrest without warrant. Kurds are the largest non-

Arab ethnic minority in Syria, comprising about 10 percent of the population of 18.5 million. They remain subject to systematic discrimination, including the arbitrary denial of citizenship to an estimated 300,000 Syrian-born Kurds. Tensions have remained high since serious clashes between Kurdish demonstrators and security forces in Qamishli in 2006 which left more than 30 dead and 400 injured. Despite a general presidential pardon for those involved in the March 2004 clashes, dozens of Kurds still face trial in the criminal court of Al-Hasake, reportedly on charges of inciting disturbances and damaging public property.

The lack of nationality and identity means that stateless Kurds, for all practical purposes, are rendered non-existent. Their basic rights to education, employment, property ownership, political participation and legal marriage are severely limited, relegating them to the outermost margins of Syrian civil society. In an attempt to mitigate the desperation of their plight, some Kurds have begun to mobilise themselves to advocate for their recognition. Others take tremendous risks to leave Syria illegally and seek opportunities abroad. Those caught may be deported back, imprisoned, and subjected to harsh treatment. Individuals who actively tried to change the situation for stateless Kurds have also been detained and tortured. 'The exceptional Supreme State Security Court (SSSC) handed down seven-year sentences to two Kurds and two-and-a-half-year sentences to three Kurds convicted of "membership of an unauthorised organisation" and "attempting to annex part of Syrian territory to another state". These charges are routinely levied against Syrian Kurdish activists.' (SSSC 2006:34). During the events which started at the football stadium in Qamishli on 12 March 2006, many people were killed; almost all of them were Kurds. They were killed apparently as a result of the use of lethal force by the security forces. No official investigation is known to have been carried out into the series of incidents which led to widespread riots, into

the use of lethal force by the security forces, the mass arrests and reports of torture and ill-treatment that followed, or into the root causes of the events.

The authorities have arrested dozens of Kurdish activists who have demanded their cultural rights and more freedoms for the Kurdish ethnic minority. To sum up, one of the common accusations against any Kurd who wants to assert his or her ethnicity, even in a very discreet manner, is the accusation of belonging to a 'secret organisation aiming to annex part of Syrian territory to a foreign country'. Kurds in Syria are suffering from ethnic cleansing in the Kurdish areas, and it is occurring unnoticed. In addition, their ethnic and cultural identity is prohibited and any cultural activities they engage in are seen as attempts to overthrow the regime. The human rights violations against Kurds are disproportionate in comparison with other groups in Syria. None of the individuals who are mentioned in the above examples demonstrated violence against the authorities. 'One person was killed because he did not speak the official language of the country, Arabic' (SHRC: 2008).

7.8   The Kurdish issue in Syria after the March 2004 unrest

With the war in Iraq and the federalism agreement of March 2004, which secured Kurdish linguistic, cultural and political rights within a federal Iraq, the Kurds of Syria have come under increasing attacks from both the regime and as a result of escalating anti-Kurdish sentiment among Syria's majority Arab population. On 14 March 2004, on the Syrian Kurdish unrest, the *New York Times* reported 'Syrian Kurds, inspired by the changes next door in Iraq – where the Kurds are seeking to enshrine their distinct identity in a new constitution – have become increasingly vocal in demanding minority rights. The government suspects them of seeking autonomy or even trying to break away to join Iraqi Kurdistan'. The March 2004 unrest in Syrian Kurdistan left a strong impression on the international community and also shook the political system in Syria. The Syrian Ba'th authorities realised for the first time that the Kurdish issue needed to

be addressed. In an extensive interview with the television network Al-Jazeera early in May 2004, Bashar Al-Assad, the president, said: 'Syrian Kurds are fully-fledged citizens; that the March Qamishli incidents were not instigated by outside influences and, more importantly, that the 1962 census, which revoked the nationality of over 150,000 Kurds, had been largely unjust … The Kurds that were unjustly stripped of their nationality would be able to retrieve it very soon.' (Al-Jazeera 2004:2-3). Not much has happened since this promise. At the time, the president was simply attempting to calm the situation. Amnesty International (2004:9) states 'At least 40 Syrian Kurds, including children, have reportedly been killed, most of them by the security forces, since violent clashes at a 12 March football match. Hundreds of people, some reports say up to 2,500, including children, remain in detention. Most are held incommunicado, without access to lawyers or relatives, and thereby at risk of torture or ill-treatment.

Warner (2004:43) writes 'It is alarming that at least 40 people appear to have been deliberately killed or been the victims of excessive force by the security forces. These people may have been persecuted as a result of their Kurdish origins.' Amnesty International has received the names of hundreds of Syrian Kurds, including children, who remain in detention. Although some 500–600 of those arrested were reportedly released around 19 March 2004, the whereabouts of up to 2,500 people reportedly still in detention remain unknown. Some reports suggest that many of the injured are effectively being held in detention in government hospitals, said to be surrounded by security forces. Enhancing the position of the Kurds of Iraq has not led to a change in the policies of the Syrian government towards its Kurds. Instead the Syrian state establishments have intensified the pressure and have attempted to impose Arab identity on the Kurds of Syria. Although Iraq has come some way in giving equal citizenship to its Kurdish population, it appears Syria still has a long way to go.

7.9   The two presidential decrees of 2008

Presidential Decree 49 of 10 September 2008 principally concerns the right of Syrian citizens to hold property in the border areas of the country. With immediate effect, there were to be no more entries in the land register. If this decree is complied with completely, property can no longer be bought or sold, nor can it be bequeathed to the landowner's legal heirs. Those most affected are the Kurdish and Assyrian Aramaic ethnic groups in the three governorates (*Muhafazat*) on the Turkish-Syrian border; Hasaka, Ar-Raqah and Aleppo. The region lies on the long border of Syria with Iraq and Jordan; it is semi-desert and is sparsely populated.

  Those affected by this decree will suffer the same fate as others who have already been arrested. They are seen as betrayers of the country. Many Kurds already live in the slums around Damascus because having been driven out of their homes by Decree 49 and subsequent lack of employment, and by the Arabisation of their ancient homelands. Others have left Syria to work in domestic service in Lebanon and Jordan, and many have tried to seek asylum in Europe. Abuse of non-violent Kurdish activists is widespread, as was illustrated previously. Another decree was issued on 23 November 2008 which undermines Kurdish culture (Sahin 2009:1). An English translation of the decree follows:

> Province of Hasaka - City Council of Maalikia
> No. /1118/ - Date 23/11/2008
> Final Warning
> To bookstores, offices, publishing houses and printing establishments owners
> and calligraphers in Maalikia city;
> Executing the instructions of the Strengthening Arabic Language Committee
> that are concerned with protecting and taking care of Arabic language, we order
> the following:
> 1. It is strictly prohibited to print any card, posting card, ads paper or bulletin
> board in any language except Arabic. And if the name of a shop or office is not
> in Arabic it must be written with Arabic characters as it is pronounced and the
> Roman characters may be written but in small size under the Arabic letters like:
> Maria.
> 2. Limited advertising or billboards may be in Roman characters only.
> Appreciating your cooperation
> President of City Council of Maalikia
> Engineer Jan Al-Qess Yosef

(stamp and signature)

The above decree shows that there is not a genuine exclusive policy to handle the Syrian Kurds and these decreases are obstacles in delivering equal citizenship for the Kurds in the country.

7.10 Concluding Remarks

The extensive objective evidence provided in this chapter suggests that Kurds are an oppressed ethnic group in Syria. Kurds are not recognised in the Syrian Constitution as an ethnic group, despite the fact that the Kurds are different from ruling Arabs in their language and culture. Equal citizenship for the Kurds and other non-Arab minorities does not exist. This makes Kurds suspicious and liable to be punished more severely by the authorities. Most Kurds are Sunni Muslims while the faith of the state is Alavi. The Kurdish language is banned in all aspects of life, including education, the media and all linguistic and cultural activities. The Syrian government practises guilt by association, i.e., punishing the entire family for what is perceived as a crime by one family member.

