

A STUDY ON THE HUMAN RIGHTS SITUATION IN KIRKUK

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Abstract: Human rights are the principles that seek to protect all human beings around the world from serious political, legal, and social abuses. As a result of the atrocities committed in First and Second World Wars, the United Nations ensures the protection of human rights through several international conventions and instruments, such as the UN Charter and Universal Declaration of Human Rights. Iraq is a signatory to most of the international conventions concerning the protection of human rights. This paper aims to examine the protection of human rights in Kirkuk under the Iraqi Federal Government. The paper's approach is focused entirely on desk research, with secondary sources being the main sources of information. The study concludes that the Iraqi Federal Government has failed to protect human rights in Kirkuk due to the fragmented security ability of the Federal Government and the dominance of militant groups in the region.

Keywords: Human rights, international conventions, Kirkuk, Iraq Federal Government, Kurdish minority, militant groups.

SUMMARY: 1. INTRODUCTION. 2. CONCEPT OF HUMAN RIGHTS. 3. LEGAL POSITION OF HUMAN RIGHTS. 4. KIRKUK PROVINCE. 5. KIRKUK'S ISSUE UNDER UN RESOLUTIONS. 6. FUNDAMENTAL RIGHTS IN THE IRAQI CONSTITUTION. 7. OVERVIEW OF THE HUMAN RIGHTS VIOLATIONS IN KIRKUK. 7.1. Displacement and humanitarian aspect. 7.2. Freedom of expression, discrimination and cultural rights. 8. CONCLUSION.

1. INTRODUCTION

Massive human rights violations have been taking place in Kirkuk, a disputed area in Iraq, since 2003 when the Iraqi Baathist government changed to a federal government. This incident led to sectarian violence between Sunni and Shia sects that adversely reflected the whole governance system of Iraq. The Kurds, a minority ethnic group in Iraq, have not been spared from the human rights violations that resulted from the conflicts between the two sects, especially in the Kirkuk province where the majority of the Kurds live. The province of Kirkuk is a contentious region that is on the border between Iraq and the Kurdistan Region. The population is made up of Sunni Kurds, Sunni Arabs, Sunni and Shia Turkmen, as well as a small number of Chaldean and Assyrian Christians. In addition to the districts of Dibis, Hawija, and Daquq, the city of Kirkuk is situated in the Kirkuk province (International Crisis Group, 2018; European Union Agency for Asylum, 2021) See further below, section(4). It has historically served as a focal point of conflicts between the Iraq Federal Government and the Kurdistan Regional Government. The Kirkuk province was under the jurisdiction of the central government until 2014, after the terrorist organization named the " Islamic State of Iraq and the Levant" (ISIL) occupied most of Iraq and Syria, causing the Iraqi army to disintegrate. Kirkuk city and other areas of the province were taken by Kurdish troops (peshmarga) in order to close the defensive

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vacuum created by the Iraqi military and stop ISIL from capturing them. After the city fell to Kurdish forces due to the defeat of ISIS, tensions over the city's administration between the Kurdistan Regional Government (KRG) and the federal government increased, especially over the oil issue. However, after the (KRG) held the independence referendum¹, the Iraqi army retook control of Kirkuk province (Winter, 2017). Although the civil and security administration of Kirkuk has again fallen under the control of the Iraqi federal government, several armed groups which were established in Iraq since 2003 have interfered in the internal affairs of Kirkuk province and played a negative role as a result of the Iraqi army's capture of Kirkuk (KirkukNow,2022), such as Kata'ib Hezbollah, Kata'ib Sayyid al-Shuhada, Kata'ib al-Imam Ali, Asa'ib Ahl al-Haq, and the Badr Organization, which are united under the name of al-Hashd ash-Shabi ("Iraqi Popular Forces", 2015). These groups are outside the jurisdiction of the Iraqi Federal Government; their powers are above those of the government and have a negative impact on the lives of Iraqis, especially in Kirkuk. The illegal conducts of these militants have disrupted the security of the people living in Kirkuk and deprived them of their fundamental rights. The majority of the people have been displaced and have lost their jobs. Moreover, the militant groups have been raising their own flags and have removed other cultural symbols of the minorities. They have attempted to change the demographics of Kirkuk illegally by bringing foreign families to the province. This situation has stripped the people of Kirkuk, especially the Kurds, of their fundamental rights, including the ethnic minorities' rights provided in the Iraqi Constitution of 2005.² The Constitution obligates the Iraqi Federal Government to respect the rights of the Kurds. Thus, this unfavorable situation in Kirkuk is an important subject of this study. To present more information to clarify the matter, the question arises: have the armed groups violated the fundamental rights of the people in Kirkuk, including the Kurds as the largest minority group or not? This paper therefore aims to investigate the reality of the violations. It also aims to demonstrate the position and the legal responsibility of the Iraqi Federal Government in this matter. The paper also explains the notion and legal base of human rights, followed by the issues faced in Kirkuk

¹ On 25 September 2017, the Kurdistan Region of Iraq held an independence referendum. According to the preliminary results, 92.73 percent of the ballots cast were in favour of independence. KRG believed that the reason for holding the referendum was the failure of the Iraqi Federal Government to implement the constitutional demands of the region. For further information, see Shareef, Sanh (2020), "Iraqi Kurds Right to Self Determination in the Context of Governmental Policies and Academia".