This chapter has discussed briefly how the discriminatory law in Syria can lead to internal oppression. The relationship between the Kurds and the Syrian authorities has been tense in the last few years. Syrian Kurds, perhaps under the influence of the Kurds in Iraq, have been more active. Since March 2004, Syrian Kurds have started an intensive campaign for more ethnic rights. Dozens have been killed and hundreds are detained. Human rights organisations report that the Syrian authorities are in breach of the norms, charters and laws of internationally recognized human rights.

Syria has a strong central government with oppressive armed forces, security and intelligence apparatus. This is directly controlled by the extensive and highly organised security and intelligence services that operate there through all levels of society and walks of life. Additionally there are a number of vigilante groups linked to different

centres of power in Syria. The extensive information and evidence that are available reasonably suggest that if a Kurd comes to the attention of the Syrian authorities, he or she is exposed to real risk of arrest and imprisonment without due process for alleged political involvement. In that situation, Kurds are deprived of meeting members of their family; subjected torture or other inhuman or degrading treatment, which is legal in Syria, and deprivation of access to a fair trial under an independent and properly constituted judiciary.

By Syrian law, Kurds, their language and their culture do not exist. The Syrian authorities assert an Arab identity for Syria which dismisses the Kurds, and all other ethnic and religious groups, notably Armenians, Circassians, Assyrians, Turkmens and Jews. The populations of Kurds and other non-Arab ethno-religious groups are not precisely known; the Syrian authorities do not recognise them. The Constitution only honours one type of Arab; the one who is in pursuit of the 'Revolution's objectives: unity, freedom and socialism'; and who also shall accept 'the Socialist Arab Ba'th Party' *as* the leading political group. The Syrian government has taken advantage of the world's attention being focused on other issues to increase its oppression of its indigenous Kurds. At the same time, Europe is opening the door to Syria because this is to its political and economic advantage, while Kurds live in poverty and despair. Against this background the governments of Iran, Turkey and Syria continue to work together to ensure that Kurds accept the nationality of their respective countries, as second-class citizens at best, or to drive them out. The Syrian government considers that it has opened the door to discussions with the rest of the world, and that it can continue its programme of the ethnic cleansing of Kurds from its borders with impunity.

This chapter concludes that the state party should take effective measures to combat discrimination in practice against minority groups, in particular the Kurds. Such measures should be aimed especially at improving birth registration and school

attendance and allowing for the use of their languages and other expressions of their culture.

The continuing state of emergency, now in place for over 40 years, has also allowed the government to enforce a harsh security regime. Detention without trial, torture and curbs on freedom of expression are particularly serious, with those who even sign documents calling for greater rights being arrested and imprisoned. Abolition of the discriminatory articles of the Constitution and reform of the judicial system are milestones in improving the legal status of the Kurds of Syria. In order to ensure equal access to the political and educational institutions, and to guarantee civil and cultural rights, this chapter calls for a radical reform in the Constitution and the Syrian penal code.

8   Chapter eight: Discussions and conclusion

The four countries of this study are part of the Middle East region. Iraq and Syria are the product of the end of World War One and collapsing of Ottoman Empire. However, Turkey and Iran as a country has been existed for a long time, but the collapse of the Ottoman Empire affected indirectly on the structure of latter two countries. The four examined states attempted to consolidate themselves as unitary and homogenising nation-states. However, the present study argues that the four countries in need come to terms with the enduring reality of ethnic and religious cleavages, and find new ways of accommodating and respecting diversity. The pursuit of national homogenisation by Iraq, Turkey, Iran and Syria has led to resistance movements, deliberate discrimination and even civil war-in countries. The four case studies show that the constitutions and penal codes of the four countries are in crisis and need a radical reform. The new political and legal systems of Iraq after 2003 are less discriminatory comparing with the previous one, however, the other three countries' constitutions and penal codes are based on deliberate discriminations and need a radical reform.

In the West, the adoption of multiculturalism and minority rights has typically taken place after the adoption and consolidation of political democracy and market economics. Democratic stability and a prosperous economy were already in place when the state embarked on policies to 'pluralise' the state. In Middle East including the four examined counties of the present study, by contrast, claims for multiculturalism and equal citizenship are often coinciding with democratisation; indeed, the latter is a driving force for the former. Attempting to adopt multiculturalism and equal citizenship in the Middle East of a democratic transition raises difficult issues that were not present in most Western cases. A democratising country needs to set up institutions to ensure equal citizenship for all individuals. Where those are not present or functioning

properly, minorities may use their group rights to deny equal rights and opportunities to members of other communities in the Middle East, or even to pressure them to leave. Without firm protection of individual civil and political rights, minority rights can create islands of tyranny, in which formerly oppressed minorities reproduce these patterns of exclusion at a more local level.

This chapter presents the conclusions of the thesis and emphasises the important issues surrounding the legal status of the Kurds. This chapter highlights the major and significant reforms needed in order to establish a state that guarantees equal rights for the Kurds. Lack of equal citizenship (equal access to political, educational, social and economic institutions of the country) for the Kurds should be taken seriously and further research is necessary. In order to achieve this aim, this chapter addresses five issues and how they interact with one another. The identities of the countries of Iraq, Turkey, Syria and Iran are in crisis. The absence of a liberal constitution and the existence of a political system biased against a particular sect, language or ethnicity. The constitutional attempts of these four countries to deliberate discrimination the Kurds rather than guaranteeing equal citizenship for them and finally what can be done through international organisations and carrying out internal reforms to improve the legal status of the Kurds.

8.1 Structural causes of treatment of the Kurds

It is particularly necessary in a Middle Eastern context to stress the conceptual difference between state, regime and government and the populations or the citizens. The ruling elite in the four states on which this study emphasises use a combination of means, varying from one state to another, to manipulate and seek to affect and transform the political culture of their people. The elite want to maintain their position and enhance their power; therefore, they implement and make available a variety of options. The powerful figures in these regimes, especially the leaders and their close family

members, want to be seen by the people as heroes, as the sole defenders of their interests and, above all, as their saviours. In order to achieve this, they use diverse channels including educational institutions, religious foundations and state media. Additionally they make changes to legislation and use force when necessary.

The four countries studied in this thesis mishandle their minority populations including the Kurds; this has led to an absence of equal citizenship. The poor legal status of the Kurds investigated in the thesis demonstrates how the Kurds are not treated equally. On the status of minorities and how they should be treated, Hassanpour (1992: xxxiv) argues:

> Why is minority status usually or at least frequently considered disadvantageous? It is not necessary that such a status is a bad one; for instance, the Italian speaking population of Switzerland does not consider itself an Italian minority; they consider themselves Italian-speaking Swiss. Cultural differences can be overcome as well: the Parsees in India (Zoroastrians who emigrated from Iran after the Muslim conquest, keeping their religion and partly also their language) do not consider themselves a separate political entity. Political nationhood has prevailed over the ethnic one. On the contrary, the worst type of situation obtains when a minority lives in a state which is openly hostile to it.

Establishing the states of Turkey, Iran, Iraq and Syria, based on Turkish, Persian and Arab identities created major obstacles for the minority populations, including the Kurds. Nations often matter more to people than states. Monoethnic Serbia makes more sense to some than multicultural Bosnia; a Hutu (or a Tutsi) Rwanda makes more sense to others than a peaceful shared citizenship of Tutsi and Hutu; only when Britain and France became nations as well as states did ordinary citizens come to care much about being French or British. States, on the other hand, matter morally, intrinsically. They matter not because people care about them but because they regulate the lives of the people through forms of coercion that will always require moral justification. In the four countries examined, coercion rather than persuasion is pervasive in handling the Kurds.

The identities of the four countries examined in this thesis are in crisis. This is because the indigenous populations of these four countries belong to a specific type of nation which is based on one ethnicity, sect or religion. Hence, this chapter proposes a new form of identity based on liberal principles. Identity is put forward as a major contributor to the resurgence of nationalism, often against the state itself. Alternatively, identity may explain how groups are formed that place themselves outside civil society and formulate an alternative way of life, which Castells (1997:65-66) names 'communes based on a certain project'. Building upon this distinction, society is divided into different identity groups that are based not on traditional classes in the Marxist sense, but on groups that seek or behold self-determination communally and opposed to the established society. By identity, what is meant is the idea of an individual belonging to a collective where the members recognise each other and where the individual finds guidelines of meaning and concurring behavioural patterns. 'Identity is important because it is the focus around which people can become mobilised to act to change their conditions and to pursue social goals' (Castells 1997:8). A collective identity may be the primary means of mobilisation, while simultaneously providing the individuals involved with a feeling of belonging, which paves the way for social obligations.

A common identity may even be created and promoted politically to form a singular group. Thus, recognition of identity is vital for the implementation of political goals. Monitoring and formation of identity are fundamentally challenging to the legitimacy of the state. Identity from a liberal point of view entails a number of interrelated phenomena. First of all, identity is something of the individual and for the individual. The identity of a liberal collective is characterised by the idea of freedom for every member in it, even though each member is aware of certain duties that have to be performed to guarantee the maintenance of his or her own freedom and that of the collective. The new interests of newly formed subgroups can focus on ethnicity, locality

or environmentalism. Politically, their voice for reform is heard more loudly than that of another group that is not really a group at all. This last category of people is not politically mobilised nor may they be. Its members are disconnected from societal progress and are left behind with little or nothing. This group is hardly represented politically so they are hardly reckoned with. With the rise of powerful democratic nation-states this group previously seemed to be fading away, but now it is growing once more. A neoliberalism has emerged from the end of the last century which has been parallel with civil society and international organisations. A new form of governance has been advocated. A cosmopolitan liberal might say that we are caught up in a transition from the liberal division within the state to a more homogeneous liberalism. The challenge to a liberal state is emerging ethnic nationalism and other separatist movements. The process of collective identity construction is highly political.

In light of the above facts and definitions of a liberal definition of identity, the current status of the four countries investigated in this thesis shows that the indigenous populations of the four countries are not free to choose their identity; rather they have an identity imposed on them which is created by the state. Hence, improving the legal status of the Kurds to remove the ill-treatment of the Kurds is a deeper matter than the reform of the constitutions or judicial systems of these four countries. Instead it is a problem of how the states impose an identity on the minorities, including the Kurds. Therefore, citizenship and the nation-state in these four countries are in crisis because their definitions of citizenship and the nation are exclusive. It is obvious that the four countries are complex and they have failed in creating cosmopolitanism as a post-national nation of identity.

The debate on citizenship refers to rights and identities, to moral and political values, and to the sharing of civic responsibilities within a given political community. The national project on which the four studied countries are founded on is an ethno-cultural

conception of the nation, rather than a political one. Consociational democracies such as Belgium and Switzerland are based on the recognition of communal divisions, which are regulated by the institutionalisation of compromise through various procedures; power-sharing between the elites of the major groups, proportional representation for each community within the higher political and administrative levels and direct management by the communities of certain domains (such as education). De-ethnicisation of the nation-state is a vital step in implementing equal citizenship. Equal citizenship is about the responsibilities as well as the privileges of citizenship. Improving the poor legal status of the Kurds is not motivated by citizenship centred on a common culture but by citizens committed to common institutions, to the conditions necessary for a common life. What is required to live together in a nation is a mutual commitment to the organisation of the state, the institutions that provide the overarching order of the common life. In order to improve the poor legal status of the Kurds, the identity of the four states needs to be inclusive not exclusive. This would lead to creating a nation where the inhabitants belong to the state institutions rather than to a specific ethnicity or sect.

8.2   Representation and recognition

Most of the countries in the world have ethnic, cultural, religious and linguistic minorities that are different from the majority. Will (1996:1) states '[a]ccording to recent estimates, over 600 living language groups, and 5000 ethnic groups exist in the world's 184 independent states. It can be seen in few countries that all citizens share the same language, or belong to the same ethno national group'. The diverse character of nations creates substantial questions for countries to achieve real democracy which does not ignore the demands of a multiethnic and multicultural society. As Will (1996:1) states:

Minorities and majorities increasingly clash over such issues as language rights, regional autonomy, political representation, education, curriculum, land claims, immigration, and naturalization policy, even national symbols, such as the choice of national anthem and public holidays. Finding morally defensible and politically viable answers to these issues are the greatest challenge facing democracies today.

Democratic society requires that the majority has regard to the interests of all groups and people in the state, not only those of its supporters. These interests of minorities should not be left to the mercy of the majority and their rights should not be removed by majority votes. Real democracy also needs to provide minorities with the opportunity to participate at all levels of society with their own identity without fear and on equal terms with the majority.

The right to political participation of minorities, namely the representation of minorities and their interests, plays a critically important role in achieving real democracy. Why should minorities be represented by their representatives rather than by the majority or other groups? The main reason is that fundamentally everyone knows what is best for their own interests. This also applies to minority groups with regard to their needs and preferences. Therefore, the Kurds should be involved in the processes of recognition, representation and participation in order to influence the state policies that affect them. Gianni Zappala provides more valuable points and broader clarification regarding the importance of minority representation when he explains the importance of mirror representation, based on the idea that members of certain groups or certain experiences cannot be sufficiently represented by members of another group (Zappala 1997:137) argues:

Parliamentary presence in relation to ethnicity first provides the political system with a sense of legitimacy in the eyes of all the citizenry. Secondly elected representatives from an ethnic background may be more responsive and empathetic to the wishes of the constituents from ethnic backgrounds than representatives who are not….. Finally, and related to the legitimacy argument, is the symbolic importance of having members from ethnic groups visible in the various legislatures. Struggles over identity politics are essentially about appropriate symbols and who has the power to define those symbols. As key

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institutions where symbolic struggles often take place, parliaments should contain representatives of different 'interpreters' of the symbols of nation.

In relation to the legitimacy argument, minority representation in parliament strengthens the legitimacy of parliament, and thus parliamentary democracy. When people can look and see people like themselves, they are much more likely to identify with an institution and have a sense of ownership. Karina (2003:06) states '[m]inority representation is an important stage for the recognition of minorities. It provides a powerful symbol of minority acceptance and inclusion especially where minority groups have historically been excluded from the political system'. Putting minority issues on the agenda is another important feature of minority representation. Being on the agenda will lead other members of groups to be aware of minority issues and perhaps this will create a public consensus regarding the need for solutions.

Minority representation is also of crucial importance in ensuring the rights of minorities and preventing discrimination against minorities. Without active participation in the decision-making process, other rights and the prevention of discrimination of minorities cannot be effectively ensured and minority rights protection can be substantially weakened. Especially in those states where ethnic nationalism exists, it is unlikely that the majority will vote for parties or candidates of other nations or ethnic groups. 'Being excluded from the political system without special protection will result in the absence of the voice of minorities and consequently pose a risk to democracy' (Florian 2002/03). As a number of scholars of divided societies and ethnic relations point out, without minorities conventional institutions, democracies are insufficient to allow for a stable democratic system in diverse society.

In light of the above explanations, it is important that the four countries adopt an inclusive political system towards their minorities in order to fulfil the principles of representations and recognition for their citizens. This would be one of the crucial ways

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of improving the current legal status of the Kurds. The existence of minorities is usually seen as a threat and as a result, special policies are adopted by states to eliminate the identity of minorities, who face discrimination, marginalisation and poverty. This raises the question of whether the existence of minorities and their demands for recognition and protection of their rights constitute the cause of conflicts, or whether the reaction that they get from states to their demands makes the minority issues more complex and creates the conflict. States believe that recognition of minorities leads to power leaking to minority groups that will thus constitute a threat to the stability of the nation-state system and lead to separation. A number of scholars support this idea and argue that recognition of minority rights decreases the interaction between majority and minority groups. 'Decreasing interaction results in a lack of communication between groups and a lack of knowledge about other groups which in turn eventually leads to ethnocentrism, stereotyping and mutual distrust' (Blum 2001:122). Morton Deutsch (2001:122) explains 'lack of communication creates misperceptions, which increases hostility which further hinders communication'. This argument is inaccurate, because recognising and guaranteeing the rights of minorities assists the stability of a country and enhances the nation-state system. The current legal status of the Kurds and the instability of the four countries analysed is an obvious of example of this thesis's argument.

Recognition and representation of the Kurds in the four countries analysed is the first step towards a radical reform in improving their legal status and guaranteeing their equal citizenship. The above sections deal with the structural problems of the four state countries and how these problems can be challenged. The following sections examine the role of external factors in changing the poor legal status of the Kurds.