² Most important minority rights can be found in Iraqi Constitution, 2005, Art. 2 (2), Art 4(2), Art.14 and 15. Article 2(2) states that "This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandaean Sabeans." Article 4(1) state that "The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkmen, Assyrian, and Armenian shall be guaranteed in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions." Article 14 states that "Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status." Article15 states that "Every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority." See further at: <https://aceproject.org/ero-en/regions/mideast/IQ/Full%20Text%20of%20Iraqi%20Constitution.pdf/view>.

under the UN Resolutions. Finally, it investigates and analyses the human rights violations in Kirkuk that have resulted from the unwanted conduct of armed groups in the province.

2. CONCEPT OF HUMAN RIGHTS

The concept of human rights is a thorny one. It is expansive in its content and sensitive in its implications. It includes a wide range of rights, including civil, political, social, and economic rights. Most legal and governmental systems and organisations have regulations on these rights. The issue of human rights is sensitive because it interferes with a person's daily life, with one's various activities, with one's individual and psychological relationships with others, and with the subject-based authority of the group. Therefore, any denial of one of these rights is ultimately a denial of the existence and dignity of the individual and a denial of the legitimacy of the existence of the state itself (Fawzia, 2012). However, in view of the seriousness and scope of human rights, it can be difficult to give a specific definition of this human rights concept, and most of the attempts made in this context have only succeeded in approaching the basic elements of this concept. Therefore, it is first necessary to clarify what is meant by right; it is a moral or material interest belonging to the right holder that is protected by legal means. A right is what is permitted, permitted by written laws or rulings related to considered actions, or morally permissible, because the intended action is either valid or morally impartial (Daham, 2020). Regarding human rights, there are many definitions; French scholar Yves Madiot defined it as "the study of personal rights recognized nationally and internationally, which in the light of a particular civilization guarantees a combination of affirming and protecting human dignity on the one hand, and maintaining public order on the other hand" (Shabib, 202).

Human rights are also defined as a set of rights that every individual enjoys or should enjoy in the society in which he or she lives. This requires that these rights are universal and enjoyed by every individual as a human being without discrimination between individuals. Likewise, these rights must also find their dignity in a legal obligation to implement them, not a moral obligation (Abdul Ghaffar, 2003). David b. Forsyth believes that human rights are in themselves the source of the legal and political legitimacy of the state, which does not derive from any legal system or policy evaluation criteria (Fakia, 2015). However, all these definitions share a common view of the subject within the modern view of rights and law, assuming the existence of a modern state dominated by the law, in that this law must guarantee the rights, dignity, equality and justice for all citizens.

Thus, it can be said that these definitions presuppose the existence of a modern science called the science of human rights, and that the criterion for this science is human dignity. There are several principles that can characterize these rights such as universality of human rights and the principle of complementarity and interdependence, and domestic national matter. The origin of human rights lies in the fact that it is both a domestic national issue and an international principle (Fawzia, 2012).

The concept of human rights, linguistically, idiomatically, and legally, is one on which nations and humanity as a whole are built. In this respect, human rights differ according to the meaning and term in which they are found. Linguistically, human rights

are among the moral principles that represent the human model that humans should have. The rights should not diminish as they are granted by God to humans in general and bind upon them regardless of race, religion, or morality. Nonetheless, the definition of human rights in terms of terminology varies from one society to another, depending on the culture itself and the conditions of the society (Nasser, 2022).

Terminology, human rights is defined as a special branch of the social sciences. It is concerned with the study of relations between human beings on the basis of human dignity. Thus, it defines the essential human rights and permissions for the well-being of every human being. Another definition of human rights is science peculiar to a person, especially a person living under a state, that they should benefit from the protection of the law when they are accused of a crime or when they are the victim of an infraction. Through the intervention of national judiciary and international organisations, their rights, especially the right to equality, should be brought into line with the needs of the public system (Hamdoush, 2014). However, violations of human rights are still committed in some countries. According to a report, the countries where human rights are endangered and violated the most include Yemen, Iran, Syria, and Iraq (The Global Economy, 2022).

In law, the concept of human rights did not originate from legal principles. Instead, human rights were taken as moral claims. Over time, these rights began to be formally recognised and protected by laws, as described in the next section. They are often enshrined in a country's constitution and expressed in the form of bills that no government can negate. In addition, independent courts have been established to provide redress to the people deprived of these rights (UN Office of Human Rights, 2004). In other words, human rights are the principles and demands that are closely related to human dignity; they must be respected and protected by the authorities to ensure that the people can lead a dignified life (Sedeed, 2020). However, the international legal framework of human rights can be criticized as being relative rather than universal; it may even be considered as Western values. Arguments emphasize that human rights, especially as stated in the Universal Declaration of Human Rights, leave no room for multiculturalism or that these rights are not multicultural; for instance, this framework does not apply to African and Asian countries, or even the Middle East (A de Man, 2018 & Borhani, 2018).

The definition of human rights relates to a particular understanding of the state and existing law, wherein the citizen takes precedence over the benefit of a community and the state. The appreciation of self-respect and the rights that flow from that dignity is the foundation of fairness in the model definition of human rights, thus the foundation of any legal framework that wants to be just. Positive law can be protected from worsening through jurisdictional lawlessness by identifying the additional lawful roots of existing law and demonstrating the lawful framework on the admiration for human rights (Piechowiak, 1999).

All the definitions of human rights revolve around one axis, namely the protection of human rights, whether legal or human. Whilst the definitions vary, they lead to the same result, which is the protection of the individual's right and freedom to live in a satisfactory place that protects all human rights.