8.3   The role of external factors in improving the legal status of the Kurds

Over the past two decades, the ideas of multiculturalism and minority rights have been 'internationalised' in two distinct ways, first, a discourse of multiculturalism in circulating amongst elites who participate in international networks of activities, scholars, and policy-makers. Through these networks, a certain way of talking about ethnocultural diversity is being diffused around the world, premised on principles of tolerance and ideas of justice. Within this discourse, minorities are seen, not as a problem to be solved or a threat to be neutralised, but as legitimate members of the state whose identity and culture must be respected. Second, formal international standards of minority rights are being adopted by international organisations such as the United Nations (UN), the Word Bank, and the International Labour Organisation (ILO). These organisations have attempted to codify minimum standards for the behaviour of states in relation to their minorities, and to establish mechanisms to monitor state compliance with them.

Debates over state-minority relations will continue to have a strong international dimension. This may take the form of the codification, monitoring, and enforcement of international legal norms on minority rights. As we have seen, there are some existing international standards, particularly regarding indigenous peoples, as well as proposals to strengthen the codification and enforcement of other types of minority rights, but even if international law remains quite weak, there is still the court of international public opinion. The idea that the treatment of minorities are intensively monitored by a range of international nongovernmental organisations, such as Human Rights Watch, Cultural Survival, and Minority Rights Groups, and any perceived injustices regarding quickly publicised around the world. International campaigns regarding Tibet, or East Timor, are relevance of the capacity to mobilise public opinion in these issues.

In that sense, there is no escaping the internationalisation of minority rights debates. State policies towards minorities will be evaluated in a global context, using a global discourse, in light of global trends. And, for the moment at least, this global discourse is dominated by the ideas of equal citizenship and liberal multiculturalism. To date, Middle East countries have been surprisingly absent from the global debate. There have seen a flurry of activity on minority and indigenous rights in virtually every region of the world except Middle East. There have been important developments in the Americas through the organisation of American states, in Europe through their council of Europe and the OSCE High Commissioner of National Minorities, and even in Africa, where the African Union has been discussing the idea of the regional charter of minority rights. In all these cases, it was recognised that the global debate and discourse did not adequately address certain regional specificities, and that it was important to formulate an alternative and supplementary regional framework, addressing their own needs. To date, however, there have seen nothing comparable in the Middle East except Turkey, as a result, the Middle East countries continue to be judged by standards that they little rule in formulating, and that may not be appropriate for them.

One of the major factors which may play a significant role in improving the poor legal status of the Kurds would be external actors. They can be international organisations, NGOs and the European Union. The end of the Cold War has led to a widespread debate about the rights of minorities and the role of the state in dealing with its indigenous population. Kirisci and Winrow (19922:31) argue: 'The activities of international organizations, non-governmental organisations, and multinational corporations in the Cold War era had already led analysts to question increasingly the validity of an exclusively state-centric approach. The end of the Cold War has resulted in a much less rigid but as the same time more unstable and volatile international environment'. Declarations of independence by most of the Soviet republics resulted in

the acceleration of the disintegration of the USSR. The issues of minority rights and human rights in general are also now firmly on the international agenda. The following sections assess the role of international factors in assisting the process of improving the legal status of the Kurds in the Middle East.

8.3.1   Monitoring human rights records

This section addresses the need for a mechanism and an organisation to deliver equal citizenship for the Kurds, while recognising that human rights violations, are prohibited in the current laws of all member states including the countries ruling over Kurdistan; Iraq, Iran, Syria and Turkey. Safeguarding human rights records globally can be achieved in three steps. Firstly, monitoring the human rights records of UN members and organisations that have the power of prosecution to identify the perpetrators; secondly, ensuring the punishment is proportional to the crime that has been committed; and, thirdly, ensuring that the violation is not repeated. This leads to further promotion of the protection of human rights.

Failure to guarantee equal citizenship for the Kurds is perceived by this thesis as a violation of human rights. Therefore, this section highlights the importance of monitoring the human rights in order to deliver equal citizenship for the Kurds. The UN, the EU Parliament, democratic parliaments and human rights organisations such as Amnesty International and Human Rights Watch identify states and organisations perpetrating human rights abuses. While these institutions are promoting good human rights practices and norms, monitoring alone is not adequate, as the perpetrators, whether they are states or non-state actors, are not transparent in their human rights record. As a result, a great part of these atrocities are left in the dark and the perpetrators continue to deceive the international community. These states breach international laws, treaties, conventions and norms to which they are signatories.

The EU Human Rights Law (EUHRL) is an example of a law that defines human rights violations and safeguards human rights. However, this is only applicable in one part of the world – EU member states. If human rights law becomes universally accepted, then the international community would be in a position to define a crime. There is also, of course, the Universal Declaration of Human Rights; however, these are guiding principles only and are not binding. If it is accepted the EUHRL, or even the various UN charters related to guarantying equal citizenship as the predominant point of this thesis to define what constitutes human rights and the abuses of them, then it be realises that there are modern constitutions among UN member states their constitutions authorise discrimination. Few examples are given in the countries that are the focus of this paper and where Kurdish people are divided, i.e. Turkey, Iran, Syria and Iraq.

In the constitution of Turkey, the Turkish term is not used as an ethnicity, but as a nationality. For example, an Armenian born in Turkey, to parents whose nationality is Turkish, becomes a Turk. Therefore, nationality is being ethnicised in Turkey. By EU standards this is regarded as persecution or a serious human rights violation. Article 3 of the Constitution of Turkey stipulates 'The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish'. Article 3, therefore, denies that any other languages can be used in the country. This seemingly ambiguous statement could mean that every other language is illegal, or could allow some languages whilst banning others. This is what has happened to the Kurdish language. Article 42 in the Constitution of Turkey (2007) further elaborates on Article 3 'No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institution of training or education'. Article 66 of the Turkish Constitution (as amended on 17 October 2001) states: 'Everyone bound to the Turkish state through the bond of citizenship is a Turk. The child of a Turkish father or a Turkish mother is a Turk'.

This means the Turkish Constitution defines the language of the majority, Turkish, and no other language can have the same status as Turkish in Turkey. It is clear that this article is reveals the fear of Kurds and the Kurdish language because of their minority status in their own country and because as indigenous people they live on their own historical land, which is recognised by them as the Kurdistan region in Turkey. This mentality is embodied in the deeds of Turkish top decision makers. In Iran, no ethnicity is recognised in the Iranian Constitution. The Islamic Republic has refused to recognise the term 'ethnicity', having replaced it with the concept of Islamic *umma*, such as in *Ummat Al-Islam*, or the Islamic people. Article 11 of the Iranian Constitution states (1989) 'In accordance with the sacred verse of the Qur'an, "This community is a single community, and I am your Lord, so worship Me" [21:92], all Muslims form a single nation'. Despite this claim that all communities in Iran constitute one nation, Article 15 'The official language and script of Iran, the lingua franca of its people, is Persian. Official documents, correspondence, and texts, as well as text-books, must be in this language and script'. Therefore, Article 15 ensures that people living in Iran all assimilated as Persians and this article makes one race a dominant race. In this way the Iranian Constitution is very similar to the Turkish Constitution. The Iranian Constitution, nevertheless, allows publications in vernacular (native) languages.

The Iranian Constitution further defines this *umma*. It explicitly defines the state religion as Shia Islam, Jafari Twelve or Ithna'ashariyyah'. Article 12 of the Iranian Constitution (1989) stipulates 'The official religion of Iran is Islam and the Twelve Ja'fari School and this principle will remain eternally immutable'. Although many communities in Iran, including Kurds and Baloch, and most Arabs, are Sunni, no Sunni sect is recognised. How could Iran recognise other peoples and incorporate human rights in its constitution, when the founder of the Islamic Republic of Iran did not believe in universal human rights and considered it as a conspiracy to deceive people (as

discussed in chapter five). The Iraqi Constitution has also reinforced the Islamic identity of Iraq in a number of its provisions, in particular Article 2 which is stated in chapter three.

Although the current Iraqi Constitution may not be in the same class as the aforementioned Turkish or Iranian examples, one can realise its inherent contradictions. For example, Islam is fundamentally opposed to democracy because one is about the absolute power of God and the other about people's will, which in many cases oppose each other. Iraq has to be recognised as a multi-ethnic, multi-religious, multi-faith and multi-sect country. All these different identities cannot be covered by imposing Islam as the religion of the state. Even though over 10% of the Syrian population are Kurds, Article 4 of the Syrian Constitution (1973) states 'The Arab language is the official language'. Article 21 of the Syrian Constitution clearly states the educational system is in Arabic, which could be seen as a denial of the Kurdish language as it denies the usage of Kurdish in the educational system. The educational and cultural system (this is quoted from the Constitution, as referred to in previous chapter) aims at creating a socialist nationalist Arab generation which is scientifically minded and attached to its history and land, proud of its heritage, and filled with the spirit of struggle to achieve its nation's objectives of unity, freedom, and socialism, and to serve humanity and its progress. From the above, Syria and Turkey can be seen to have marginalised the rights of Kurds to a greater degree than Iran and Iraq. However, all need to improve the legal status of the Kurds in their state by active measures. These examples illustrate how the UN has failed to influence member states and enforce its values, norms, and treaties to its member states.

Despite the fact that the UN has promoted some useful concepts to safeguard human rights values globally, it has fundamentally failed to enforce the powers of its watchdog organisations or to implement a constitution that would impose punishment for crimes

and human rights abuses as solutions. The failure to enforce may currently discredit the UN, but what undermines it is its selectivity in prosecuting war criminals such as in Yugoslavia and certain nations in Africa (most recently, the Sudanese President), yet turning a blind eye to crimes committed in Turkey, Syria or Iran. The failure of the UN's institutions in monitoring the legal status of the Kurds would not encourage the four studied countries to deliver equal citizenship for the Kurds.

8.3.2   Universal Declaration of Human Rights

The right to political participation is enshrined in several United Nations instruments. The Universal Declaration of Human Rights (the Declaration) defines the general principles of the right to political participation. Although the Declaration is not legally binding, it provides the foundation for other treaties and frameworks of minimum standards for states. Article 21(1) of the Declaration (1948) states 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives', and according to Article 21(3), 'The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures'. If the four countries implemented these two principles, the legal status of the Kurds would be in a better position. The Universal Declaration of Human Rights is a document that could assist in reforming the constitutions of the four countries analysed in this thesis. The provisions of this significant document could be adopted by the legal and judicial systems of the four countries.

8.3.3   International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966. It entered into force on 23 March 1976, in accordance with Article

49. Article 4 states '1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation'. (International Covenant on Civil and Political Rights: 1976).

The International Covenant on Civil and Political Rights (the Covenant) has similar content to the Declaration regarding political rights. Differing from the Declaration, the Covenant is a binding treaty as it imposes some obligations and provides compliance mechanisms for signatory states. Using similar language to the Declaration, Article 25 of the Covenant (1976) states 'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors. (c) To have access, on general terms of equality, to public service in his country'. Article 25 refers to Article 2 of the Covenant to make clear that these rights must be enjoyed 'without any

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distinctions'. The distinctions in Article 2 are explained as follows 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. Article 27 of the Covenant can be associated with the political participation of minorities. Although the article does not refer to political rights directly, the right to effective political participation for minorities is parasitic to the rights recognised in Article 27, which provides: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

In its general comment on Article 27, the Human Rights Committee concluded that the enjoyment of the rights of minorities mentioned there may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them. Article 18 of the Covenant provides '1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and

moral education of their children in conformity with their own convictions'. Article 26 of the Covenant provides 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other statuses'.

The civil and political rights of the minorities of the four examined countries are very poor. In order to change the current situation and advance the civil and political rights of the Kurds, the International Covenant on Civil and Political Rights would need to assist in this process. This thesis recommends that the articles of this convention to be adopted by the four examined countries. One major problem with all other UN instruments is the lack of effective monitoring and enforcement mechanisms.

8.3.4 Convention on the Elimination of All Forms of Racial Discrimination

The political participation of all persons without discrimination on the basis of race, colour or other status is guaranteed by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD:1969). Persons belonging to national or ethnic, linguistic and religious minorities also enjoy equal rights of political participation without any discrimination. Article 5 of ICERD (1969) provides 'In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...) (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service'.

Ill-treatment towards the Kurds is based on ethnicity; adopting conventions on the elimination of all forms of racial discrimination would be a significant policy to be pursued by the four countries of Iraq, Iran, Turkey and Syria to improve the legal status of the Kurds.

8.3.5 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities is an important instrument concerning the right to political participation of minorities. Article 2.2 provides 'Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life' (UNDRPNERLM: 1992). Article 2.2 expresses the right to participation from a general aspect. The term 'public life' includes being elected, the holding of public office, voting and other political and administrative domains. Article 2.3 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities particularly refers to the effective participation of minorities in the decision-making system and states 'Persons belonging to minorities have the right to participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation' (UNDRPNERLM: 1992). In his commentary on the Declaration, Asbjorn Eide (2000:8) explains that the minimum requirement for this is '[p]ersons belonging to minorities have the right to have their opinions heard and fully taken into account before decisions which concern them are adopted'. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities would play a significant role in the process of improving the poor legal status of the Kurds. The Kurds are discriminated against on basis of ethnicity (in Turkey, Iraq and Syria) and because the Kurds are Sunni Muslims they are discriminated against on the basis of religion and ethnicity in Iran.

8.3.6 The Council of Europe

The Council of Europe as a regional club has an international impact. The documents, conventions and apparatus of the Council of Europe have inspired many countries across the world in the process of democratisation and improving the rights of minorities. In terms of the Kurds, the Council of Europe has already had a positive impact on improving the legal, political and cultural status of the Kurds of Turkey. This impact could be extended to other countries which have Kurdish populations.

The jurisdiction of the Organization of Security and Co-operation of Europe (OSCE) and the Council of Europe do not extend beyond the boundaries of Turkey. Hence, the series of tripartite discussions between Turkey, Iran and Syria are more an exercise in damage control rather than conflict resolution. In relation to the process of guaranteeing equal citizenship for the minorities and the Kurds, the conventions, recommendations and approaches of OSCE and Council of Europe would guide and inspire the policy and law makers of Turkey, Iran, Iraq and Syria.

8.3.6.1 The European Convention on Human Rights

Article 3 of Protocol No. 1 of the European Convention on Human Rights provides the right to regular, free and fair elections within the context of political rights. The Article states 'The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature' (CPHRFF:1953). Article 3 does not have a broad definition concerning the right to political participation compared with other international instruments. For example, the right to vote and to be elected is not mentioned explicitly in this article. However, Donna (1959:180) states on this article '[p]resupposes the existence of a representative legislature, elected at reasonable intervals, as the basis of a democratic society'. Moreover, the article has been clarified by the case law of the European Court of Human Rights and by the Commission. As

regards the right to vote and to be elected, the Commission (No. 9267/81:97) concludes '[i]n principle, the provision guarantees the right to vote and the right to stand as a candidate for election to the legislature. States may impose certain restrictions on the right to vote and to be elected as long as those restrictions are not arbitrary and do not infringe the free expression of the opinion of the people'.

The Court has dealt with a number of issues concerning the political representation of minority groups. In the case of Mathieu-Mohin and Clerfayt v. Belgium, the Court had to decide whether Article 3 of Protocol 1 guarantees linguistic rights during the election period. The applicants were French-speaking Belgian nationals living in the Flemish regions. The applicants complained that they were prevented from sitting on the Flemish Council because they took their oath in French. The Court decided there was no violation of Article 3 of Protocol 1 (ECtHR: 1987) stating:

> In any consideration of the electoral system in issue, its general context must not be forgotten. The system does not appear unreasonable if regard is had to the intentions it reflects and to the respondent state's margin of appreciation within the Belgian parliamentary system – a margin that is all the greater as the system is incomplete and provisional. One of the consequences for the linguistic minorities is that they must vote for candidates willing and able to use the language of their region. A similar requirement is found in the organisation of elections in a good many states. Experience shows that such a situation does not necessarily threaten the interests of the minorities.