Historically and philosophically, the idea of human rights traces its origins to natural law. The idea of human rights based on natural law is awareness that the rights established to protect liberty and dignity are human in nature, and the rights inherent in or attached to the human person, as well as their denial, do not preclude their existence because the rights exist together with humans. Therefore the idea of human rights is outside the scope of positive law, and it interferes with what is possible. Describing it as legal fiction implies that laws are revealing rather than creative (Sobh, 2020).

One of the most prominent renaissance thinkers was Machiavelli, who defended freedom, argued that there is no freedom without equality. He permitted nations to resort to any means to achieve the right to equality and liberty. Social contract philosophers have also played a prominent role in the intellectual evolution of the human rights notion, such as John Locke and Montesquieu who supported liberty. Jean-Jacques Rousseau who advocated popular sovereignty, also believed that popular sovereignty was the only guarantee for the protection of individual rights and freedoms (Shaanan, 2012). Thus, the principle that the 18th-century philosophic thinkers in the West started in their appeal to human rights is the notion of natural rights.

Natural rights, which developed from the idea of natural law, are regarded as the forerunners of human rights. Natural law is the greater order decency norm by which all other rules are measured, and it has held a prominent position in Western governmental philosophy for decades. To challenge the unfairness of human-made law, one could turn to God or natural law, which has superior power. This notion of natural law gradually developed into natural rights, reflecting an alteration of focus from community to the citizen. Natural rights grant citizens the freedom to bring lawsuits against the government and offer a framework for restrictions of undue state control over society (Nickel, 2019).

Generally, human rights can be viewed as the values that aim to keep all citizens around the world from serious political, legal, and social violations. Rights to liberty of religion, to justice once convicted of a crime, to not be abused, and to education are all areas of human rights (United Nations Office, n.d.). The language of human rights has become universal today, a common language used to express the most basic demands of justice. Moreover, it can be said that human rights are the outcome of the political struggle for human dignity, and that all human rights enshrined in the international declaration of Human Rights in the contemporary world represent a broad and acceptable consensus on the necessary requirements for a decent life.

3. LEGAL POSITION OF HUMAN RIGHTS

The value of human rights was recognised in 1945 with the establishment of the United Nations (UN) following the horrific devastations to mankind in the Second World War that had never been seen previously. The UN Charter begins by saying “We the Citizens of the United Nations” (Mohiuddin, 1997, p. 80). This creation defines states’ responsibilities to take necessary steps to protect human rights (UN Office of the Commissioner of Human Rights [OHCHR], n.d.).

One of the UN's major successes is the formation of a substantive framework on human rights law, i.e., a uniform and global standard that all governments may adhere and all citizens may aspire. The UN provides a comprehensive list of universally recognised rights, namely legal, educational, financial, political, and civil rights. It has developed frameworks to promote and safeguard the rights, as well as to support governments in fulfilling their obligations. The UN Charter, ratified by the General Assembly in 1945, is the basis of this set of laws (UN, n.d.).

The Universal Declaration of Human Rights (UDHR), drafted by the Human Rights Commission, was adopted by the General Assembly in 1948 (UDHR, 1948). Besides the UDHR, the UN's efforts culminated in several main legal tools that describe and pledge the human rights defence, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) that came into force in 1976, as well as the Optional Protocol to the International Covenant on Civil and Political Rights (UN General Assembly, 1966). The constitution of universal human rights is made up of these instruments. Critics on universal human rights acts refer to the UDHR as a foundational universal declaration of individuals' unchallengeable and unbreakable rights. Whilst the UDHR provides the ethical meaning, the conventions obligate the governments that approve them (Mohiuddin, 1997, p. 80).

Human rights are addressed in many clauses of the UN Charter. Consequently, the UN Charter includes several articles regarding human rights such as Articles 1, 8, 13, 55, 56, 62, 68, and 76 so as to preserve global peace and security, to foster good relationships among states, to collaborate in the resolution of global matters and the promotion of human rights, and to serve as a focal point for aligning national movements. One of the UN's goals, according to Article 1, is to "promote and encourage regard for human rights and basic freedoms for everyone, without regard to race, sexuality, culture, or faith." Article 8 provides that "The United Nations shall not enforce any limits on men and women's eligibility to engage in its main and subordinate organs in any ability and on an equal basis." Article 13 states that "The General Assembly's duties, roles, and powers shall comprise supporting in the protection of human rights and essential freedoms for everyone".

Article 55 outlines the UN's goal of global collaboration, namely "global respect for and adherence of human rights and basic freedoms for everyone without regard to race, gender, culture, or faith". Article 56 states that "all members have to take collective and independent measures in collaboration with the Organization for the accomplishment of the objectives set out in Article 55". Similar guidelines are included in Article 62, which describes the Economic and Social Council's (ECOSOC) duties, roles, and powers. According to Article 68, "the Economic and Social Council shall constitute commissions in economic and social fields, as well as such other commissions as may be necessary for the execution of its functions". Likewise, in the explanation of the international trusteeship scheme, Article 76 includes human rights clauses.

Many global declarations, conferences, and regional agreements addressing human rights preceded the UDHR and the covenants of ICCPR and ICESCR. The Convention on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(1984), and The Convention on the Elimination of All Forms of Racial Discrimination (1969), are only a few examples (OHCHR, n.d.).