In a joint dissenting opinion, five members of the Court expressed their disagreement with the decision and stated that this may result in the violation of free expression. According to the dissenting opinion:

> Such a situation, excluding, as it does in practice, representation of the French-speaking electorate of Halle-Vilvoorde at regional level, does not ensure 'the free expression of the opinion of the people in the choice of the legislature' as stipulated in Article 3 of Protocol No. 1 (P1-3), and it creates a language-based distinction contrary to Article 14 (art. 14) of the Convention. (ECtHR: 1987).

If freedom of expression means freedom to receive information and opinions, what happens if people do not understand the state language? For instance, as will be explained below, in the case of Kurdish minorities in Turkey, many cannot speak or

understand the state language. In this case, these kinds of restrictions would also violate their freedom of expression. Moreover, a broad scope in the state's margin of appreciation can be used as a justification by states to legitimate unnecessary restrictions on the use of non-official languages and to create other barriers to political representation. In a number of cases against Turkey, the Court has dealt with the issue of the dissolution of political parties. These parties were usually dissolved on the grounds that they aimed at undermining the unity and territorial integrity of the state. They were alleged to advocate terrorism and have the goal of dividing Turkey by referring to the Kurdish issue and proposing solutions to this question. In these cases the Court has usually stated that there was no incitement to the use of violence and breach of the rules of democracy. For example, in the case of the United Communist Party of Turkey and others v. Turkey the Court (ECtHR: 1998) states:

> The Court considers one of the principal characteristics of democracy to be the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned.

The Court decided that political parties are protected within the scope of Article 11 and found a violation of Article 11. In the cases of the Freedom and Democracy Party (OZDEP) v. Turkey, The Socialist Party of Turkey and others v. Turkey, The United Macedonian Organization Ilinden-PIRIN and others v. Bulgaria and in some other cases regarding the dissolution of political parties, the Court reached the same conclusion and found violations of Article 11.

As regards the high threshold in the electoral system in the case of Yumak and Sadak v. Turkey, the Court examined whether the 10-per cent threshold in Turkey violates the Convention. The applicants were Kurdish politicians from Turkey who failed to get elected to parliament at the 2002 elections on account of their party not exceeding the

10-per cent national threshold, despite the party obtaining approximately 45 per cent of the votes in their region. According to Turkish law, a political party is required to receive 10 per cent of the national vote in order for it member(s) to enter parliament. The applicants complained that the imposition of the 10-per cent threshold in the parliamentary election violated their rights under Article 3 of Protocol 1. In this case, the Court pointed out that the 10-per cent threshold is higher than in any other European country and that it needs to be lowered. The Court avoided drawing this conclusion in its decision and the 10-per cent threshold was left within the margin of appreciation of the government. The Court (ECtHR: 2007) concluded that there was no violation of Article 3 of Protocol 1 and stated:

> While noting that it would be desirable for the threshold complained of to be lowered and/or for corrective counterbalances to be introduced to ensure optimal representation of the various political tendencies without sacrificing the objective sought (the establishment of stable parliamentary majorities), the Court considers that it is important in this area to leave sufficient latitude to the national decision-makers. In that connection, it also attaches importance to the fact that the electoral system, including the threshold in question, is the subject of much debate within Turkish society and that numerous proposals of ways to correct the threshold's effects are being made both in parliament and among leading figures of civil society.

From the above section, it is obvious that the European Convention on Human Rights has had a considerable impact on improving the status of human rights of the citizens of Turkey. Hence, this Convention could play a significant role in changing the poor legal status of the Kurds in Turkey and consequently will affect the legal system of regional countries (Iraq, Iran and Syria), in guaranteeing equal citizenship for the Kurds.

8.3.6.2 Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities is the most important and comprehensive convention under the Council of Europe regarding minorities. It is the first legally binding multilateral treaty devoted to protecting specifically minority rights. The Framework Convention provides mechanisms for the

implementation of the Convention. The Committee of Ministers of the Council of Europe is entrusted with the task of monitoring the implementation by state parties.

Article 15 of the Framework Convention regulates the right to effective participation in general. The explanatory report on the Framework Convention and the opinions/recommendations of the Advisory Committee provide further clarification regarding the concept and the efficiency of the political participation. The explanatory report to the Framework Convention provides some measures that states may adopt to give effect to the public/political participation of national minorities. These measures are 'consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly; involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly; undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities; effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels and decentralised or local forms of government' (Framework Convention for the Protection of National Minorities: 1995). In its several opinions and recommendations concerning the implementation of the states parties, the Advisory Committee on the Framework Convention has made a significant contribution to the political participation of national minorities.

The establishment of institutions and practices is one of the ways that the Advisory Committee suggests facilitating the effective political participation of national minorities. The Advisory Committee emphasises the importance of establishing advisory or consultative bodies and how these institutions can make a valuable contribution to increase the level and quality of dialogue between national minorities

and the relevant authorities. In a number of its opinions the Advisory Committee provides important information on how these institutions should operate. According to the Committee: 'The areas in which national minorities are consulted should not be too restrictive and it should not be confined to just cultural and educational issues' (ACFC/INF/OP/I (2003)002:Para88). Paragraph 66 also states '[t]he effective participation of minorities requires that consultative or advisory bodies should be consulted on all issues specifically affecting minorities'.

As regards representation in the advisory or consultative bodies, the Advisory Committee stresses the importance of providing permanent consultation structures for representatives of national minorities and involving all minorities in the advisory bodies. According to the Committee, authorities should consider creating a more consolidated structure for consultations of national minorities and involve all national minorities, including the numerically smallest ones on the advisory or consultative bodies. Such consultation of national minorities in relevant decision-making systems is also important at the local level and it should be taken place in all municipalities concerned. The Advisory Committee explains desired the working method and character of consultative bodies. According to the Committee, occasional meetings and consultations between national minorities and relevant authorities are not fully effective. The consultative bodies and authorities need to meet regularly and frequently to promote effective consultation and dialogue between authorities and national minorities. This should be considered at the local and regional level as well. The views of consultative bodies are sometimes disregarded without explanation by state agencies.

The Advisory Committee thinks that as well as seeking advice from consultative bodies more regularly, state authorities should also give reasons whenever they do not accept the views of consultative bodies. The Committee has noted that lack of staff and other resources restrict the effectiveness of the consultative bodies thus authorities

should provide further resources and sufficient staff. The Committee has drawn attention to unbalanced representation of minorities in consultative bodies and its results on decisions thus suggest authorities examine ways of strengthening the representation of minorities. The Committee further suggests that the number of minority members in consultative bodies should be more than a majority. The Advisory Committee points out that the members of national minority groups in consultative bodies should not be perceived as the sole and exclusive interlocutor of the authorities in minority questions.

The Advisory Committee comments on some issues in the context of electoral representation. For instance, regarding the language requirements for candidates in parliamentary and local elections, the Advisory Committee points out that this requirement has a negative impact on the effective participation of national minorities, that it is not compatible with article 15 of the Framework Convention and thus should be abolished. The parliamentary representation of small communities and dispersed members of national minorities (for example, Roma) is another issue regarding the effective political participation of national minorities, as states usually explain the situation of larger groups of national minorities in their reports. In this case authorities are encouraged to seek other means to take account of minority interests. The Advisory Committee is also concerned about the mechanisms for participation of travellers and insists on adequate provision for such non-territorial minorities. As regards citizenship, state parties usually report to the Advisory Committee on the formal equality of all citizens in terms of political rights. It can be argued that such equality should be evident in the very designation and design of the constitutional system. For example, designation in the constitution of the state is based on a particular nation or ethnic group, rather than all its citizens. In this case the Advisory Committee has noted that where a particular national or ethnic group is so nominated, particular steps should be taken to enhance effective participation for other groups as well.

The Kurds are a national minority and, with other minorities, they suffer from an exclusive legal and constitutional system in each of the four countries studied. The Framework Convention for the Protection of National Minorities can be used as guidance in improving the situation of national minorities of the four countries, because the minorities, including the Kurds, are vulnerable and need protection and this framework would play an important role in protecting their rights.

8.3.6.3 European Charter of Local Self-Government

The European Charter of Local Self-Government is an international treaty that was adopted by the Committee of Ministers of the Council of Europe in June 1985. The treaty recognises improving local democracy as a method of protection of national minorities. The Preamble of the Charter emphasises the particular role and importance of local self-government and its contribution to the process of the construction of democratic principles in Europe. The Charter provides a number of significant principles for the member states of the Council of Europe concerning local self-government. These principles are as follows 'The right of citizens to participate in the conduct of public affairs is a democratic principle shared by all member States of the Council of Europe. It is at local level that this right can be most directly exercised. The existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen. The safeguarding and reinforcement of local self-government is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power. The existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment' (European Charter of Local Self-Government: 1985).

While the Charter states safeguarding and reinforcement of local self-government secures decentralisation of power as well as principles of democracy, this can be applied to the representation of minorities, as representation of minorities requires a decentralised state. Furthermore, state parties undertake to guarantee the political, administrative and financial independence of local authorities under the Charter. The Charter also provides for the principle of local self-government to be recognised in domestic legislation, and where practicable in the constitution. Adopting local democracy is another way of improving the human rights of the Kurds and guaranteeing equal citizenship. The Charter discussed in this section has outlined the concept of local self-government. Hence, this Charter could inspire the four countries to adopt different ways of governance which would consequently empower minorities and improve their legal status.

8.3.7 The Lund Recommendations on the Effective Participation of National Minorities in Public Life

Many recommendations of the European Union would be beneficial to assist the four examined countries to improve the legal status of the Kurds. However, this section emphasises on The Lund Recommendations because they are relevant to national minorities. The Lund Recommendations on the Effective Participation of National Minorities in Public Life were drafted in 1999 by a group of international experts at the request of the High Commissioner of European Union National Minorities (OSCE) is the first comprehensive instrument on the mechanisms for achieving the inclusion of national minorities in public institutions. John Packer argues '[t]he Lund Recommendations are an authoritative interpretation of the relevant international standards concerning the political participation of minorities' (Packer 2000:41). The Lund Recommendations start by emphasising the importance of the effective participation of minorities for democratic society and explain their aim. The first Article of the Lund Recommendations (1999) states:

> Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities. These Recommendations aim to facilitate the inclusion of minorities within the state and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.

The rest of the Lund Recommendations explains what should be done and how to achieve the aim stated in the first Article. Ensuring opportunities exist for minorities to have an effective voice at the level of central government is important for this purpose. These may include 'Special representation of national minorities, for example, through a reserved number of seats in the parliament and other guaranteed participation in the legislative process; Formal or informal understandings for allocating cabinet positions, or other seats/positions in judicial and governmental organs; Mechanisms to ensure that minority interests are considered within relevant governmental organs and Special measures for minority participation in the civil service' (Lund Recommendations: 1999).

Regarding electoral systems, the Lund Recommendations suggest that the electoral system should facilitate minority representation and influence. This can be achieved in different ways. For example, 'States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination' (Lund Recommendations: 1999). It also includes the freedom to establish political parties based on communal identities as well as those not identified exclusively with the interests of a specific community. Where minorities are concentrated territorially, single member districts may provide sufficient representation; proportional representation systems where a political party's share in the national vote is reflected in its share of the legislative seats may assist in the representation of minorities; some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation; and

lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.

The Lund Recommendations suggest states establish formal advisory or consultative bodies to facilitate effective communication between governmental authorities and national minorities. Such bodies should be able to raise issues with decision makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to the building of confidence. The effective functioning of these bodies will require that they have adequate resources. Moreover, the Explanatory Note to the Lund Recommendation (1999) considers:

> Such bodies can be standing or ad hoc, part of or attached to the legislative or executive branch or independent therefrom (...) In order to be effective, these bodies should be composed of minority representatives and others who can offer special expertise, provided with adequate resources, and given serious attention by decision makers. Aside from advice and counsel, such bodies can constitute a useful intermediary institution between decision makers and minority groups. They can also stimulate action at the level of government and among minority communities.

The Lund Recommendations state that effective participation of minorities does not merely consist of involvement in the decision-making process or consultation, it goes beyond these and it requires a much broader involvement within state organisations. This may mean the establishment of non-territorial or territorial arrangements of self-governance. In order to achieve this, '[i]t is essential for governmental authorities and minorities to recognise the need for central and uniform decisions in some areas of governance together with the advantages of diversity in others' (Lund Recommendations: 1999). States usually resist these kinds of claims as they always have a fear of threats to their territorial integrity and the result of secession. Providing

such arrangements usually helps minorities to integrate with the state in which they live.

Walter A. Kemp significantly notes:

> Self governance may satisfy many of the desires of minority populations that seek greater control over decisions that affect them … In order to prevent secessionist tendencies, minorities must feel that they are equal partners in the state and that their views will be protected. They must feel that the state and its institutions are theirs. To reach this level they need to be empowered, to be involved in effective, representative and accountable political units that take into account their concerns. (Kemp 2007:10).

The Lund Recommendations (1999) also notes: 'Experience in Europe and elsewhere shows the value of shifting certain legislative and executive functions from the central to the regional level'. The main purpose of suggesting the establishment of these arrangements is to improve the opportunities of minorities to exercise authority over matters affecting them. The Lund Recommendations (1999) provides another alternative 'Appropriate local, regional, or autonomous administrations that correspond to the specific historical and territorial circumstances of national minorities may undertake a number of functions in order to respond more effectively to the concerns of the minorities.' Such regional or local arrangements can have authority over education, culture, use of minority language, environment, local planning, natural resources, economic development, local policing functions, and housing, health, and other social services. Functions of taxation, administration of justice, tourism and transport could be shared by central and regional authorities. Finally it should be noted that such arrangements do not require the transfer of authority from democratically elected national governments to unaccountable local elites. According to the Lund Recommendations, any of these regional or local arrangements must respect the human rights of all those affected, and must be based on democratic principles to ensure that they genuinely reflect the views of the affected population. The Lund Recommendations represent another tool and guidelines which could be beneficial to the four studied

countries in including their minorities. The Lund Recommendations would assist in improving the poor status of the legal status of the Kurds.

The above sections highlighted the role of external players and factors in improving the reduced legal status of the Kurds. It also shows how international instruments, European law and treaties and the experiences of other countries can be used to benefit the four studied countries in advancing the rights of minorities, including the Kurds. This chapter concludes by the following section which gives the summary of necessary steps that would be carried out by the authorities of the four examined countries to deliver equal citizenship for the Kurds. The following section also would the final remarks of this thesis.

8.4   Final remarks

To recapitulate the examination of the relevant constitutional law of the four countries from previous chapters, Article 66 of the Turkish Constitution (as amended on 17 October 2001) states 'Everyone bound to the Turkish state through the bond of citizenship is a Turk. The child of a Turkish father or a Turkish mother is a Turk'. Article 3 states: 'The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish.' Article 42 elaborates this further 'No other language than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education'. No ethnicity is recognised in the Iranian constitution. The Islamic Republic has refused to recognise the term 'ethnicity' and replaced it with the concept of Islamic *umma*, such as in *Ummat Al-Islam* or Islamic people. Despite the fact that the Kurds, Baloch the Arabs of Khuzestan are Sunni Muslims, no Sunni sect is recognised. The Iranian Constitution explicitly defines the state religion as Shia Islam.

Depoliticisation of the question of the Kurds might serve to create a more favourable atmosphere in which to solve the Middle East's Kurdish question. The Kurdish issue is perceived and treated by Syria, Turkey, Iraq and Iran as a security threat rather than the

matter of a minority population that has a poor legal status and needs a political and legal solution which embodies reforming the constitution, the legal system and especially the penal code. Article 4 and 21 of the Syrian constitution (referenced in chapter six) deny the education, cultural and legal rights of the Kurds. In order to improve the poor legal status of the Kurds in Syria, the above article should be abolished and replaced with a more tolerant and inclusive provision which guarantees equal access to cultural, educational resources and state institutions. The Iraqi Constitution (2005) has reinforced the Islamic identity of Iraq by a number of articles, in particular, Article 2: First: Islam is the official religion of the State and it is a fundamental source of legislation: A. No law that contradicts the established provisions of Islam may be established. B. No law that contradicts the principles of democracy may be established. C. No law that contradicts the rights and basic freedoms stipulated in this constitution may be established. Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice such as Christians, Yazedis, and Mandi Sabeans. The first part of this Article 2, (A), is an attempt to impose an Islamic identity on the whole population of Iraq by not allowing of making laws which contradict Islam.