ICESCR is concerned with employment rights, trade unions, community welfare, household care, living and health standards, education, and cultural life. It guarantees that those rights are progressively realised in their entirety without discrimination (ICESCR, 1966). Meanwhile, liberty of movement, equal treatment under the law, assurance of innocence, freedom of faith and belief, freedom of thought and speech, right of peaceful assembly, freedom of association, right to engage in public affairs and to vote, and minority rights are all covered under the ICCPR. It prohibits unreasonable deprivation of life, abuse, inhuman or degrading treatment or punishment, bondage and forced labour, arbitrary detention or imprisonment, unreasonable invasion of isolation, conflict propaganda, and incitement to bigotry or aggression based on race or religion (ICCPR, 1966).

Individuals' right to self-determination, codified in Article 1, is the most important right governed in both covenants. Furthermore, except in emergency circumstances, those rights under the ICCPR can never be revoked or restricted, as stated in Articles 6(1), 7, 15, 16 and 18. Article 6(1) states that "No state party may abdicate its obligations to safeguard the right to life." Article 7 guarantees freedom from violence, Article 15 guarantees freedom from retroactive criminal law, Article 16 guarantees the right to be recognised as a citizen before the law, and Article 18 guarantees freedom of expression, conscience, and faith (ICCPR, 1966). However, persons can file charges of human rights abuses against approving states under certain conditions based on the Optional Protocol to the ICCPR (OHCHR, n.d.).

Since Iraq is a member state of the above covenants, the country recognises the responsibility to uphold the rights enshrined in them. Iraq is also a signatory of the International Convention on the Elimination of Racial Discrimination. Article 1(2) of the convention defines institutional racism as any differentiation, omission, or limitation of choice based on race, colour, ethnicity, or national origin that has the intent or result of negating or effecting the acknowledgment, enjoyment, or practice of human rights and political liberties on an equal basis in the political, economic, religious, cultural, or other fields of public life. Therefore, it means that the Iraqi Federal Government shall respect the international instruments regarding the protection of human rights (UN Treaty Collection, n.d.).

The UN General Assembly passed a resolution in 1975 specifying that any abuse and cruel, inhuman, or abusive treatment or punishment is beyond human self-respect and is a breach of human rights and basic liberties. Further, the Convention on the Elimination of All Forms of Discrimination Against Women emphasises the importance of eliminating segregation that denies or restricts women's representation in politics, economy, education, culture, and public participation (Convention on the Elimination of All Forms of Discrimination, 1979).

The UN General Assembly also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984. The convention requires

governments to regard abuse as a crime and to prosecute and execute those who commit it; neither greater orders nor extraordinary circumstances will warrant torture (Torture Convention, 1984). However, the most critical consideration would be that the UN has no compliance powers, even in accordance with Chapter VII of the UN Charter that only relates to the UN Security Council's (UNSC) intervention against violations of peace and performances of violence (UN Charter, Chapter VII, 1945). It is noteworthy that Iraq is a signatory of most of the human rights conventions and is responsible for any human rights violations (UN Human Rights Treaty Bodies and Data Base, n.d.).

4. KIRKUK PROVINCE

Kirkuk province is a disputed area located on the border between Iraq and Kurdistan Region. Sunni Kurds, Sunni Arabs, and Sunni and Shia Turkmen make up the population, along with a small number of Chaldean and Assyrian Christians. The city of Kirkuk is located in the Kirkuk province, which also includes the districts of Dibis, Hawija, and Daquq (International Crisis Group, 2018; European Union Agency for Asylum, 2021).

Kirkuk is an oil-rich city with oil pipelines to Tripoli, Lebanon and Yumurtalik port in Turkey. Crude oil production promoted the city's long-term development (Tikkanen, 2011). Although the majority of Kirkuk's population is Kurdish, the Ba'ath Party's Arabization³ programme has increased the Arab population five-fold in official censuses over the past 40 years (Anderson, 2009, p. 43). Therefore, the population of Kirkuk was estimated to consist of 178,000 Kurds, 48,000 Turks, and 43,000 Arabs based on the census conducted in 1957 (Kurdish Project, n.d.). Meanwhile, the Census Registration Records of 1957, Iraqi Ministry of Interior, the General Population Directorate showed that the population of Kirkuk comprised 48.3 percent Kurds, 28.2 percent Arabs, and 21.4 percent Turkmen, along with Assyrians, Chaldeans, and other communities (Cited from Talabany, 2007). However, Kirkuk's population can only be estimated because since the 1957 census, no reliable data have been made available (Saeed, 2017).

According to the Ministry of Planning of Kurdistan Regional Government (KRG), the population of Kirkuk is estimated at 1.2 million people (Westganews, n.d.; Kurdistan Region Statistics Office, n.d.). Meanwhile, the Ministry of Planning of Iraq Federal Government estimated the population of Kirkuk at 1.5 million ("Kirkuk is a province in Iraq", n.d.). It is clear that there is no accurate and definitive census that portrays the true population of Kirkuk.

Kirkuk is situated in a contested region in Iraq that extends from Sinjar on the Syrian border to Khanaqin and Mandali on the Iranian border. It has been a disputed area for over 80 years, as the Kurds want Kirkuk to be a part of the Kurdistan Region; however,

³ Arabization is a policy and process in which the former Ba'athist government forcibly displaced hundreds of thousands of Kurds from their homes in 1975 and brought in Arab populations to replace them. For further information see Washington Kurdish Institute report (2021).

this proposition has been opposed in Arab and Turkmen-populated areas (Bartu, 2010; Galbraith, 2008). Historically, the Kirkuk province presents an unresolved longstanding issue between Kurdistan regional and Iraqi federal governments. It is the subject of the bulk of issues and conflicts between both parties, including those involving human rights, land, security, oil, and the Kurdistan region's border (Washington Kurdish Institute, 2021). According to Article 140 of Iraq's constitution, the issue of Kirkuk must be solved through "normalisation and census and referendum".⁴

5. KIRKUK'S ISSUE UNDER UN RESOLUTIONS

The UN emphasises the idea of avoiding conflict and developing stability and peace. Therefore, the UN Charter specifies war prevention as one of the organisation's primary goals. The UNSC, among other UN organs, plays a crucial role in preserving peace and security. Once the presence of a risk or an act of aggression is identified, the UNSC will seek to resolve the conflict amicably and in accordance with the agreed terms stated in Chapter VII of the UN Charter (Alexandridi, 2022). Hence, the UNSC has played its role in Iraq in ensuring peace and security, especially concerning the issue of Kirkuk.

The United Nations Assistance Mission for Iraq (UNAMI) was established by the UNSC via Resolution 1500. The mission was approved on 14 August 2003 to help the UN Secretary General in carrying out its mission through Resolution 1483, based on the construction and obligations outlined in its statement declared on 15 July 2003, for a period of 12 months (UNAMI, 2003). Currently, the authorisation for UNAMI has been further extended by the UNSC until 31 May 2023 via Resolution 2631 (UNSC, 2022).

In Resolution 1770 (2007), the UNSC Council used the term "disputed internal boundaries" for the first time. In Paragraph 2 of the resolution, the UNSC specified that UNAMI should counsel, promote, and help the Iraqi government in addressing certain issues, such as the disputed internal boundaries when conditions permit. At the appeal of the Iraqi government, the Special Representative of the Secretary-General and UNAMI will "recommend, support, and provide assistance to the Iraqi government and the Council of Representatives on constitutional appraisal and application, as well as the establishment of procedures that are appropriate to the Iraqi government for resolving contested internal borders" ("UNSC Resolution 1770", 2007).

When UNAMI was formed, the Human Rights Office had to determine how it would operate. Since the beginning of its participation in Iraq, the UN has prioritised human rights matters. The two Secretary Generals' reports to the UNSC in 2003 provided

⁴ Article 140 of the Iraqi Constitution enacted in 2005 states that "The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalisation and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007".

comprehensive evaluations of the country's human rights situation. According to Paragraph 7(b) of Resolution 1546 issued in 2004, the Human Rights Office's mission is to "advance the shelter of human rights, peace building, and lawful and judicial restructuring in order to enhance the rule of law in Iraq" (Pace, 2008).

It is imperative to refer to Paragraph 6 of the UNSC's Resolution 1936 (2010), issued in 2011, on the situation in Iraq. The paragraph stresses "the need to review the joint security mechanism established to strengthen the security forces of the Iraqi government and the Kurdistan Region by conducting joint patrols between the Arab and Kurdish areas in the provinces of Diyala, Nineveh and Kirkuk" ("UNSC Resolution 1936", 2010). Further, according to this resolution, the security administration of Kirkuk province should be shared between KRG and the Iraqi Federal Government.

The UNSC, through two other resolutions 1883 and 2299 issued in 2009 and 2016, respectively, emphasises the term "disputed internal borders". It also underlines the importance of all Iraqi communities participating in the governance system and an open political dialogue, refraining against making remarks and decisions that could cause conflict, reaching a detailed resource delivery solution, developing a just and equitable solution for the country's contested internal borders, and working towards national unity ("UNSC Resolution 1883", 2009; "UNSC Resolution 2299", 2016).

The resolutions maintain the UNSC's position of "Emphasizing the significance of the UN, particularly UNAMI, in informing, promoting, and helping the Iraqis, comprising civil society, and the Iraqi Federal Government in strengthening democratic bodies, advancing comprehensive political negotiation and peace building in accordance with the Constitution, coordinating settlement attempts, and facilitating local negotiation, progress procedures that are appropriate to the Iraqi Federal Government for resolving internal boundary disputes" ("UNSC Resolution 1883", 2009; "UNSC Resolution 2299", 2016). The UNSC appears to have obliged both the Iraqi Federal Government and KRG to solve their internal boundary disputes peacefully based on the Iraqi constitution (Azizi, 2018).

On 18 October 2017, the UNSC released a press declaration in response to Resolution 13036, expressing concern about reports of violence near the Kirkuk province. It stated that "Members of the Council urged all parties to stop using violence and instead participate in positive dialogue as a method of reduction of tensions and preserving Iraqi unity while preserving the Iraqi Constitution's clauses. The members reconfirmed their support for Iraq's sovereignty, territorial integrity, and solidarity, and also the significance of focusing on the fight against the terrorist organisation known as Islamic State of Iraq and Syria (ISIS). They also expressed their complete backing for UN attempts to encourage cooperation between Iraqi stakeholders" ("UNSC Resolution 13036", 2017).

In 2020, after a six-month absence, a commission charged with resolving the fate of the contested province of Kirkuk returned to work under the oversight of the UN and Iraq's president and prime minister. Kurds, Arabs, and Turkmen make up the commission, which reflects the variety of the troubled province. The commission's goal is to reconcile

long-standing sectarian differences. The commission's task has resumed in the face of increasing pressure from Kurdish and Turkmen groups, which claim that the existing local government in Kirkuk is pursuing an Arabization project in the province in addition to ongoing assaults by ISIS (Mohammed, 2020).