  Minority rights are the key to pluralism and peace in the Middle East. In order to achieve stability in the region, guaranteeing the legal rights of the Kurds, as the largest ethnic minority of the four examined countries is the key. Hence, one of major internal factors or incentives to improve the legal status of the Kurds would be a stable region without interventions and sources of instability. Failure to deliver equal citizenship and integrate the minorities of the Middle East has been the source of internal instability and external weakness. Ghanea (2008:320) argues '[w]hat we commonly think of as the 'Arab and Muslim world' is in fact a rich and varied mosaic of peoples. Over the last 50

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years, many Middle Eastern and North African minorities have been oppressed or struggled to survive – be they national groups (Berbers, Kurds, Turkmens, etc.), religious communities (Christians, Zoroastrians, Baha'is, etc.) or both (Armenians, Jews, etc.). Sects, such as Shia in the Gulf States and Sunnis in Iran, have not been successfully integrated within Islam itself. Now, more than ever, thriving minorities are the cornerstone of a healthy civil society and the key to pluralism and peace in this troubled region'. Looking at the internal and external proposals to improve the poor legal status of the Kurds, challenges and opportunities do exist.

The right of a minority to its identity is crucial. The rights of national minorities can only be realised through various forms of autonomy. The problem of other-definition cannot be avoided though. The authorities need to recognise first, openly, the existence of a minority; but they may prefer to deny recognition, in order to crush the identity of what is in reality a minority group. Recognition may also be denied by the central authorities out of fear of disintegration of the state that may ensue. Given what happened to the Soviet Union and the former Yugoslavia, the leaderships of many states, particularly of those states in unstable and volatile regional environments such as the Middle East, are especially sensitive to any developments which may threaten, however indirectly, the territorial integrity and indivisibility of their state. The international community should be aware of Turkey's legitimate security concerns and be mindful of the wider dimensions of the Kurdish question in the region. In contrast to Iran, Iraq and Syria, Turkey is an easier target for Western governments to criticise because of its democratic credentials, its geographical status and Turky's attempt to join the EU. Ironically, such condemnations of the policies of the Turkish government are also in effect a demonstration of indirect praise for the workings of Turkish democracy.

Delivering equal citizenship for the Kurds requires equal access to the educational system and the labour market and shared facilities for ethnic groups; the right to be

different and the right not to participate in national society in certain respects; the availability of national identity to all citizens regardless of their cultural differences; the decentralisation of political power and the acceptance of different principles for local party organisation; and the taking of measures to ensure that the state should not be identified with a set of symbols exclusively representing one or a few components of the population. In establishing a new constitution and judicial system to improve the poor legal status of the Kurds, the existence of ethnic nationalism, the clash between religion and secularism, centralisation and ideologies that have failed Middle Eastern societies would be major challenges in the four countries studied. The global wave of democratisation, the awakening of the rights of indigenous populations, and the unpleasant history of the region has meant that more rights have been obtained by the Kurds. Events in Iraqi since 2003 and the potential membership of Turkey to the EU offer opportunities for change and weakening the exclusive culture of the four studied countries. Since recognition is essential to secure the rights of minority groups in a state, the struggle for recognition of minority groups in the political arena has become central.

Non-recognition of the Kurds can create sources of domestic conflict, while legally guaranteed recognition can promote long-term stability and peace within a state. Recognition is an essential step for securing the rights of the Kurds and gives power to the Kurds by providing them with the opportunity to be involved in the decision-making process. Representation in parliament is one of the most significant and common means for the effective political participation of minorities. Involvement in parliament and the decision-making process strengthens the protection of minorities, helps them to integrate in the state and creates the opportunity for dialogue between the minority and the majority, thus enabling mutual accommodation between them. The task then is to find ways to reconcile the need for larger economic units with the growing demand for

smaller political units based upon ethnic identity. Part of the solution lies in legitimising the idea that modern states need not be centralised, that centralism has outlived its usefulness, and that federalism, cultural autonomy and condominium arrangements, accompanied by guarantees of the rights of linguistic and religious minorities, can be effective instruments for satisfying nationalist aspirations for decentralisation and self-government without redrawing international boundaries. Part of the solution may lie in finding ways to provide international standing to ethnic groups short of state sovereignty, perhaps through representation for ethnic groups within regional and international organisations.

The International community will need to come up with creative solutions to what will surely remain one of the central issues for the remainder of this century and beyond. A fundamental change in the relationship between peoples and states takes place. This new relationship is taking an extraordinary variety of forms: the demands for secession and the subsequent breakup of the Soviet Union and the creation of a Commonwealth of Independent States; the disintegration of Yugoslavia; the quest for autonomy by the Kurds; secessionist movements among the Kashmiris, Sikhs, Timorese, Eritreans and many other peoples; concerns over multiculturalism in the USA; anxieties over relations between nationals and the new migrants from North Africa and the Middle East in western Europe; and debates over migration and refugee policies in all advanced industrial countries and in much of the Third World. 'Peoples' – however they identify themselves by ethnicity, religion, language, tribe or shared history – want new political institutions or new relationships within existing institutions. When these arrangements are not satisfactory or their demands are met with force they may resist or flee across regional and national boundaries. Throughout the world, government leaders watch with concern the ethnic and religious conflicts within

neighbouring states, recognising how quickly these conflicts can threaten their own internal security.

What is for some peoples the quest for identity and autonomy, to others represents a force for internal disintegration. Governments detest such claims within their own borders, but may find it in their interest to support such claims when they are made upon their adversaries. Cynics note that Arab states including Syria oppose the legal rights of the Kurds, but seek it for the Palestinians. India condemns Pakistan's support for the Kashmiris, but has supported the Pashtuns and Sindhis. Iran has funded the Kurds to undermine the Iraqi government and defends the rights of Palestinians, but refused to grant autonomy to its own Kurds. The Chinese have supported the Nagas and Mizos, but suppressed the Tibetans. Turkey defends Turkmens in Iraq and the Turkish minority in Bulgaria, while it oppresses the Kurdish minority on its own soil. These examples illustrate the central point: state builders simultaneously seek to strengthen the state by undermining ethnic minorities within their own country while supporting the ethnic minorities of their adversaries. This explains the inconsistent position taken by many Third World governments including the four examined countries of this thesis, who in the chambers of the United Nations declare their opposition to self-determination and the restructuring of international borders, but within their own regions play the ethnic card against their neighbours. The four studied countries are examples of violating the rights of minorities, including the Kurds. The issue of the Kurds need to be de-securitise by the countries rule the Kurds.

In conclusion, this thesis recommends the following principles: minority rights are human rights, and equal citizenship should replace other frameworks in the four countries studied, recognition of the rights of minorities and abolition of discriminatory laws are the cornerstone of a healthy civil society and the key to pluralism and peace in this region, the Kurds are not the only victims of failed states in the Middle East, they

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are but one of the victims, false sense of ethnic homogeneity is no longer a solution, regarding Turkey's membership in EU, real reform is necessary, not cosmetic reforms and the state should not be biased to one ethnicity or a sect of religion.

Finally, taking the following steps would improve the legal status of the Kurds and guarantee equal citizenship for the Kurds. The development of a human rights standard with which all UN member states would comply; part of this would be a model constitution for the UN member states to implement; in addition, it would be a model of human rights law that would not allow certain punishments to be carried out, and set a standard for treating those accused of crimes. The establishment of an international body responsible for promotion and implementation in this global human rights standard. The establishment of an international body to ensure a healthy and safe environment is maintained in conflict areas and the establishment of an international body that investigates allegations of discrimination and denying the rights of an ethnic group such as the Kurds. The above recommendations and steps might be not be easy to be implemented, however, they are necessary in the path to improve the legal status of the Kurds in the four countries.

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