Consequently, several UN resolutions have been issued, and they are lawful and will continue to be lawful until a final resolution of the conflict is achieved. Clearly, the UNSC does not allow violence against human rights in the city of Kirkuk. Thus, the protection of human rights in the Kirkuk province must be considered, and the Iraqi government is responsible for protecting the people of Kirkuk.

6. FUNDAMENTAL RIGHTS IN THE IRAQI CONSTITUTION

This section discusses the fundamental principles of human rights enshrined in the Iraqi Constitution. The purpose of this section is to present a constitutional commitment to protect the fundamental rights of the Iraqi people in general and Kirkuk province in particular without discrimination. Therefore, the Iraqi Federal Government must follow this Constitution in this context.

The current Iraqi constitution was adopted in 2005. There are several articles relating to the human rights protection of the Iraqis, including political, religion, education, economic, and cultural rights. The first part of the constitution, dealing with fundamental rights, applies to the province of Kirkuk as it is under the Iraqi federal administration by virtue of the constitution. It consists of several articles, including Article 2(2), which ensures the religious right of Iraqis. The article stipulates that "This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandeans". Article 4 gives all Iraqis the right to exercise their own native languages and recognises the use of both Kurdish and Arabic languages as the official languages in government institutions. It states that "Both Arabic and Kurdish remain recognized as formal languages in Iraq. According to educational criteria, people of Iraq shall be permitted to teach their kids in government-run educational facilities in their mother tongues, such as Turkmen, Assyrian, and Armenian, or in any other language in privately." Article 13 emphasises the supremacy of the constitution over all Iraqis, stating that "The Iraqi Constitution shall apply uniformly throughout Iraq as the primary and final source of law".

The other part of the constitution, which is relevant to rights and freedom, applies to the people of Kirkuk. In the first chapter including political and civil rights, Article 14 provides that "Regardless of sexuality, ethnicity, race, citizenship, birthplace, colour, religion, sect, opinion, or social or economic standing, all people of Iraq are treated equally under the law." Article 15 guarantees the right to protection of Iraqi people's life, stating that "Everyone has the right to freedom, safety, and the enjoyment of life. The infringement or limitation of these rights is illegal unless authorized by law and supported by an order from a court with appropriate jurisdiction". Article 16 gives Iraqis the right of equal opportunities, stipulating that "All Iraqis shall be given equal opportunities, and the state must ensure that appropriate steps are taken to make this happen".

According to Article 17, “First, everyone has the right to their own privacy as long as it does not conflict with the rights of others or the general good. Second, the dwellings’ safety shall be preserved. Homes would not be invaded, inspected, or damaged unless authorized by a court order that complies with the law”. Article 19 provides Iraqi people the protection of personal rights, stating that “Everybody’s right to engage in litigation shall be preserved and protected. In every stage of the inquiry and the trial, the right to a defence shall be protected and preserved. In both legal and administrative actions, everyone has the right to be treated fairly”. Article 120 safeguards the political rights of the Iraqi people by stating, “Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office.”

The chapter also emphasises economic, social, and cultural liberties. Article 22 (1) states that “All people of Iraq have a right to work in a manner that provides they can live in dignity.” Article 23 stipulates that “Private property is protected. The owner shall have the right to benefit, exploit and dispose of private property within the limits of the law. Ownership of property for the purposes of demographic change is prohibited.” According to Article 24, “The state shall guarantee freedom of movement of Iraqi manpower, goods, and capital between regions and governorates, and this shall be controlled by law.” Article 29 ensures that “The family is the cornerstone of society; as such, the state is obligated to protect it, along with its national, religious, and moral values. The state is required to ensure that women, kids, and the elderly are protected, to care for kids and youth, and to offer them the right environment in which to grow in their skills and capacities.” Article 30(1) provides that “The state shall ensure that each person and family, particularly kids and ladies, has access to health and social protection, as well as the necessities for a free and dignified life, including adequate housing and earnings.”

The second chapter of this part highlights the rights to freedom. Article 37 states that “First, Man’s freedom and dignity shall be upheld. No one may be held in custody or subjected to an investigation unless authorized by a court order. Torture, both psychological and physical, as well as cruel treatment, are not permitted. Any confession obtained through coercion, torture, or threats is not admissible as evidence, and the victim is entitled to legal restitution for any physical and psychological harm they endured. Second, the state shall ensure that each person is free from intellectual, religious political and intellectual pressure”. Article 38 provides that “In a manner that upholds morals and public order, the state shall ensure: First, the right to express oneself in whatever way. Second, freedom of the press, including printing, publishing, advertising, and media. Third, the right to freedom of association and peaceful association, which shall be governed by law”.

Article 42 says that “Each individual shall have the freedom of thought, conscience, and belief.” Article 46 emphasises that “Any of the rights or liberties guaranteed by this Constitution may not be restricted or limited in any way, except authorized by law or on the grounds of a law, and only to the extent that the limitation or restriction does not go against the fundamental nature of the right or freedom”.

In the light of above, it is clear that the Iraqi constitution strongly emphasises the Iraqis' fundamental rights, including cultural, political, security, economic, and religious rights. However, KRG is concerned about the human rights violations of the Kurds in Kirkuk, and these violations are elaborated in the following section.

7. OVERVIEW OF THE HUMAN RIGHTS VIOLATIONS IN KIRKUK

Human rights violations have been committed by militants operating in Iraq since 2003. The explosion of the UN headquarters in Baghdad in August 2003 killed the top officials in Iraq, illustrating the significant risk at the time ("Who Are the Iraq Insurgents", 2006). The explosion killed 22 UN employees and wounded over 100 others. The Executive Director of the World Health Organization (WHO) in charge of External Relations and Governing Bodies was also among the deceased. ("UN observes 5th anniversary of terror attack", n.d.). Since 2014, violence has escalated, mainly as a result of the acts of militant organisations such as Shia's Hashed al-Shaabi militants and ISIS ("Iraq Human Rights Report", 2017).

The rising power of the militant groups has led to deteriorations of the human rights situation in Kirkuk and has fragmented the security authority of the Federal Government over its institutions in the province. Assaults by militant groups are the greatest security issue for the populations of the Kirkuk province. There are numerous state and non-state security armed and militia groups, including ISIS, in Kirkuk. Some groups have vastly different power bases, agendas, and levels of commitment to the Federal Government while other groups receive orders from outside the government and from external parties such as Kata'ib Iraqi Hezbollah, Badr Organization, Asa'ib Ahl- Haq, Kata'ib Sayyid al-Shuhada and Kata'ib Hezbollah Al-Nujaba. All these armed groups belong to Iran (Rached & Bali, 2018). The government-supported armed groups govern the city of Kirkuk, while others govern the spot check and roads around Kirkuk (Kassim et al., 2020). These various armed groups typically have varied ethnic and sectarian make-ups. Therefore, the life of the people of Kirkuk reflects this diversity, which indicates the concurrent existence of many armed militants ("International Religious Freedom Report", 2021). The violations of human rights by militant groups in Kirkuk province can be classified into two subsections:

7.1 Displacement and humanitarian aspect

Many Kurdish families began to fear sectarian violence and fled Kirkuk after Iraqi militant groups regained control of the city. The UN estimated that slightly more than 100,000 civilians had left the city by 21 October 2017. Many people returned shortly after, but over 99,700 civilians remain displaced in the province as a whole, comprising those expatriated by the militant groups such as ISIS (Westcott, 2019).

The legal system is hampered by the various security players' division of power and authority. In the current volatile environment, the instability of the government's security authorities has led to the increased power of ISIS in the far west and across vast villages around Iraq, most notably in Kirkuk. According to a report by the UNSC on 11 January 2019, the number of ISIS militants in Iraq and Syria exceeded 14,000 ("UNSC Report", 2019). Further, according to a report by the international institution Oxfam, the attacks

by ISIS on civilians and security agencies in Kirkuk were more than 33 per month in 2018. This situation has a detrimental effect on the general security of Kirkuk and impacts how safely and fairly people can receive necessary services and protection (Kassim et al., 2020). In other words, militant armed groups have caused the people of Kirkuk to face several challenges, including in achieving security, social protection, employment, and in curbing sexual identity abuse.

ISIS burned farmers' crops, which are the source of their livelihood. According to a spokesperson of the Civil Defense of Kirkuk, 10 acres of farmers' land were burned (Ghareeb, 2020). Meanwhile, the Security Media Department of Iraq alleged that ISIS looked for innocent farmers to use as hostages. In an assault, six farmers were killed and their lands were set on fire (Mahmoud & Mustafa, 2022).

After the Iraqi army and Iranian-backed Shia Hashed al-Shaabi militants seized control of the multi-ethnic and religious province of Kirkuk on 16 October 2017, they dismissed the Kurdish governor of Kirkuk from his office and installed an Arab governor. Since then, there have been systematic human rights violations and abuses against Kurds in retaliation to the 25 September 2017 referendum on independence for the Kurdistan Region. Over 180,000 residents, mainly Kurds, were also expelled from Kirkuk and other contested cities as a result of the assault of 16 October such as Dibis, Daquq and Tuz Khurmatu, and they suffered from arson, robbery, and intimidation (Riva, 2017; Saeed, 2017).

Subsequently, the people of Kirkuk are concerned over the issues of employment and services due to the situation where security was under the control of the armed groups. Several demonstrations were held to demand their basic rights. Therefore, Jeanine Hennis-Plasschaert, Head of UNAMI, spoke with women, young people, and members of civil society about the fundamental and immediate needs of the public as well as issues related to human rights ("Kirkuk activists share concerns", 2022).

According to a report by Washington Kurdish Institute on 9 May 2022, the Iraqi Federal Government is still constructing the security foundations and conducting spot checks in civilian districts in the Kirkuk province in order to dissatisfy the local Kurdish population. Kurdish locals think that this is a tactic used by the Federal Government to force Kurds out of the province (Washington Kurdish Institute, 2022). The militant groups encourage Arab families to seize Kurdish families' agricultural lands by using unlawful evidence in the province. For instance, in 2019, approximately 200 Arab Sunni nationals went to a Kurdish sub-district named Sargaran to set up residence and possess properties using forged certificates. Kurdish villagers in Palkana were also threatened by Hashed al-Shaabi militants and Iraqi Federal Government soldiers if they did not abandon their properties (Ali, 2019; Hussamadin, 2020).

Human Rights Watch (2003) reported that the U.S and allied powers refused to restore rule and order in Kirkuk and guarantee the safety of its citizens. Thus, the Geneva Convention clauses, which define an occupying power's responsibility, have been violated. The report maintained that many people had been killed in Kirkuk city and that robbing and forced deportations had continued to occur. All the national minorities in the city had

been affected by extensive robbing and property damage, whilst the condition beyond the Kirkuk seemed to become even more unstable.

Furthermore, the Independent Commission of Human Rights in Kurdistan Region urged UN agencies, embassies, and diplomatic staff in Iraq to establish a global reality commission of inquiry against the abuses perpetrated by Iranian militia groups in Iraq and Syria, specifically in disputed districts including Kirkuk, Tuz Khomartu, Sinjar, and Khanaqin. The committee also emphasised the importance of international mediation so as to start a negotiation between Baghdad and Erbil in order to resolve all the remaining problems according to Iraq's constitution ("Middle East Report", 2018). According to a report by UNAMI on 19 October 2017, the UN is concerned about reports of homes, businesses, and governmental institutions being destroyed or looted, as well as the ethnic cleansing of people, mostly Kurds, in disputed areas by militant groups (UNAMI, 2017).

In 2011, Iraq ratified the UN Convention against Torture and embraced the Universal Declaration of Human Rights (UN Treaty Collections, n.d.). This obligates the Iraqi Federal Government to protect the human rights of everyone in Kirkuk, including all minorities, without discrimination. However, according to a research report published in 2020 by the Kirkiknow website, it had received over 2,000 complaints from the province of Kirkuk. Most of the complaints were concerned with violations of human rights, abductions, and devastation in the rural communities. Meanwhile, a report by the Centre for Regional and International Studies from the Kurdistan University at Kurdistan region of Iraq in 2019 declared that KRG protested humanitarian violations in Kurdistan areas which are outside the KRG (University of Kurdistan Hewler, 2019).

In a speech, the Prime Minister of KRG called on the Iraqi Federal Government and international institutions to "urgently intervene and put an end to these inhumane practices". He also requested that the UN assign a fact-finding team to explore and gather information thereof (Riva, 2017). As mentioned above, Kirkuk is a disputed area that has experienced various Arabization processes over the course of history in order to change its demographics. Hence, the president of Kurdistan Region called upon the UN to play its main role in solving the issues between the Iraqi Federal Government and KRG, especially concerning the issue of Article 140 of the Iraqi constitution (Gly, 2019).

7.2 Freedom of expression, discrimination and cultural rights

Freedom of expression is another issue of concern in the Kirkuk province. According to an annual report published by Press Freedom Advocacy Association in Iraq, from 3 May 2021 to 2 May 2022, with 37 violations reported, the Kirkuk province came in second after Baghdad, the capital of Iraq. The violations were abductions, death threats, abuse during coverage, captures and detentions, defeats, closure of TV channels, and unlawful dismissals ("World Press Freedom Day/Iraq", 2022). After the 10 October 2021 parliamentary election, a large-scale operation by an Iraqi security unit including Popular Mobilization Forces (Hashdi Shaabi militants) in the Kirkuk province led to the arrest more than 50 young Kurdish boys for celebrating the victory of a Kurdish party (Sherwani, 2021).

Discrimination is also another form of violation committed by the militant groups. According to KRG, along with the Kurdish population, the Christians and other religious and ethnic minorities were also victims of the armed groups' attacks ("International Religious Freedom Report", 2021).

Another human rights violation is violating the native language of the minorities within the Kirkuk province. The government of Kirkuk has removed Kurdish from official signages and is using the Arabic language exclusively. Therefore, the Kurdish people have requested the province's administration to rescind a decision to limit the language used on public signs to Arabic and some English in the multicultural metropolis (Sirwan, 2021). The Iraqi Federal Government prohibits using Kurdish terms in correspondences with the nation's Gas Corporation. For instance, the Oil Ministry of Iraq has formally forbidden using the Kurdish language at the government-owned North Gas Company ("Iraq bans use of Kurdish phrases", 2018).

In light of the above, it can be said that there has been blatant violations of human rights in Kirkuk. These are real violations of international human rights instruments and conventions. The cause of the violations can be traced to the presence of militant groups as well as the fragmented security ability of the Federal Government of Iraq in the Kirkuk province.

8. CONCLUSION

The paper concludes that everyone has their own natural and legal rights in society. Conceptually, natural rights are those that accord citizens the freedom to defend themselves, while legal rights offer a framework for restricting unwarranted state control over society. In other words, human rights are the principles that protect all people based on their own life framework within the world from political, legal, and social violations. Such rights include the rights to freedom of expression, justice, education, work, and security. Due to the significant human rights violations during First and Second World Wars, the international community paid close attention to human rights, giving them an international legal base. The UN Charter and the UDHR are the two main international legal conventions that emphasise the protection of human rights by states. These are followed by several other international instruments and conventions. This paper focused on the issue of human rights violations in the Kirkuk province. It explained the UN representatives' role in the province regarding the protection of ethnic minorities in the disputed area between the Iraqi Federal Government and KRG. Several resolutions of the UNSC focus on the peace and security in Kirkuk. Further, Iraq's current constitution also demonstrates emphasis on these fundamental rights. The constitution provides for human rights for all the different ethnic groups that live in Iraq. It obligates the Iraqi Federal Government to ensure the right to live, security, work, and freedom for Iraqis without any discrimination. Iraq is also a signatory of most of the international conventions related to the protection of human rights. However, this paper found that the Iraqi Federal Government could not guarantee the protection of the people living in the Kirkuk province due to the fragmented security ability of the Federal Government in the province and the greater power of militant groups over the power of the government. Thus, this situation has caused displacements, killings, and loss of jobs to numerous people in Kirkuk, especially the Kurds. Hence, it can be said that the Iraqi Federal Government could not carry out its international obligation regarding the protection of human rights.

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